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Family Foundations in Switzerland

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Abstract

At a governmental level, the introduction of a Swiss law on trusts is currently being reviewed. One of the arguments is that Switzerland does not provide for a suitable instrument to be used for estate planning or asset protection purposes. Many scholars and practitioners take the view, though, that a common law trust is not a suitable instrument and that therefore it would be more advisable to review the existing instruments, such as the Swiss family foundation or the *fiducie* (*Treuhand*), and to amend them accordingly. This article shall shed some light on the Swiss family foundation, on its use and limits and how it could be used *de lege ferenda* in the future if its legal limits were finally to be released.

General remarks

A robust estate planning ensures a reliable regulation and avoidance of conflicts amongst heirs. In each case, a tailor-made structure must be determined. While a testator may want to commit family assets over several generations to his family, another may seek avoidance of long inheritance proceedings or high inheritance taxes. Yet, other families seek anonymity and asset protection. A foundation may also be used in cases where an entrepreneur has no descendants suitable for succession or if he wants to ensure long-term continuity of his company.

However, a Swiss testator is faced with narrow rules limiting his or her estate planning options. Relatively high compulsory portions (forced heirship rules) encumber a free transfer of assets to heirs of the testator's choice. The Civil Code provides for a *numerus clausus* of testamentary dispositions, and a de facto prohibition of family maintenance foundations limits the use of foundations and possibly of trusts. As a consequence, in a pure Swiss estate where the testator, most heirs and assets are located in Switzerland, the use of a family foundation has rarely been considered. However, since families are often spread over different countries and continents and assets are located in various jurisdictions, contributions of assets to foundations or trusts may be the optimal solution, also because these assets no longer fall within the scope of the estate.[1]

The Swiss Family Foundation

Fideicommissum in the early days

Switzerland has long known the foundation as a legal entity, in 1853, the first German-language codification of foundation law was implemented in the Canton of Zurich.[2] Most of the early structures were so-called Fideicommissum derived from the Latin word "*fideicommissum*", which means "in trust". In a Fideicommissum, the dedicated assets are permanently linked to a family without the usual succession, and the Fideicommissum is intended to go typically to the

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1. BGr 5P.40/2005, E. 3.
2. H R Künzle, "Konturen des Stiftungsbegriffs aus schweizerischer Sicht" in Caspers/Wagner/Künzle, *Die Liechtensteinische Stiftung* (Zürich, 2002) 1.

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eldest son, in order to protect the property from fragmentation of the legal succession. The aim of the founders of a Fideicommissum was to ensure that at least one descendant of a respective generation continued the social and material status the family had attained, thus enabling him to enter the honourable but unprofitable service of the state.

According to the then established practice, the fideicommissionar had limited ownership in the special fund dedicated to him. He was entitled to use it but had to preserve the property in its substance, thus the funds could not be sold, encumbered or changed. The fideicommissionar was obliged to maintain the property, financed from the earnings and, if these were not sufficient, from his private assets, and to transfer it to another family member at a specific point in time, for example upon his death.

In the Swiss Civil Code (ZGB), which came into force on 1 January 1912, also the law on foundations was codified. In the dispatch of the Federal Council,[3] it was stated that foundations could be established for any purpose in the forms prescribed by law. The draft Civil Code declared Family Foundations to be generally permissible, although the limits of the freedom of disposition under inheritance law were to be observed. A Fideicommissum, on the other hand, was generally prohibited.

Historically, it appears that the introduction of the prohibition of the Fideicommissum into the Civil Code was the result of a compromise. In the preliminary drafts of the Civil Code of 1896 and 1900, it was left to the Cantons to limit or prohibit the Fideicommissum and/or the Family Foundation. However, after it was voted against maintaining the proposed Fideicommissum, an arrangement was reached whereby no new Fideicommissum could be settled, but those already existing in the Cantons, could continue to exist.[4] This proposal was included in the preliminary draft published by the Federal Department of Justice and Police and finally adopted in Article 335, paragraph 2 Civil Code of 10 December 1907.[5] The Federal Supreme Court drew from this perspective in its decision rendered in 2009 that if the legislator authorized the persistence of a Fideicommissum that existed before the entry into force of the Civil Code, it was because he considered that this institution did not unbearably offend the morals and sense of law prevailing in Switzerland.

