

Client Briefing

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Planned Revision of the Taxation of Foreign Family Foundations

Information on the draft bill published by the Federal Ministry of Finance (BMF) on 18 November 2025 on the revision of Section 15 of the German Foreign Tax Act

In November 2025, the Federal Ministry of Finance presented a draft revision of Section 15 German Foreign Tax Act. The provision, which concerns the taxation of founders or beneficiaries of Germany-based foreign family foundations and trusts, is to be largely amended. Although the basic model of attribution taxation (a kind of CFC taxation) will remain in place, the draft contains numerous changes which, if implemented, could have significant influence on existing and new structures.

I. Introduction

The taxation of foreign family foundations and trusts (hereinafter referred to as "**foreign family foundations**") and of founders and beneficiaries resident in Germany has always been a pressing but often underestimated issue. The fact that the rules governing their taxation are spread across four tax laws – the Corporation Tax Act (*Körperschaftsteuergesetz*), the Income Tax Act (*Einkommensteuergesetz*), the Inheritance and Gift Tax Act (*Erbschaft- und Schenkungsteuergesetz*) and the Foreign Tax Act (*Außensteuergesetz*) – is testimony to the complexity of the matter.

After the Supreme Tax Court (*Bundesfinanzhof* – BFH) recently ruled that the current provision of Section 15 of the German Foreign Tax Act violated the free movement of capital under EU law (Art. 63

TFEU), the Federal Ministry of Finance (BMF) presented a draft on 18 November 2025, according to which the provision is now to be completely revised and more closely aligned with the so-called controlled foreign company rules (CFC rules) (Sections 7 to 13 of the German Foreign Tax Act). Now that first comments in the ongoing legislative process on the draft by associations are available, we would like to give you an overview of the planned changes and their practical implications.

II. Overview of the Current Legal Situation

Although the Federal Ministry of Finance's draft contains numerous changes, the basic principle of taxing foreign family foundations is to be retained. Under Section 15 of the German Foreign Tax Act, the legislator breaks through the shielding effect (tax intransparency) of foreign family foundations under

certain conditions. Regardless of whether the foreign family foundations has its own legal personality and tax liability, the foundation's income is attributed (pro rata) to the founder resident in Germany or, subordinately, to the Germany-based beneficiaries of the foreign family foundations and is re-classified as income from capital assets. This is referred to as attribution taxation. Unlike, for example, the receipt of dividends, this applies regardless of whether the beneficiary actually receives payments from the foreign family foundations, so that taxation initially occurs without any cash inflow ("dry income"). Foreign taxes paid by the foreign family foundation on its income can be credited. A subsequent payment to the beneficiaries is then exempt from income tax in the amount of the attributed amount.

The term "family foundation" has, until now, covered foundations (and comparable structures such as trusts) that are established primarily in the interests of a family, where the founder, his relatives and their descendants together are entitled to more than half of the benefits or proceeds.

The legislator's intention is to prevent foreign family foundations from being used specifically to transfer capital to low-tax countries abroad and thus to avoid German taxation. However, the low taxation of foreign family foundations income has not previously been a prerequisite for taxation under Section 15 of the German Foreign Tax Act. Attribution taxation is therefore similar in purpose and effect but not 100% comparable to so-called CFC rules, which is intended to prevent the transfer of (passive) income to low-tax corporations abroad. There, too, certain income of the company is attributed to the domestic shareholder who controls the foreign corporation as if the income was generated by his own, despite the corporation's independent tax status.

Section 15 para. 6 of the of the German Foreign Tax Act currently provides for an important exception to attribution taxation. If the foreign family foundations is based in an EU or EEA country and provided there is a sufficient right to exchange information ("broad information exchange clause") between Germany and that country, and if the foundation's assets are legally and effectively withdrawn from the power of disposition of the founder and the beneficiaries (e.g. these persons have no legal or economic entitlement

in the foundation's assets), attribution taxation is excluded. Due to the basic freedom of free movement of capital within the EU, this exception must also apply to foreign family foundations based in third countries irrespective of the narrow wording of the provision. This was recently confirmed by the Supreme Tax Court in its rulings as of 3 December 2024 (see our client information dated May 2025).

