

THE AUSTRIAN PRIVATE FOUNDATION AS A LEGAL FORM IN FARM MANAGEMENT, WITH SPECIAL EMPHASIS ON TAX ISSUES

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ABSTRACT

Farmers are faced with numerous problems due to the increasingly difficult conditions within management enterprises. Thereby, the choice of legal form, amongst other issues, has to be carefully considered to legally minimize tax burdens. Existing agricultural enterprises in Austria are mainly sole proprietorships, but the establishment of private foundations could gain significance in the future. Private foundations' potential to provide lasting security for assets, as well as possible favorable taxation, make this investment form especially attractive for larger farms. This paper discusses the basic legal aspects of the private foundation in Austria with respect to its suitability for agricultural businesses. Furthermore, model cost estimates are illustrated to demonstrate the effectiveness of the involved taxation aspects.

Keywords: farm management, private foundation, inheritance and gift tax, income tax.

1 INTRODUCTION

European agriculture is characterized by increasing competition and increasing capital investments. These developments lead, in turn, to continual structural fluctuation, and farmers are subjected to numerous demands in the sphere of business management. Alongside the technical requirements of production, it is especially necessary to ensure an economic structure suited to these demands. Literary sources advocate the theory that the profit margin after income tax is relevant in management decision-making (e.g. SCHWINN, 1993; KUBMAUL, 1998 and SEICHT, 2002). For this reason, farmers are obliged to minimize their income tax burden within the framework of the legal possibilities open to them.

Presently, farms in Austria are predominately family businesses, run along the lines of sole proprietorship. From a management point of view, the question is

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posed as to whether other legal structures would be more profitable to farmers in the future, especially in the form of private foundations. Existing private foundations in Austria are mostly comprised of family foundations, whereby relatives and heirs benefit from the income resulting from assets. In addition, assets are protected by limiting the heirs' accessibility named in the foundation. In all these cases, it is obvious that the founder tries to secure the right to exert influence over stipulations made in the foundation's documentation (NOWOTNY, 2003).

Using these introductory factors as a starting point, private foundations' potential as a legal form for family farming businesses will be evaluated in this paper, with special consideration given to the range of legal structures appertaining to the demands specific to these farming enterprises. Alongside taxation aspects, freedom in management decision-making, securing assets, as well as business liability and financing are all integral factors to be considered. In the majority of cases, not all these aims can be fully realized and in some cases antagonistic relationships also exist.

This paper aims to illuminate the taxation consequences resulting from introducing farm assets into private foundations within the relevant legal framework. A decisive motive for this choice is the possible savings on income tax. Contrary to this are the expenses and taxes of the business, as well as the continual expenditure involved in foundation management. Establishing a foundation involves complex problems, and therefore a dynamic tax model concept will be used to illustrate the estimation of tax effects. The size of the farming business itself has a significant influence on the attainable taxation advantages. This factor is therefore a central point of the analysis.

2 LEGAL REGULATIONS APPERTAINING TO AUSTRIAN PRIVATE FOUNDATIONS

2.1 Civil law regulations

2.1.1 Concept and characteristics of private foundations

Private foundations are juristically independent, non-owned assets that are drawn up by the founder by means of a foundation deed to fulfill certain aims. Private foundations must be of a domicile origin. Instead of owners, the foundation has beneficiaries who have different entitlements according to the declaration and wishes of the founder. As a rule, self-use foundations stipulate the family and their offspring as beneficiaries (CERHA et al., 1993). According to Article 1 par. 2 of the Austrian private foundation law, a private foundation is not allowed to exercise any commercial activities other than those of an incidental character. Private foundations are also barred from managing the business of

trading companies and cannot be unlimited partners. The eligibility of immediate agricultural activities for private foundations is a controversial issue, but according to the foundation taxation legislation (Stiftungssteuerrichtlinien – StiftR) they should be acceptable (ORTMAYR, 1998 and StiftR, 2001 Rz 34).

2.1.2 Establishment and formation of private foundations

A private foundation can be established for a definite or indefinite period of time (GASSAUER-FLEISSNER and GRAVE, 2005). The foundation is formed through the legal documentation of the intended foundation declaration, whereby it concerns a unilateral declaration of will with no obligatory recipient that can also be constructed as a last will. If the minimal requirements of private foundation law, stipulated in Article 9 par. 1 are fulfilled in the foundation deed, further stipulations can be made as long as these do not conflict with the compulsory law (HUBER, 1995). Quite often, an appendix is drawn up which, unlike the foundation deed itself, does not appear in the company register (WERKUSCH, 2001).

As long as the minimal capital of 70,000 EUR is not presented in cash, the services of a court-appointed foundation auditor are required to establish whether the value of the capital on hand fulfills this amount (CSOKLICH, 1994). The introduction of property accompanying the demand of an “establishment audit” must be taken into consideration by farmers planning a foundation and the expenses involved must be compensated by tax-saving effects in the following years.