The prohibition of the establishment of a new Fideicommissum must be seen in connection with the prohibition of multiple post-inheritances that already existed in the laws applicable at the time before the entry into force of the Civil Code. Accordingly, the appointment of a subsequent heir was limited to one generation in the Civil Code. The Fideicommissum was seen as basically nothing other than a subsequent appointment for an indefinite period of time and was therefore inadmissible under the legal understanding. In this respect, the existing Fideicommissium represented obsolete institutions that could no longer fulfil their purpose and were no longer in line with the legal system because they violated applicable inheritance law and were undesirable as continuing feudalism. Idleness was to be fought and people were to be encouraged to work. Therefore, there was no objection in principle to the abolition of the Fideicommissum.

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3. BBl Nr. 24. Vom 15. Juni 1904 IV 1.

4. As an example of a fideicommissum—in 1757, as the last two living, Franz Bernhard Feer and Leopold Christoph Feer, transformed the real property held by the family since 1525 into a family fideicommissum with primogeniture in favour of the descendants of their brother-in-law Anton Rudolf Pfyffer von Altishofen. The property became indivisible and inalienable with the right of inheritance of the oldest son in the line. In 2006 the fideicommissum was officially dissolved by the Canon of Lucerne. The only funds left was cash and this was transferred to the fideicommissionar; see Botschaft des Regierungsrates an den Grossen Rat (B 163) zum Entwurf eines Grossratsbeschlusses über die Aufhebung des Feer'schen Fideikommisses Balthasar'sche Abteilung (https://www.lu.ch/downloads/lu/kr/botschaften/2003-2007/pdf_2003/botschaften_2003/b_163.pdf), last accessed 26 April 2020.

5. BGE 135 III 614, E. 4.3.3

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Family maintenance foundations

Article 335, paragraph 1 Civil Code permits the establishment of family (maintenance) foundations "*to meet the costs of education, equipment or support of family members or similar purposes*". In other words, the permanent accumulation of assets for the benefit of a specific family, combined with unconditional beneficial interests for an unlimited number of generations, is prohibited.[6] The purposes have in common that assistance is to be provided to family members in certain situations, such as in adolescence, when setting-up their own household or living on their own, and in case of need. Similar purposes are also limited to those providing material help to the members of a certain family in situations of life where assistance appears to be necessary or desirable.[7]

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Educational costs include both the cost of basic and cost of continuing education at universities, apprenticeship schools and other educational institutions. In case of accommodation away from home, educational costs also include the cost of living in connection with education or training.[8] Such distributions serve to finance the general living support in the course of the education or training, i.e. the financing is limited to the duration of the education.

The term *equipment* was understood as the dowery of daughters getting married. Today, equipment includes payments that serve to establish, secure or improve a livelihood, in particular when starting a household, getting married or taking up self-employment.[9] The concept of endowment is to be interpreted broadly and understood to be an allocation of assets of a certain size and value.[10] As is the case for benefits under the title "education", distributions under the title "endowment" do not require an actual need or emergency situation of a beneficiary but a connection between the benefit and the purpose. The amount of the benefits paid to the beneficiaries is not limited, but depends on the financial resources of the foundation, the concrete needs of the beneficiary and the circumstances of family members.[11] The Supreme Court is rather strict in its interpretation of Article 335 Civil Code.[12]

The *support of family* members requires a situation of need of the beneficiary. An admissible support situation is denied if the beneficiaries regularly receive money or benefits in kind from the foundation for their general subsistence, irrespective of a concrete need situation. Financial or other benefits for sick, infirm, unemployed, single or economically difficult family members are allowed.

Based on the Federal Supreme Court's case law, foundations granting a beneficial interest without any special conditions linked to a certain life situation but simply in order to allow a beneficiary a higher or more pleasant standard of living, are frowned upon and considered null and void.[13] This is viewed as a substantial disadvantage vis-à-vis foreign family foundations.

Whether a Family Foundation is permitted or prohibited is only determined based on its purpose. Article 335, paragraph 1 Civil Code only prohibits the permanent confinement of assets in favour of a

6. H M Riemer, in Berner Kommentar zum Schweizerischen Privatrecht, Die Stiftungen, Systematischer Teil und Kommentar zu Art. 80–89bis ZGB, Bern 1981, N154.
7. BGE108 II 393
8. O Arter, Die Schweizer Familienstiftung, in: P V Kunz/F S Jörg/O Arter *Entwicklungen im Gesellschaftsrecht VII*, (Stämpfli Verlag AG Bern, 2002) 129.
9. O Arter note 8, 131.
10. O Arter note 8, 133.
11. O Arter note 8, 135.
12. BGE 108 II 393.
13. BGE 108 II 393

