



THE ESTABLISHMENT OF FOUNDATIONS AND THE TAX EXEMPTION ACCORDING TO TURKISH LAW

A FOUNDATION IS A NON-PROFIT ORGANIZATION that typically either donates funds and support other organizations, or provide the source of funding for its own charitable purposes. It is formed by allocation of sufficient assets and rights by real or legal persons, for specific and continuous purposes. Considering those qualities, foundations are major bases of social welfare and solidarity in a society. However, there is insufficient knowledge about foundations among those who actually have the resources to establish them. The increase of awareness of establishment procedures and the rights that foundations enjoy regarding tax according to Turkish law will have an encouraging effect on the popularity of foundations in Turkey.

Establishment of Foundations

Establishment of a foundation is a unilateral legal transaction, performed by a declaration of intention with a specific context. This declaration includes the allocation of assets, rights or revenues to achieve a particular purpose. The purpose of the foundation may be freely determined by the founder as long as it is compatible with Turkish law. Above all, foundations shall satisfy some pre-requisite conditions in order to stand on legal grounds.

The procedural requirements to establish a foundation are: the act of establishment, the legal competency of the founder and the registration of the foundation. The intention to establish a new foundation is declared either through a “trust deed”, which will be prepared in the notary public; or through testamentary disposition. The requirement of the registration of the “trust deed” through court decision, which is also mandatory for the establishment, has no limiting effect on the validity of establishing a foundation according to the founder’s will. It is supplementary to the execution of the will of the founder; in other words, it creates a binding force. The registration must be materialized with the application to the authorized court of first instance. The foundation is incorporated with the registration to the registry at its place of residence. According to Article 102 of the Turkish Civil Code numbered 4721 (“Turkish Civil Code”); the name and the purpose of the foundation, the allocated assets and rights in this respect, the organization diagram with the administrative body of the foundation and the registered address of the foundation must be indicated in the trust deed. It is resolved in the Turkish Civil Code that sufficiency of the allocated assets for achievement of the “purpose” shall be determined by the courts.

Both real and legal persons are able to establish foundations. A legal capacity is required for real persons to be eligible for establishing a foundation; which means, the

founders of the foundation must be adults, who are of normal intelligence and sound mind. In the case of legal persons; in order for them to become founders, either a clause in their “Articles of Association” indicating that the legal person is eligible to establish and allocate assets to a foundation must be present and the authorized body must decide in line with this claim; or a decision must be taken by the authorized body in that respect, even though a specific clause is not present in the Articles of Association. Following the court order for registration, the foundation shall be both registered to the registry in the court in the place of residence and to the Prime Ministry’s General Directorate of Foundations of the Republic of Turkey and shall be published in the official gazette.

The material requirements for the establishment of foundations are; presence of assets, allocation of those assets and presence of designated purpose(s). Undoubtedly, there must be an asset for the establishment of a foundation. More importantly, this asset must be adequate to enable the foundation to achieve its purposes. If the assets are not sufficient, the court may transfer the assets to another foundation with similar purposes. The founder has the right to object to the court order of transfer and since the intended foundation has never existed, the ownership of the assets will remain in the founder in the case of objection. The founder may freely choose the purpose of the foundation and there may be more than one purpose. However, the purpose(s) shall not be contrary to; (i) the characteristics of the republic stated in the Turkish Constitution, (ii) Turkish law, (iii) public morals, (iv) national unity, and (v) national interests. Also, the purpose(s) shall not be impossible to achieve and the foundation shall not pursue an economic goal. In order for the establishment of a foundation to be finalized in material sense, the assets must be allocated to the foundation for achievement of the purposes in a continuous manner. A temporary transfer of revenues shall not constitute a continuous allocation and without continuity, the material requirements of a foundation are not fulfilled.

Granting Tax Exemption to Foundations

In order to encourage individuals to establish foundations for the public interest, laws are enacted to grant specific financial advantages to the founders and the foundations themselves. The major financial advantages relating to foundations are exemptions from tax. According to Article 20 of Law regarding Amendments to Several Laws and Granting Tax Exemption to Foundations numbered 4962 (“Law No. 4962”), “Foundations that are established to give service(s) relating to issues that are in the scope of general, annexed and special budgeted administrations with at least two thirds of their revenues, may be exempt-

ed from tax by the decision of Council of Ministers with the recommendation from Ministry of Finance.” Within the scope of this article, the requirements and other necessary information is stated in the General Communiqué related to Granting Tax Exemptions to Foundations (“General Communiqué”) which contains material relating to the conditions for granting tax exemption to foundations, the liabilities of the tax exempt foundations, the removal of tax exemption and the problems relating to the application of the tax exemption. According to this document, the conditions for foundations to be exempt from tax are as follows:

Area of Activity

Foundations could only be established for the purposes of healthcare, social welfare, education, scientific research and development and preservation of culture and environment and forestation. Foundations could have a single purpose or more than one purpose within the allowed category. However, those activities of the foundation shall be open to public and provide high level service which will contribute to the State’s public service duty. Foundations that aim to serve only a specific area or community shall not get exempted from tax.

Activity Period

Before applying for tax exemption, the foundations shall have operated for at least one year beginning from the date of establishment and had a relieving effect on the State’s public service liability with their activities.

Book Keeping

The commercial books of the foundations must be kept on the basis of profit and loss balance and the commercial books that must be kept by the first class merchants according to the Tax Procedural Law numbered 213 (“Tax Procedural Law”) shall be certified and exhausted within the period specified therein. In cases where there is an economic entity owned or affiliated by the foundation, its commercial books shall also be certified.