2.1.3 Private foundation executive bodies

Every private foundation requires a board of directors and an auditor, and in addition, depending on the number of employees, an obligatory supervisory board is also required. The required number of 300 employees is, however, not attained in Austrian farms (LBG, 2005). The board of directors has to consist of at least three members for a stipulated or unstipulated period of time, and no immediate family member of the founder can be accepted as a member of the board. The founder himself, as far as he is a beneficiary, as well as legal entities are also barred from this function (HUBER and LEITNER, 2004). The first board of directors in the foundation is selected by the founder or the curator and those following are either chosen from the old board of directors or determined by the court. The founders can also select an advisory board to support the purpose of the foundation. This advisory board is not entitled to select or dismiss the board of directors due to possible conflicts of interests (BRIEM, 2002). The beneficiaries can exercise their control rights through the right to receive information and through access to the books; these rights can be exercised at any time (ARNOLD, 2002).

The foundation auditor is selected, usually at the request of the founder, by the court or, respectively, by the supervisory board, and has the status of a chartered accountant who has to check the annual statement of accounts, the bookkeeping and the assessment report according to the regulations laid down by trade law (VETTER, 2000). In addition, the fulfillment of the foundation deed's aims, as well as the status report, are to be checked.

To summarize, when creating a foundation, a farmer forfeits his unlimited powers of decision-making through the obligatory transfer of rights to supervisory bodies. However, the appointment of a foundation advisory council, to which beneficiaries can also belong, ensures a certain degree of influence.

2.1.4 Amendments, revocation and dissolution of a private foundation

The private foundation law allows for extensive amendment and revocation of the foundation from the period between its declaration of the establishment and recording of the deed. After the private foundation has been established, it can only be amended or revoked by the founder if he has inserted a clause to this effect in the trust document (RASTEIGER, 2004). If this right should be preserved for the following generation, then the heirs would have to have the status of founders as well (KRAUS, 2004).

Prior to the documentation of the foundation, the board of directors has the right to alter the declaration under certain circumstances, should the sole founder or last founder fall away. After documentation, the board of directors can only execute amendments when there is no possibility that the founder himself can do so. But the board of directors is, under all circumstances, duty-bound to adhere to the aim of the foundation (RASTEIGER, 2004).

Reasons that can lead to the dissolution of a private foundation are listed under Article 35, namely: the expiration of the intended period of time; application for bankruptcy procedure; denial of bankruptcy due to insufficient estate; as well as the court's or the board of directors' unanimous agreement to dissolve the foundation. The board of directors has to reach a unanimous agreement for dissolution if it receives a valid revocation on the part of the founder, if the aim of the trust has been fulfilled, or if the aim cannot be carried out due to lack of capital. This also applies where a non-profit foundation that has served as support of persons for a period of 100 years and where no unanimous agreement has been reached by the last beneficiaries to continue with the trust, or where other reasons that are listed in the foundation declaration for its dissolution have been unanimously agreed upon by the board of directors (GASSAUER-FLEISSNER and GRAVE, 2005).

2.2 Taxation methods in a private foundation as compared to sole proprietorship farming businesses

2.2.1 General

The following model concept will be illustrated using the relevant tax regulations as a basis, whereby a distinction must be made between capital transfer taxation, which generally takes the form of inheritance and gift tax or property transfer tax in Austria, and the continual profit tax. Alongside this, the taxation aspect of the dissolution of a foundation, as well as the Value Added Tax has to be considered. In the first instance, it is necessary to establish that in the field of agriculture the assessed value serves as the focal point for various taxes and expenditures, whereby this is concerned with a standardized profit value that should reflect natural and economic yield conditions and should be allotted to each business (BMLFUW, 2005).

2.2.2 Taxation of the transfer of assets

Asset transfer after death, or as a gift, is dependent on the inheritance and gift tax under Austrian law. The tax assessment stipulations are measured according to the value of the transferred assets, whereby in some cases various allowances can be deducted. In the case of properties, three times the assessed value is relevant. The tax rate increases according to the value of the assets and the degree of the family relationship status, and varies between 2% and 60%. In the case of property bequests, the tax increases, according to the family relationship status, by a “property tax equivalent” of 2% or 3.5%.

When transferring a farm, there are certain special regulations. The property tax law provides for the transfer of assets to close relatives with reciprocation, whereby the beneficiaries guarantee the transfer or provision of livelihood. The tax amounts to 2% of the simple assessed value of the business. If the reciprocal value is under the threefold assessed value, then administrative practice takes the form of a composite endowment (JILCH, 2002). In this case, there is, alongside the property tax that is assessed from the reciprocal value, an additional inheritance and gift tax for the amount of the threefold assessed value exceeding the reciprocal value. If there is a house included in the properties used for farming purposes, allocating the reciprocation value for tax assessment purposes is calculated according to the simple assessed value (URBAN, 2005).

