

Trusts and foundations: the taxation of foreign instruments

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The trust, which this chapter has presented as a planning instrument, poses Swiss tax law a question that it has resolved through administrative practice. Since Swiss tax law does not recognise the trust, the federal administration laid down in 2007 the rules for its treatment: the revocable trust is transparent, its assets and income remaining taxable in the hands of the settlor; the irrevocable fixed-interest trust is taxed in the hands of the beneficiaries, to the extent of their entitlements; the irrevocable discretionary trust, whose beneficiaries have no firm entitlement, is treated differently depending on whether or not the settlor was resident in Switzerland at the time of settlement.¹ These rules, which practitioners regarded as offering little certainty, led Parliament to call for the introduction of a trust under Swiss law. The Federal Council put a draft out to consultation in January 2022, then abandoned it in September 2023 for want of political consensus and in the face of the rejection of the proposed tax provisions, so that Parliament wrote off the motion at the beginning of 2024.²

This abandonment leaves the Geneva financial centre in a particular situation: it is home to one of the largest concentrations of trustees in continental Europe, subject to authorisation since the Financial Institutions Act, yet it administers trusts settled under foreign laws, those of Jersey, England or New Zealand, whose Swiss tax treatment depends on a circular. Foreign foundations, from Liechtenstein and Panama, receive similar treatment, based on the question whether the foundation is genuinely detached from its founder, failing which it is disregarded for tax purposes and its assets attributed to him.³ The Geneva adviser must therefore master three layers: the civil law of the structure, which is often foreign; Swiss tax law, which decides who is taxed on what; and the tax law of the beneficiaries' country of residence, which the automatic exchange of information now informs of the structure's existence. Structures that do

not withstand this threefold analysis have, over the past ten years, been dismantled, and those that remain serve civil-law objectives, such as family governance, the protection of minors or the continuity of a business, in which taxation is no longer the driving force.

1 Notes

1. Swiss Tax Conference, Circular No. 30 “Imposition des trusts” (Taxation of trusts) of 22 August 2007 (ssk-csi.ch); Federal Tax Administration, Circular No. 20 of 27 March 2008 (estv.admin.ch): “The provisions adopted also apply to direct federal tax and to withholding tax”. ↩
2. Federal Office of Justice, “Introduction du trust dans le droit suisse” (Introduction of the trust into Swiss law), bj.admin.ch (accessed September 2026): motion 18.3383, consultation opened on 12 January 2022, abandonment by the Federal Council on 15 September 2023 for want of sufficient political consensus and in the face of the rejection of the tax provisions, motion written off by the Council of States on 12 December 2023 and by the National Council on 27 February 2024. ↩
3. BDO, “Sera-t-il bientôt possible de créer une fondation de famille suisse ?” (Will it soon be possible to create a Swiss family foundation?) (bdo.ch): under the double taxation treaty between Switzerland and Liechtenstein, a foundation whose founder retains a decisive influence is treated as transparent, its assets and income being attributed to the founder, whereas a foundation of which the founder has entirely divested himself is a tax subject in its own right, the beneficiaries being taxed on distributions; motion Burkart 22.4445, adopted by both Chambers, instructs the Federal Council to permit Swiss family foundations while preserving this distinction. ↩

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