III. Key Changes according to the Federal Ministry of Finance's Draft Bill

1. Approach to CFC Rules

In terms of tax system, the Federal Ministry of Finance's draft primarily pursues the goal of approximating the attribution taxation of Section 15 of the German Foreign Tax Act to the CFC rules regulated in Sections 8 et seqq. of the German Foreign Tax Act. In particular, the attribution of income to foreign family foundations will in future only apply if the foreign family foundation is subject to low income taxation of less than 15 per cent. This limit originally stems from the concept of global minimum tax (Pillar II) and has also applied to German CFC rules since 2024. Unlike in the case of CFC rules, however, according to the current draft version, it is irrelevant whether the foreign family foundation generates active or passive income. The regulation thus covers all low-taxed income of the foreign family foundation (only for CFCs of that or related foreign family foundation the general CFC rules apply according to which only passive income is subject to CFC taxation). The associated restriction of taxation to low-taxed income is generally positive for the foundation structures concerned. However, the alignment with CFC rules is not being implemented consistently.

2. Redefinition of Foreign Family Foundations

The new version of Section 15 of the German Foreign Tax Act also redefines the term "foreign family foundation". In addition to minor editorial changes, the new definition contains a significant expansion of the scope: in future, the determination of the direct or – now also – indirect beneficiaries will no longer depend solely on the founders, their relatives and their descendants, but also on so-called related persons. This covers, in particular, corporations in which one of the aforementioned persons holds at least a

25 per cent stake or over which they can exercise a controlling influence (cf. Section 1 para. 2 of the German Foreign Tax Act). A close relationship can also be established by reference to Section 7 para. 4 of the German Foreign Tax Act if several beneficiaries act in concert. Depending on the circumstances, these extensions can result in a re-classification of foundations becoming a foreign family foundation for the first time and henceforth being subject to attribution taxation.

Example: Founder S has established a foreign foundation whose income is to be distributed in equal shares (1/3 each) to his son and two other persons who are neither relatives nor descendants. Under current law, this is not a foreign family foundation because only the son falls into the aforementioned group of persons, but he is not the beneficiary of at least 50 per cent. In future, however, a foreign family foundation could be assumed if another beneficiary is a person close to the founder or the son, or if the son coordinates his behaviour with regard to the foundation with another beneficiary.

3. Exemption of Attribution Taxation

A fundamental revision is also planned for the exemption provision in Section 15 para. 6 of the German Foreign Tax Act. According to the current wording, this provision only allows for an exemption from attribution taxation for foreign family foundations based in an EU or EEA country under the additional conditions specified therein. The planned revision will replace that rule with an exemption that, regardless of the registered office of the foreign family foundation, will only focus on the question of whether the involvement of the family foundation is based on an "artificial arrangement".

The draft bill takes account of the latest Supreme Tax Court ruling, which rightly considered the narrow wording of the previous exemption provision to be a violation of the EU's freedom of capital movement. For this reason alone, the extension of the exemption provision to third countries is logical. As before, however, an exemption shall only be

considered if the country of residence provides the necessary information (information exchange clause).

Until now, exemption was dependent on proof that the foundation's assets had been legally and effectively withdrawn from the founder's and the beneficiaries' power of disposition. The new decisive criterion of "artificial arrangement" is not specified in the draft, which could lead to considerable uncertainty in its application if implemented. This criterion, however, has already been established by case law of the European Court of Justice in the context of CFC rules. The decisive factor is whether the foreign corporation carries out its own economic activity (cf. Section 8 para. 2 of the German Foreign Tax Act). However, in our opinion, a simple transfer of this case law to foreign family foundations leads to further difficulties. Since foreign family foundations typically engage in asset management, the economic activity of the foundation is of limited significance. Rather, it stands to reason that the taxpayer will have to demonstrate non-tax reasons for establishing the family foundation abroad. Among other things, the previous criterion of withdrawal of power of disposal could play a role here again – but this is not certain. In this respect, the previous lack of clarity and controversy surrounding the concept of "artificial arrangement", which numerous decisions by the European Court of Justice have also been unable to resolve in practice, is problematic. Its extension to foreign family foundations is a potential disadvantage of the draft bill, compared to the clearer and more precise provisions of the current Section 15 para. 6 of the Foreign Tax Act, which were recently clarified by the Supreme Tax Court.