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particular family combined with unconditional distributions for an indefinite period. Thus, if the Family Foundation grants a special right to receive benefits to an individual or to individually determined family members instead of family members in general, such special right does not fall under the prohibition of Article 335, paragraph1 Civil Code.[14] A founder may reserve for himself or for certain individuals, rights to use, enjoy or exploit the assets contributed to the foundation and/or its earnings. These individuals may include heirs who are willing to renounce their compulsory portion in favour of the foundation or other related persons such as cohabiting partners, relatives, friends or employees of many years.[15] Special rights may include a usufruct on all or part of the foundation's assets, residential rights or payments in favour of a specific person. Although family members cannot receive an unconditional benefit in their capacity as a beneficiary, it is possible to provide the spouse, the descendants or grandchildren with general distributions for their cost of living, if they are individually determined in a special right.

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Business and Holding Foundations

A Business or Holding Foundation is a special form developed by practice and not explicitly regulated by law. In contrast to other foundations typically pursuing an ideal purpose, a business foundation is characterized by its proximity to the economy. However, its purpose must fall under the usual classification, i.e. it must correspond to that of a charitable or a Family Foundation.

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Two forms appear, the Business Foundation and the Holding Foundation. Business Foundations directly operate a commercial enterprise. In practice, these foundations often appear as hospitals, homes, schools, museums or theatres. The difference from the ordinary foundation lies in their commercial activity. In the case of a Holding Foundation, there is an indirect relationship between the company and the foundation. In its assets, the foundation holds equity in an operating company.

Whether a foundation may run a commercial enterprise and pursue an economic purpose has been questioned by scholars, in particular if the economic purpose prevails. Nevertheless, it is generally regarded as permissible, since ownership of companies does not in itself contradict the idea of a foundation. In 2001, the Federal Supreme Court for the first time dealt in detail with a Holding Foundation and affirmed its admissibility on the grounds that neither the freedom of legal transactions in general nor the freedom of foundations in particular allows a restriction to ideal purposes[16]. Up to this decision, the Federal Supreme Court had also regularly declared Business Foundations to be permissible[17]. As long as the legislator does not explicitly prohibit Business or Holding Foundations or the Federal Supreme Court changes its case law, economic activity remains permissible.

Typically, several motives influence the decision of an entrepreneur to establish a Business Foundation. Business Foundations with an ideal purpose are settled

14. H M Riemer, note 6 at N154; O Arter, "Unternehmensnachfolge mittels Unternehmensstiftung, Einbezug der Familie (2. Teil)" Expert Focus 725 (09/2018).
15. O Arter note 14, 725.
16. BGE 127 III 337.
17. BGE 75 II 81; BGE 110 Ib 17.

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for social and socio-political reasons. Their purpose is, for example, non-profit welfare in the broadest sense, such as the payment of contributions for the maintenance, education and training of young people who are dependent on material support due to their financial situation, or the financial support of the needy, the elderly and the sick, the promotion of the settlement and development of small- and medium-sized businesses or the support of projects and measures for the preservation of our habitat and animal protection.

If an entrepreneur has no descendants suitable for succession, the settlement of a Business Foundation could be a temporary bridging measure until the succession is settled. The establishment of a Business Foundation can, on the other hand, ensure the long-term continuity of the company. The Kuoni and Hugentobler Foundation, for example, is intended to preserve the Kuoni Travel Holding Ltd. Group on a permanent basis, while maintaining its previous corporate purpose. An entrepreneur can also use the Business Foundation to ensure the financial independence and well-being of his family and his dependants for the period after his death. However, this purpose is indeed restricted due to the prohibition of the Family Maintenance Foundation.

When drafting the foundation deed and the regulations it is advisable to take some practical peculiarities into account. It is particularly important to ensure that the purpose of the foundation is sufficiently specific but open-ended to allow for a flexible handling or the adaptation to later developments. When regulating the composition of the foundation board, it can be useful to stipulate that one family member must be a member of the foundation board. Since the company foundation is also a shareholder of the company, it is advisable to regulate the representation of the foundation in the general meeting. The foundation board meeting should ideally take place before the general meeting of the company. To ensure an influence of the foundation on the company, individual members of the foundation board should also be members of the board of directors. This guarantees a constant exchange of information. Although the principle of freedom of foundation applies, there are restrictions with regards to influencing the foundation. The founder can for instance not grant himself a free right of disposal over the foundation or its assets or reserve a right to revoke the foundation or amend the foundation deed.[18] If a founder wants to keep certain control, he typically choses a foreign jurisdiction for setting up and retains certain rights.

