

## TAX



## Changing the foundations

Recent changes have liberalised the Swiss foundation law, bringing in greater tax advantages

Ueli Sommer

Switzerland's Foundation Law changed at the beginning of this year, thanks to a raft of statutory amendments which liberalised the regime. Under the Swiss federal tax law, the limit on tax deductions for donations to charitable foundations has been increased from 10% to 20% of the net income (natural persons) or the net profits (legal entities) of donors. The cantons are still allowed to set their own limits. Under the previous law, only cash contributions were deductible. Now, however, the value of donations of other kinds of assets is also deductible. Consequently, the making of other kinds of donations, especially real estate, intangible property (e.g. software) and artworks, will be simplified and promoted.

The law now recognises, for the first time, that charitable foundations do not render a service subject to VAT if they list the name of the donor and the name of his or her company or its logo in a neutral form in publications (such as advertising). The same applies if the beneficiary of a charitable foundation refers to the charitable foundation in publications in the same manner. According to the revised laws, donations of money or property with a value of up to 20% of the net profits of a corporation, limited liability company or a mutual company to a charitable organisation may be justified as business expenses and should, therefore, not be considered a concealed profit distributed to a closely related third-party.

The law also introduced a new audit requirement. An independent auditor must review the accounting records and assets of a foundation annually and issue an audit report. In order to make the audit possible, the law also includes a new obligation to maintain accounting records and imposes the same recordkeeping requirements applicable to corporations on foundations. The Federal Council issued a regulation concerning the independent auditors of foundations which exempts some foundations from the audit requirement and imposes more stringent requirements on others. The relevant supervisory authority can excuse a foundation from the audit requirement if it does not publicly seek donations and for two consecutive years its total assets were less than SFR200,000 (£90,000).

Foundations which (i) publicly solicit donations and in two consecutive fiscal years have received donations in excess of SFR100,000 (£45,000); (ii) in two consecutive fiscal years exceed two of the following measures: total assets in excess of SFR10 million (£4m), turnover in excess of SFR20 million (£8m), 50 full-time employees; (iii) are required to prepare consolidated financial reports; or (iv) have outstanding debt securities, are required to appoint a specially qualified auditor. The new

audit requirements should lead to more transparency and reduce the work of supervisory authorities. It should increase the public's confidence in foundations, especially charitable ones.

The previous Foundation Law lacked a catalogue of duties to be observed in the case of over-indebtedness or impending insolvency. Now the law borrows the rule from corporate law that the ultimate management body is required to prepare interim balance sheets based on liquidation values and to deliver them to the auditors if there are justifiable reasons to believe the foundation is over-indebted or over the longer term can no longer meet its obligations. If the auditors determine that the foundation is, in fact, over-indebted or that it cannot meet its obligations over the long term, the interim balance sheet must be submitted to the supervisory authority. The supervisory authority will require the ultimate management body to initiate remedial measures and if it does not do so, the supervisory authority will itself initiate these measures.

Significant flexibility is provided by the introduction of the concept of a reservation of the right to change the purpose of the foundation. A donor can, at the time of establishment of the foundation, reserve the right to change its purpose. This makes it possible, after the lapse of 10 years from establishment or, if applicable, the last change of purpose, for a change of purposes to be made by the responsible federal or cantonal authority at the donor's request. If the foundation has a charitable or public purpose and is therefore not subject to taxation, then the new purpose must continue to make its tax-free status possible. If the foundation was established by a donor which is a legal entity, then the right to change the foundation's purpose expires after 20 years. The Association of Grantmaking Foundations in Switzerland issued its Swiss Code of Best Foundations Practice which sets forth 22 recommendations for the good governance of foundations.

The liberalisation of the Foundation Law is essentially positive. It results in more readily available tax advantages. The introduction of minimum accounting standards and mandatory audits increases transparency. The regulations concerning over-indebtedness and insolvency are a first step towards improved protections for creditors. Overall, the liberalisation helps Switzerland maintain its leading position for such institutions and has made Swiss foundations significantly more attractive.

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**The former members of 199 Strand regret the omission of Robert Duddridge from their earlier announcement. The full list of members and their new chambers is as follows:**

<b>David Phillips QC</b>	Wilberforce Chambers	<b>Robert Duddridge</b>	Enterprise Chambers
<b>Peter Andrews QC</b>	7 Bedford Row	<b>Rachel Vickers</b>	Outer Temple Chambers
<b>Robin de Wilde QC</b>	Clerksroom	<b>Eliot Woolf</b>	Outer Temple Chambers
<b>Keith Walmsley</b>	1 Chancery Lane	<b>Nick Isaac</b>	Tanfield Chambers
<b>Quintin Tudor-Evans</b>	12 Kings Bench Walk	<b>Louise Thompson</b>	12 Kings Bench Walk
<b>Robert Bourne</b>	9 Stone Buildings	<b>Jeremy Ford</b>	9 Gough Square
<b>Sara Hargreaves</b>	11 New Square	<b>Samantha Jackson</b>	Clerksroom
<b>Jacqui Beech</b>	Cloisters	<b>Stuart McKechnie</b>	9 Gough Square
<b>Francis Treasure</b>	22 Old Buildings	<b>Simon Brindle</b>	9 Gough Square
<b>Kevin Haven</b>	Pallant Chambers	<b>Kuljit Bhogal</b>	refer to website
<b>Patrick Sadd</b>	Outer Temple Chambers	<b>Niamh O'Brien</b>	Lamb Chambers
<b>David Fisher</b>	New Square Chambers	<b>Farrah Mauladad</b>	Crown Office Chambers
<b>Martin Hutchings</b>	Wilberforce Chambers	<b>Adam Dawson</b>	9 Gough Square
<b>James Aldridge</b>	Outer Temple Chambers	<b>Abigail Wright</b>	Lamb Chambers
<b>Nicholas Saunders</b>	Clerksroom	<b>Linda Nelson</b>	9 Gough Square
<b>Leslie Keegan</b>	7 Bedford Row	<b>Gurion Taussig</b>	Lamb Chambers
<b>Tim Nesbitt</b>	Outer Temple Chambers	<b>Thomas Wood</b>	22 Old Buildings
<b>Amanda Eilledge</b>	11 Stone Buildings	<b>Jonathan O'Mahony</b>	9 Stone Buildings
		<b>Alice Marshment</b>	Hardwicke Building

Contact details for each person can be found at [www.199strand.co.uk](http://www.199strand.co.uk)

Any enquiries about the former chambers should be directed to

Martin Griffiths on 07836 662216