

Foreign foundations and the Liechtenstein connection

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Liechtenstein, which borders the canton of St. Gallen and shares the Swiss franc and the customs area with Switzerland, has long offered a foundation law that allows the creation of family foundations for the maintenance of family members. The law gives considerable flexibility in the design of the foundation's governance and the rights of the beneficiaries. Wealthy families from Switzerland and abroad, including families living in Zug, can use such foundations to hold their wealth.¹ The Swiss tax treatment of foreign foundations follows principles similar to those applied to trusts. Where the founder has retained control over the foundation, the foundation is disregarded and its assets and income are attributed to the founder. Where the founder has irrevocably parted with the assets and the foundation is independent, it is treated as a separate taxpayer whose distributions to beneficiaries resident in Switzerland are taxed as income. The civil law recognition of a foreign maintenance foundation in Switzerland has been the subject of case law. The courts have in principle recognised such foundations validly created under foreign law, subject to Swiss public policy.²

1 Notes

1. Law of 26 June 2008 amending the Personen- und Gesellschaftsrecht, LGBL. 2008 No. 220, gesetzte.li: replaces Art. 552 PGR with a new foundation law in §§ 1–41, in force 1 April 2009. ↩

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2. BGE 135 III 614 of 17 November 2009 (servat.unibe.ch/dfr): the Federal Supreme Court recognised the capacity to sue of a Liechtenstein family maintenance foundation. It held that the prohibition in Art. 335 para. 2 ZGB is not a mandatory provision within the meaning of Art. 18 IPRG and does not override the incorporation principle of Art. 154 IPRG (text via swissrights.ch). ↩

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