Although the principle of freedom of foundation applies, there are restrictions with regards to influencing the foundation

The use of Swiss Family Foundations in estate planning

The Family Foundation is used hesitantly in Swiss succession planning, although in recent years, the establishment of a foundation has been increasingly re-evaluated. In addition to the limits the Swiss Civil Code poses on Family Foundations, other legal restrictions are also responsible for the fact that Family Foundations are hardly ever used by a Swiss testator.

The Family Foundation is used hesitantly in Swiss succession planning, although in recent years, the establishment of a foundation has been increasingly evaluated again. In addition to the limits the Swiss Civil Code poses on Family Foundations, other legal restrictions are also responsible for the fact that Family Foundations are hardly ever used by a Swiss testator

The compulsory portions of the spouses and children, and in some cases even of the parents, as stipulated in the Swiss Civil Code, restrict the testator's freedom of disposal (so-called forced heirship rules).

18. O Arter note 14, 726.

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An heir being protected by the compulsory portion is entitled to unlimited ownership of inherited assets. Even if the protected heir was the sole beneficiary of a foundation or a trust and the deed provided that the assets will be distributed at a fixed date, the compulsory portion would be violated and could in principle be clawed-back in a Court procedure.

If the testator transferred part of the assets to a foundation during his or her lifetime, irrespective of whether it is a Swiss or foreign foundation, this donation is subject to a reduction under inheritance law if it was made five years preceding his or her death (Article 527, number 3 Civil Code). If the donation was made more than five years ago and the heirs can prove that the donation was made for the purpose of avoiding the restriction on disposal, they can still claim that their compulsory portion was violated (Article 527, number 4 Civil Code). In practice, such proof is not in any case easy, but the Federal Supreme Court does not set high hurdles for descendants. In these cases, the foundation must return the assets to the respective heir in the amount of the compulsory portion, if it still exists.

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Against this background it is always advisable to discuss the motives with the family when planning an estate involving a foundation and to regulate the legal basis and consequences with a marriage and/or inheritance contract. The protected heir could renounce his or her right to the compulsory portion in a formal agreement with the testator. The latter would in return agree to transfer at least the compulsory portion to a foundation with the renouncing heir as beneficiary.

Against this background it is always advisable to discuss the motives with the family when planning an estate involving a foundation and to regulate the legal basis and consequences with a marriage and/or inheritance contract

However, to avoid limitations in the organization of a Family Foundation, Liechtenstein Foundations or, at times, common law trusts are used alternatively, depending on what the objective is or where the family members or assets are located. This situation has long been criticized by scholars as it is dissatisfactory that the intended goal can only be reached by using a foreign instrument.

For non-Swiss residents, the Swiss Family Foundation is not an alternative yet. However, if the legal limitations were finally lifted, the Swiss Family Foundation could be an attractive instrument for a foreigner as it is an instrument well known to the Swiss legal system, and, not less important, to the Swiss Courts.

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Tax considerations

Swiss Foundations

Today, tax consequences can have an additional influence on the decision against a Swiss Family Foundation. While spouses and children are tax-exempt in almost all cantons, cantonal inheritance and gift tax laws provide that the contribution of assets to a foundation is taxed at the maximum rate for non-related persons. As a result, no inheritance tax would be payable in case of direct inheritance to the heirs, but a tax of up to 45% may be payable in the case of a contribution to a foundation with the same heirs as beneficiaries. Only a few cantons do not know inheritance and gift taxes or

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exempt the contribution to a foundation from inheritance and gift tax only if tax-exempt family members are beneficiaries. The founder could of course transfer his or her residence to such a Canton. However, in most cases this is out of question for various reasons.

Swiss Foundations are taxed as legal entities. Net profit is subject to income tax, whereby contributions to the assets of the foundation are not counted as taxable profit. On the other hand, the fair market value of the net assets of a foundation is subject to capital tax. Tax rates are typically lower than corporate tax rates and can be as low as 10.4% for profit and 0.08% for capital tax.