Minimum Assets and Annual Income

The foundations that have requested tax exemption must have income generating assets with a minimum value of TL 733,000 (seven hundred and thirty three thousand Turkish Liras) and must generate an annual income with a minimum of TL 69,000 (sixty nine thousand Turkish Liras) on the date they request tax exemption. In the assessment of the annual income, the support from general, special and annexed budgeted administrations that have

the characteristics of a donation is not taken into consideration. These amounts are determined every year by multiplying with the revaluation rate designated for that year according to the articles of Tax Procedural Law.

Disbursement of the Annual Income

The trust deed must state that a minimum of two thirds of the gross income generated during the year in accordance with Article 20 of the Law No. 4962 will be spent on health, social welfare, education, scientific research and development, preservation of culture and environment and forestation; and this condition must be fulfilled within the last year and must continue to be fulfilled during the duration of the tax exemption.

Evaluation of the Request

After the first evaluation of the tax exemption request of the foundation by the Ministry of Finance of the Republic of Turkey, the opinions will be received from Prime Ministry’s General Directorate of Foundations of the Republic of Turkey and the related institutions according to the purpose(s) stated in the trust deed. Where positive responses are received from those institutions; the activities and works of the foundation, from the date of establishment will be evaluated by the central control unit of such ministry; and a decision will be made if it fulfills the conditions in the General Communiqué and to what extent it reduces the public service duty of the State.

Tax Related Advantages of Tax Exempt Foundations

Value Added Tax (“VAT”) Exemption

Limited to the delivery of goods and services stated in the first and second subsections of Article 17 of the Value Added Tax Law numbered 3065, the tax exempt foundations have the right to be exempted from VAT. According to the subsections; (i) the goods and services that aim to popularize, adjust and encourage science, fine arts and agriculture; (ii) the goods and services related to culture and education, by operating and administering theatres, concert halls, libraries, exhibitions, conference and reading halls and sports facilities; (iii) the goods and services involving operating and administering hospitals, clinics, convalescent houses, dispensaries, preventoria, blood banks and banks for organ transfer, monuments, botanic and zoological gardens, parks, institutions like bacteriology and serology labs, student dormitories, homes for the aged and disabled, free soup kitchens, workhouses and orphanages are exempted from VAT.

Inheritance and Transfer Tax Exemption

In subsection (a) of Article 3 of Inheritance and Transfer Tax Law numbered 7338 (“Inheritance and Transfer Tax Law”), where the exemptions are regulated; it is stated that public institutions, retirement and provident funds, social insurance institutions, associations related to general interest, political parties and the organizations that are established by them which are exempt from corporate tax are also exempt from inheritance and transfer tax. In subsection (b) of the same article, it states that in addition to those set forth in subsection (a), organizations that belong to real persons that are used for the benefit of the public in purposes of science, research, culture, art, welfare, health, education, charity, public improvement and sports are exempt from inheritance and transfer tax. Donations and charities to the foundations described in subsection (b) of Article 3 of Inheritance and Transfer Tax Law are also exempt from tax, for the duration of the aforementioned nature of the foundations. In addition, the goods that are obtained for the establishment or after the establishment of the tax exempt foundations are also exempt from inheritance and transfer tax under Article 4 of Inheritance and Transfer Tax Law.

Property Tax Exemption

According subsection (m) of Article 4 of Property Tax Law numbered 1319 (“Property Tax Law”), foundations are exempt from property tax for the buildings they own, with the condition that the buildings are not rented out and that they are obtained for the purposes stated in the trust deed. In addition, according to Articles 4 and 14 of the Property Tax Law and the Article 77 of the Foundations Law numbered 5737, buildings that are owned by the fused foundations and by the foundations that are established to support Turkish Armed Forces (including the Gendarmerie General Command) are permanently exempt from property tax. In fact, the buildings that are owned by the fused foundations are exempt from any tax or legal fee.

Legal Fee Exemption

According to subsection 3 of Article 38 of the Fees Law numbered 492 (“Fees Law”), the establishment procedures of the tax exempt foundations and donations that are made to those foundations are exempt from legal fees. With reference to Article 59 of the Fees Law, registration or other annotation requiring activities of the real estates and real rights of; the tax exempt foundations, the real estates that those foundations own; or the real estates that they will acquire in the future are exempt from legal fees. The scope of this article is limited to real estate acquisi-

tions of the tax exempt foundations and their registration and other annotation requiring activities; not including sale or transfer of the real estates of the mentioned foundations.

Stamp Duty Exemption

According to Article 9 of the Stamp Duty Law numbered 488, any papers used for the establishment and activities of the tax exempt foundations established to support the Turkish Armed Forces (including Gendarmerie General Command) are exempt from stamp duty.

Removal of Tax Exemption Status by the Council of Ministers

The principles with respect to removal of tax exemption status of the foundations that are exempt from tax, by the Council of Ministers, are stated in the General Communiqué from Tax. Following their removal of exemption status, those foundations shall not reapply for exemption in the next five years. After the end of the five year term, foundations may regain their tax exempt status, if they satisfy the conditions.

Conclusion

Foundations often struggle with political influences, religious preservations and the confiscation of social movements. Their valuable assets, the legal personality of the entity have been the major reasons of their attractiveness. However, foundations preserve their glory with the power they bring from the past, together with their increasing trustworthiness and expertise. In addition to creating awareness of the establishment procedures and the tax exemption advantages of foundations, popularity may also be increased by encouraging the capital owners to gather in groups and establish foundations with a variety of purposes by giving them incentives related to their subject of business. The formation of groups of capital owners to establish foundations and other ways to popularize them will be both beneficial to the national solidarity and also will reduce the burden of the State in its welfare work.

By İrem Bulut | ibulut@goksusafiisik.av.tr
By Ata Sarikatipoğlu | asarikatipoglu@goksusafiisik.av.tr