According to the new version of the provision, the exemption expressly does not apply to income that is attributed to the foreign family foundation by CFCs controlled by that foundation or another related foreign family foundation. In this respect, proof for the exemption must be provided at the level of the CFC, which further increases the complexity of the regulation.

Foreign family foundations that wish to continue to claim the exemption under Section 15 para. 6 of the German Foreign Tax Act should keep an eye on the

current reform discussions and have their tax advisor review the impact on their specific situation.

4. Tax Credit Volume

The revised provision also aims to ensure that payouts made by the foreign family foundation to beneficiaries are not subject to double taxation due to attribution. In future, this will no longer be achieved through a tax exemption, but through so-called reduction amounts (tax credit volume), as is the case with CFC rules. The taxpayer can deduct a reduction amount from the payouts that are generally taxable, which is limited to the amount of the attribution. The attribution amount is determined annually for each foreign family foundation, so that the recipient of the payout and the recipient of the attribution do not have to be identical. The legislator is thus incorporating the previous administrative practice into law.

5. Elimination of Provision regarding Corporate Foundations

Finally, it is worth mentioning that corporate foundations are no longer mentioned in the draft bill. The relevant paragraph has been deleted in the draft. However, due to the considerable expansion of the term "family foundation" to include related persons and "*acting in concert*" arrangements, existing corporate foundations are likely to be covered by the provision as foreign family foundations in future. In addition, the legislator intends to explicitly consider indirectly entitled persons as recipients of the attributed amount in future.

IV. Practical Implications and Outlook

By bringing the revised Section 15 of the German Foreign Tax Act closer to the provisions on CFC rules, the Federal Ministry of Finance's draft bill pursues a welcome reform approach that could provide relief to some founders and beneficiaries resident in Germany. Nevertheless, further numerous changes of the taxation of foreign family foundations will, if implemented, significantly complicate the application of the law. In particular, the inclusion of related persons in the "family circle" and the revision of the exemption in Section 15 para. 6 could lead to a questionable expansion of attribution taxation and to new legal uncertainties.

At the same time, numerous practical problems remain unresolved: for example, the new version still provides no guidance on how the foundation's income is to be allocated proportionally to the beneficiaries in the case of incongruent payouts, which are at the discretion of the foundation's governing bodies.

Both founders and beneficiaries should therefore keep an eye on further developments. As soon as the legislative process continues, it is strongly advisable to examine the specific circumstances in each individual case in order to prevent unexpected application of attribution taxation on the one hand and to explore the new possibilities for an exemption on the other hand.

SZA SCHILLING, ZUTT & ANSCHÜTZ

This client information contains only a non-binding overview of the topic addressed therein. It does not replace legal advice. The following persons are available as contact persons for this client information and for your consultation:



Prof Dr Stephan Scherer
Lawyer | Partner
Private Clients | Tax Law | Corporate Law

T +49 621 4257 214
E Stephan.Scherer@sza.de



Dr Marcus Schnabelrauch
Lawyer | Partner
Tax Law

T +49 621 4257 376
E Marcus.Schnabelrauch@sza.de



Anna Egger
Lawyer | Associate
Private Clients | Tax Law

T +49 621 4257 221
E Anna.Egger@sza.de

SZA Schilling, Zutt & Anschütz Rechtsanwaltsgesellschaft mbH

Taunusanlage 1
60329 Frankfurt am Main
T +49 69 9769601 0
F +49 69 9769601 102

Otto-Beck-Straße 11
68165 Mannheim
T +49 621 4257 0
F +49 621 4257 280

www.sza.de

Maximiliansplatz 18
80333 Munich
T +49 89 4111417 0
F +49 89 4111417 280

info@sza.de

Square de Meeûs 23
1000 Brussels
T +32 28 935 100
F +32 28 935 102