Distributions (also in connection with the dissolution of the Foundation) received by a beneficiary are typically subject to income tax. No distinction is made whether initial capital, capital gains or income is distributed. As far as distributions are paid for the upbringing of children or the alleviation of distress, such payments may qualify as tax-free support benefits. These benefits are typically paid periodically. According to the case law of the Federal Court of Justice, distributions cannot be viewed as gifts from the foundation to the beneficiary since the foundation is not acting voluntarily but within the framework of the foundation deed, fulfilling its legal obligation[19]. However, there are Cantons such as the Canton of Zug that may apply gift tax on large gifts in the sense of a larger, one-off endowment.[20] The establishment of a foundation itself has no tax implications for the beneficiaries.

If the tax authorities recognize the non-profit status of a foundation, no gift tax is levied when the foundation is settled. The entrepreneur-founder typically seeks tax exemption as a transfer of his company may trigger substantial gift taxes otherwise. However, pursuant to Federal Tax Code,[21] entrepreneurial purposes are expressly not charitable. The acquisition and management of significant equity investments in companies can be considered as non-profit if the interest in maintaining the company is subordinated to the non-profit purpose and no management activities are carried out. Thus, pure capital investments—even if they are more than 50% shareholdings in companies—do not preclude tax exemption if they do not allow for any influence on the management of the company. This is the case, for example, if the voting rights are held by another legal entity. Thus, no influence on the business activity of the company concerned may be exercised via the capital participation. Among other things, this requires a clear organizational and personnel separation (i.e. independence) between the foundation board and the board of directors, whereby the presence of a liaison person is permitted.

The law also requires that, in the case of a substantial shareholding, the maintenance of the company must be subordinated to the public interest. This presupposes that the foundation is regularly supported by substantial contributions from the company it owns and that these funds are actually used to carry out an altruistic activity in the general interest, i.e. a non-profit-making activity.

If a non-Swiss resident settled a Swiss Family Foundation, no Swiss gift tax would be due. The tax consequences in the country of residence of the founder would of course need to be considered. As the tax rates on Foundations are quite low, the Swiss Family Foundation could *de lege ferenda* be an interesting tool in estate planning.

Liechtenstein Foundations

As mentioned, Liechtenstein foundations are commonly used as they are more flexible. In contrast to Swiss civil law, family maintenance foundations are permitted under Liechtenstein law, i.e. these foundations can provide family members with foundation assets and income even without a special need situation.

In contrast to Swiss civil law, family maintenance foundations are permitted under Liechtenstein law

19. A.668/2004, E. 3.4.3.
20. The furnishing of the daughter's dental practice is paid for by the family foundation established by the father. In some Cantons, the amount of gift tax is based on the degree of kinship between the founder of the foundation and the beneficiary.
21. Art. 56 lit. g Federal Tax Code.

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In the case of a Liechtenstein foundation recognized under civil law, the assets owned by the foundation under civil law and the income from them are in principle attributable to the foundation also for tax purposes. However, based on actual circumstances, the Swiss tax authorities typically examine whether the assets and income of the Liechtenstein foundation should rather be attributed to the founder or the beneficiaries. For this purpose, the tax authorities and Courts typically rely on the tax avoidance provision. Also, various tax provisions relevant in this context are not strictly linked to civil law, e.g. the provisions on taxable income and taxable assets do not necessarily require ownership of the assets under civil law. The actual circumstances have to be assessed according to their economic content.

Based on actual circumstances, the Swiss tax authorities typically examine whether the assets and income of the Liechtenstein foundation should rather be attributed to the founder or the beneficiaries

Whether foundation assets and income are to be allocated to the foundation, the founder or the beneficiaries is thus assessed based on the circumstances of the individual case. The foundation deed, the by-laws and possibly a mandate agreement between the (economic) founder and the foundation councils must be considered. An allocation of the assets to the founder may be necessary in the following circumstances:

- The founder has not definitively renounced his assets. This is particularly the case if he can revoke the foundation or demand its liquidation in his favour.
- Due to the specific circumstances, the founder has de facto control over the foundation assets. This is the case in the following circumstances, for example:
  - The founder has reserved the right to amend the foundation deed or the by-law.
  - The founder may issue instructions to the foundation council via a mandate agreement concluded with its members.
  - The founder has been appointed as the first beneficiary with unrestricted entitlement to the capital and income of the foundation.
  - Based on banking powers of attorney, the founder has access to the bank accounts and custody accounts of the foundation and can therefore freely dispose of the assets of the foundation.

