



RELIANCE TRUST

INSIGHT IN CHARITABLE FOUNDATIONS

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High net worth individuals and their families want more and more to donate their time and means to causes that are important to them. Instead of giving directly – before or after their death – to an established charity, they are becoming more interested in establishing their own charitable foundation. By doing so, they achieve their philanthropic goals and have an efficient estate planning tool.

The regulatory environment and tax legislation varies per jurisdiction. The Swiss foundation sector has undergone a substantial growth during the last few years, in particular the foundations with an international scope. We will focus in our newsletter on the use of Swiss charitable foundations

SWISS CHARITABLE FOUNDATIONS

The combination of tradition of humanitarian aid, proximity of seats of major international governmental and non-governmental organisations (Red Cross, World Health Organisation, UNICEF, UNHCR), political stability, local expertise and favourable tax treatment, gives the necessary comfort and explains why Switzerland has become one of the favourite jurisdictions for charitable foundations.

There are circa 13'000 charitable foundations in Switzerland. The total endowment is estimated to be approximately CHF 70 billion and their annual distributions more than CHF 1.5 – 2 billion.

Below we summarise a number of specific characteristics of the Swiss charitable foundation.

CREATION OF A CHARITABLE FOUNDATION

A foundation is established by public deed before a notary public. Registration with the trade register is necessary to acquire the legal personality. A minimum initial capital of CHF 50.000 is in principle requested.

TAX TREATMENT

The Federal Circular of 8 July 1994 has provided a clear description of the Swiss tax treatment of charitable foundations. When the foundation is exclusively of public interest, it can obtain a tax exemption which will be applicable on federal, cantonal and communal level. This implies that the foundation is tax exempt and does not pay profit tax nor capital tax on gifts received from Swiss or foreign resident individuals or entities.

To obtain a tax exemption the following cumulative conditions must be met by the foundation:

- The foundation must have a purpose of public utility. The activities can be of charitable, humanitarian, health, ecological, educational, scientific and cultural nature;
- The foundation must have an unrestricted circle of beneficiaries;
- The foundation must have no self-interest and must allocate its funds in an altruistic manner to achieve its purpose;
- The funds must exclusively and irrevocably be dedicated to a public purpose.

LOCAL PRESENCE AND OPERATIONAL SET-UP

- Foundation Council: The Foundation Council represents the foundation and is responsible for the supervision of the activities of the foundation. The Foundation Council has to approve the annual financial statements. The Council must be composed of at least 3 members and at least one of them must be residing in Switzerland. The founder and family members can also become a member.
- Accounting and audit: The foundation is required to keep accounting records and an auditor must in principle be appointed.
- Supervision: Swiss charitable foundations are under the supervision of a public authority (Confederation, canton or commune). The activity report of the foundation has to be submitted on an annual basis to the competent supervisory authority. The main function of this supervision is to ensure that the funds are used according to the purpose for which they are destined.

PUBLICLY AVAILABLE INFORMATION

As the charitable foundation must be registered with the trade register to acquire legal personality, the following information is publicly available: (i) the name, purpose and seat of the foundation, (ii) the name, nationalities and residence of the members of the foundation council, (iii) the audit company.

Contrary to many other jurisdictions, the name of the founder, the regulations and the annual reports of the foundation are not public.

Reliance can assist with the incorporation, liaising with the various authorities (public notary, commercial registry and supervision authority). We can also coordinate with tax experts regarding the tax exemption. In Geneva, we take care of the administration, accounting and legal/tax obligations of Swiss charitable foundations.

We shall be pleased to provide any additionally needed information.

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Reliance Trust

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