



March 30, 2024

For more information :

LLJ Tax :

Dirk COVELIERS*
dirk.coveliars@llj.be

Lallemand Legros & Joyn (LLJ)
Ch. de La Hulpe, 181/24
Terhulpesteenweg
1170 Brussels – Belgium
*Lallemand Legros & Joyn (LLJ)
Antwerpen
Uitbreidingstraat 84
2600 Berchem - Belgium
M : +32 472 920 327
T : +32 2 738 02 80

www.llj.be

Recently, some sensational articles have appeared in the Belgian newspapers L'Echo and De Tijd, suggesting that the use of Belgian private foundations by wealthy families primarily aims to avoid inheritance taxes. Below, you will find an initial reaction to this. Of course, every situation is different, and an individual analysis of each private foundation is therefore advisable. You can read more about this via the following link:

FAMILY FOUNDATION: Don't throw out the Baby while keeping the Bathwater!!

In the March 23 issue of L'Echo and De Tijd, the family foundation is unfairly portrayed as a vehicle for avoiding inheritance tax. A quote in the article even suggests that the foundation "skirts" what the law allows if it makes distributions to all family descendants.

I recommend reading my contribution titled "Over naar Familiestichting" ("Transitioning to Family Foundations"), published in the Liber Amicorum Alois Van den Bossche, Die Keure 2019.

In it, I explain how the selfless purpose has been interpreted over the years by the Ruling Commission and Vlabel. Moreover, notaries also have a scrutiny role regarding that selfless purpose when establishing a private foundation. Since the Law of March 23, 2019, introducing the new Code of Companies and Associations (CCA), directors and founders of the private foundation can also receive distributions within the framework of the selfless purpose, which before was legally defended.

As a consequence, distributions to family members are entirely possible if they align with the selfless goal and provided that the foundation is not merely a conduit to the next generation.

Not only are the distributions limited to the realization of the selfless purpose, but they also depend on the autonomous operation and discretionary decision-making authority of the Board of Directors of the foundation.

The newspaper headline emphasizes the avoidance of inheritance tax! The property tax on, among others, private foundations was recently raised significantly from a flat rate of 0.17% to a progressive rate of up to 0.45%. In a policy note dated October 27, 2023, Finance Minister Van Peteghem



declared that the property tax was reformed to make it 'future-oriented' and to align it once again with its original purpose in 1921, namely to compensate for the loss of inheritance tax. So what's the point??

The 2013 law on the unification of protection statuses has also given the private foundation a new important protection function. It is the only legal entity in Belgian law eligible to become a guardian (administrateur/bewindvoerder) over the assets (and person) of an incapacitated person. Thus, the private foundation can fulfill a similar role before the beneficiary is declared incapacitated and can also prevent that person from ever being declared incapacitated. Furthermore, it is a very important and entrenched structure that protects "singles" or individuals without direct descendants from financial exploitation by asset managers or "companions." There is indeed oversight by the commercial court, especially when the foundation is dissolved and assets are reallocated. It is also a perfect structure for protecting its assets for those who fear dementia.

Of course, abuses can sometimes occur with this vehicle, but in the majority of cases, such a family foundation is perfectly legitimate. Don't throw The baby shouldn't be thrown out with the bathwater!

In that regard, it is also unacceptable that certain founders are publicly named in one stroke of the pen in the press. Largely sensationalism, as we have already experienced with the "Pereos" foundation established by the late Queen Fabiola.

**



Lallemand
Legros &



