

Taxation of Foreign Family Foundations and Trusts



In practice, foreign family foundations (separate taxable entities) and trusts are used as instruments in family wealth and estate planning. The tax treatment is dependent upon the configuration of the rights of the founder or settlor, and those of the beneficiaries. The tax implications outlined below are based on the assumption that the founder or settlor and the beneficiaries are resident for tax purposes in Switzerland, and that only private assets are transferred (with the exception of real estate).

A. Taxation of Foreign Family Foundations in Switzerland

Revocable family foundations

Incorporation:

The transfer of movable assets from founder to the foundation does not entail any tax. The assets and any resulting income are imputed to the founder.

Distributions:

Distributions may give rise to inheritance and gift taxes in line with cantonal regulations at the founder's (last) place of residence, depending upon the family relationship to the beneficiaries.

Liquidation:

Liquidation does not have any tax implications if distribution is made to the founder. For final distributions to the beneficiaries, inheritance and gift taxes may be incurred dependent upon cantonal law and the degree of kinship.

Irrevocable family foundations with a fixed beneficiary clause

The fiscal status is unclear, as there is no established case law. The tax consequences are either analogous to irrevocable family foundations with an open beneficiary clause (see below), or if there is an assumption of usufruct (beneficiary = usufructuary) as follows:

Incorporation:

The transfer of assets from the founder to the beneficiaries via the foundation may give rise to inheritance and gift taxes in line with cantonal regulations at the founder's (last) place of residence, depending upon the family relationship to the beneficiaries. The assets are imputed to the beneficiaries.

Distributions:

Only distributions considered to be income on capital are subject to income tax for the beneficiaries. Distributions from private capital gains (providing not a professional securities trader) and repayments of the paid-in foundation capital remain tax-free if adequate justification is provided.

Liquidation:

Beneficiaries are taxed on final distributions as current distributions.

Irrevocable family foundations with open beneficiary clause

Incorporation:

The transfer of assets from the founder to the foundation may lead to inheritance and gift taxes at the rate applied for non-relatives in line with cantonal regulations at the founder's (last) place of residence. The assets are imputed to the foundation.

Distributions:

The individual cantons take different approaches to distributions. In general, the recipient is subject to income tax at the time of the contribution. However, payments made to assist the needy may be tax-free.

Liquidation:

Beneficiaries are taxed on final distributions as current distributions.

B. Taxation of Trusts in Switzerland

Revocable trusts

Incorporation:

The transfer of assets from the settlor to the trust does not entail any tax. The assets and any resulting income are imputed to the settlor.

Distributions:

Distributions may give rise to inheritance and gift taxes in line with cantonal regulations at the settlor's (last) place of residence depending upon the family relationship to the beneficiaries.

Liquidation:

Liquidation does not have any tax implications, if distribution is made to the settlor. For final distributions to the beneficiaries, inheritance and gift taxes may be incurred dependent upon cantonal law and the degree of kinship.

Irrevocable fixed interest trusts

The trust beneficiaries are treated as the usufructuary, so the trust fund and income are imputed to the beneficiaries.

Incorporation:

The transfer of assets from the settlor to the beneficiaries via the trust may give rise to inheritance and gift taxes in line with cantonal regulations at the founder's (last) place of residence depending upon the family relationship to the beneficiaries.

Distributions:

Only distributions considered to be income on capital are subject to income tax for the beneficiaries. Distributions from private capital gains (providing not a professional securities trader) remain tax-free if adequate justification is provided.

Liquidation:

Beneficiaries are taxed on final distributions as current distributions. Capital repayments of the paid-in trust capital are tax-free. However, the paid-in trust assets can only be paid out after the distribution of all trust income.

Irrevocable discretionary trusts

If the settlor is resident in Switzerland when the trust is set up, the assets and investment income continue to be imputed to the settlor. The tax consequences are the same as for a revocable trust. However, if the settlor is resident abroad at the time the trust is set up, then the trust assets cannot be imputed to the settlor or the beneficiaries. In this case, there are the following tax implications:

Incorporation:

As the settlor is resident abroad at the time of the transfer (donation) of assets from the settlor to the trust, there are in principle no tax implications in Switzerland.

Distributions:

Beneficiaries are subject to income tax on the receipt of distributions. Proof of a tax-free capital gain should not be possible.

Liquidation:

Liquidation is taxed like distributions. Capital repayments of the paid-in trust capital are tax-free. However, the paid-in trust assets can only be paid out after the distribution of all trust income.

Other

When setting up a foreign family foundation or trust, or before relocating to Switzerland with assets in such legal entities, we recommend that you obtain in advance confirmation of the tax implications from the tax authorities by means of a tax ruling.

Contact Us

We will be happy to arrange a personal consultation. Please contact your advisor or schedule a personal consultation at:

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CREDIT SUISSE (Switzerland) Ltd.

P.O. Box 100

CH-8070 Zurich

[credit-suisse.com](https://www.credit-suisse.com)

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