On the other hand, it may be appropriate to allocate foundation assets and income to the beneficiaries if

- The beneficiaries have de facto or de jure control over the assets of the foundation, or if
- The assets of the foundation are firmly linked to a family and serve to pay maintenance benefits to the respective beneficiaries in predetermined quotas (the legal relationship between the beneficiaries and the foundation then has a character like a usufruct). A typical example of this is a foundation in which the income is to be paid to the beneficiaries on an ongoing basis in accordance with the foundation deed or by-law.

As long as contributions to Swiss Family Foundations remain subject to tax, the establishment of a Liechtenstein foundation may remain more beneficial for a Swiss testator. He can retain certain influence on the foundation or foundation assets resulting in a transparent tax treatment while implementing his other goals.

Outlook

Due to the current legal framework, the Swiss Family Foundation is of limited use.

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The prohibition of Family (maintenance) Foundations has already been criticized on various

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occasions. Particularly offensive is the fact that the statutory limitation of purpose only applies in relation to family members, whereas a foundation for any purpose (including maintenance) may be established for the benefit of non-family members.[22] It is unsatisfactory that foreign instruments can be used in practice to achieve the intended result. Professor Andrea Opel even takes the view that Article 335 Civil Code is alien or even "contrary to the system" and that the catalogue of permissible purposes in the existing law (*de lege lata*) must therefore be interpreted broadly, even if this does not fully comply with the will of the historical legislator.[23] Furthermore, the Supreme Court held that moral, even purist and economic considerations which led to the introduction of Article 335 Civil Code are obsolete today, as the prevention of idles is no longer an important task of the state unlike the fight against unemployment and impoverishment.[24]

The prohibition of Family (maintenance) Foundations has already been criticized on various occasions

The doctrine therefore argues for the Family (maintenance) Foundation to be allowed in principle.[25] In order to avoid "eternal" asset perpetuation, a time limitation of the existence of the foundation to about 100 years is proposed, similar to the common law trust.[26] For this reason, the purpose of the family maintenance foundation should be extended *de lege ferenda*.

Since the tax framework has a decisive influence on the use of Swiss Family Foundations, the taxation should also be reconsidered. Professor Andrea Opel rightly calls for a holistic rather than an isolated consideration of the relationship.[27] The capital contribution as well as the distribution of dividends should therefore be regarded as a triangular relationship between founder, foundation and beneficiaries as a whole. From this it follows that the substance should not be taxed more than once, i.e. with the gift tax at the time of the contribution and thereafter again with the income tax at the time of distribution to the beneficiary. As is also the case with trusts, the contributed substance, but not the income earned in the foundation, should remain tax-free on distribution.

By opening up the purpose of the foundation, the Swiss Family Foundation would not only be an instrument for Swiss testators but could also be interesting for foreigners, especially since foundations are taxed at a relatively low rate.

The discussion on the introduction of the Swiss Trust[28] gives new impetus to the demand for the opening of the Swiss Family Foundation and it is to be hoped that this demand will also influence the discussions.

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22. A Opel, "Hat die schweizerische Familienstiftung ausgedient?", Jusletter 4 (31 August 2009); P Breitschmid, Erbrecht, Unter Berücksichtigung insbesondere der Schnittstellen von persönlichkeits- und vermögensrechtlichen Aspekten, in P Gauch / J Schmid, (Hrsg.), Die Rechtsentwicklung an der Schwelle zum 21. Jahrhundert, Symposium zum Schweizerischen Privatrecht, Zürich 2001, 109; M Hamm/S Peters, Die schweizerische Familienstiftung – ein Auslaufmodell?, successio 2008, 248 ff., 250 f.; BGE 75 II 81, 90 .
23. A Opel, note 20 at 7.
24. BGE 135 III 614.
25. H Grüninger, in: H Honsell/P N Vogt/T Geiser, Thomas (Hrsg.), *Basler Kommentar zum schweizerischen Privatrecht*, Art. 1–456 ZGB (3rd ed., Basel, 2006) N3 to Art. 335; M Hamm/S Peters note 20, 251; H R Künzle, Familienstiftung – Quo Vadis?, in P Breitschmid et al. (Hrsg.), *Grundfragen der juristischen Person*, Festschrift für Hans Michael Riemer zum 65. Geburtstag (Bern, 2007) 189ff.; A Opel note 20, 9.
26. A Opel note 20, 9; H R Künzle, Stiftungen und Nachlassplanung in *Die Stiftung in der juristischen und wirtschaftlichen Praxis* (Zürich, 2001) 16.
27. A Opel note 20, 8.
28. N Peter, "Introduction of a trust law in Switzerland" 25(6) *Trusts & Trustees* 578–586 (2019).

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