When transferring without reciprocation, taxation takes the form of a gift tax. On the other hand, a purchase according to market prices is taxed under property tax regulations. In all inheritance and gift tax business transfer cases, there is a possible tax exemption of 365,000 EUR, as long as the transferor is aged 55 or more, or as long as he is unemployable. Furthermore, the “Promotion of Start-ups Act” must be taken into consideration, whereby in certain cases, a business

transfer can possibly be entitled to a reduction up to a significant amount of 75,000 EUR.

In addition, introducing capital into a private foundation falls under the system of inheritance and gift tax. In practice however, there is a linear tariff amounting to 5% of the threefold assessed value. The allotment of properties falls under an additional property tax equivalent to 3.5% of the basic value. Furthermore it must be considered that the inheritance and gift tax laws include the issue of additional taxation. If the capital endowed in a foundation or the representative capital is transferred within ten years to a beneficiary, then the difference between the beneficiary tariff and the normal tariff must be paid as additional taxation (BRAUNER, 2003 and LANG, 2004).

If business capital is included in a private foundation, the book value is continued, and the undisclosed reserves are not disclosed. The inclusion of individual economic goods can, however, be considered as tax effective (StiftR, 2001 Rz 180ff). In addition, the transfer of properties to a private foundation can take the form of a composite endowment. If the property is burdened by a mortgage, then the property tax is estimated on the credit amount involved, and the basis of calculation for the gift tax is reduced. Should the mortgage have no economic connection to the property, then an additional capital yields tax must be paid on behalf of the founder (STINGL, 2003).

2.2.3 Current taxation

The Austrian profit tax laws require that all business income, and this includes farming business, declare their profits by annual comparison with business capital, and use a double bookkeeping system (DORALT, 2003). For farms, however, there are numerous special regulations in the form of a flat rate of profit estimation whereby profit is calculated on a certain percentage rate of the assessed value, or on turnover. These simplifications are applicable where there is an assessed value up to 150,000 EUR and a turnover of up to 400,000 EUR, and they tend to produce lower profits than those attained using the double accounting system (JILCH, 2002). The basis for tax assessments is the total income declared by a tax payer within a calendar year, whereby there may be various tax-free and tax-deductible amounts to be considered. Income tax is assessed according to the progressive tariff illustrated in Table 1 below:

Table 1: Progressive Austrian income tax

Taxable income	Marginal tax rate
> 10000 – 25000 EUR	38.33%
> 25000 – 51000 EUR	43.60%
> 51000 EUR	50.00%

Source: Austrian income tax law.

Farmers who adhere to auditing regulations are entitled to favorable taxation for undistributed profits up to the maximal amount of 100,000 EUR per annum. Hereby profits are taxed, minus personal withdrawals and plus the investments necessary for the business, by the accounted for, half-average tax rate assessed on income as a whole. Should private capital decrease in the following seven years due to omitting the consideration of losses incurred, then additional tax must be paid.

Private foundations for own use are, as opposed to farming enterprises, subject to corporate tax law at a flat rate of 25%. Dividends are subject to the additional 25% capital yields tax. Contrary to other corporations, the entire range of income sources, with the exception of income from non-independent work, can fall under this category (KNAUS, 2001). National and international participatory profits in private foundations are, independent of the degree of participation and for the purpose of avoiding double taxation, exempt from the corporation tax law (StiftR, 2001 Rz 39ff).

A private foundation's accounting has to be executed by the board of directors and carried out according to Article 18 of the private foundation law, whereby there has to be a guarantee of information governed by numerous commercial law regulations (GASSAUER-FLEISSNER and GRAVE, 2005; GELTER, 2001). The taxable profit estimations are, however, dependent on the general tax law framework. Due to the norms of obligatory bookkeeping laid down by private foundation law, all other methods of ascertaining taxable business income fall away. Outside of the business, for example when letting or leasing, the income of the private foundation is to be declared as an excess income above the professional expenses, according to the principle of in and out flow (KNAUS, 2001). A double-entry accounting for tax purposes is not applicable in this instance.

Of great relevance for making a private foundation fiscally attractive is the "intermediate taxation" of certain capital income sources, whereby in the case of money investments, claims securities and, under special circumstances, income from participation, a reduced corporate tax rate of 12.5% is applicable. The intermediate tax is assessed separately from the normal tax, and is declared in an evidence account. If the private foundation offers an endowment to beneficiaries, then it is consequently subject to assessment under the 25% capital yields tax (KÖNIG et al., 2002 and StiftR, 2001 Rz 84-114).

2.2.4 Taxation aspects of the dissolution of a private foundation

The taxation consequences in the case of revocation or dissolution of a private foundation must also be taken into account. As a general rule, taxation is assessed on the level of the last beneficiary, with 25% capital yields tax, whereby undisclosed reserves are generally not disclosed. Only if the foundation is revoked is the income shortened on the application in order to reduce the relevant

values by the values that were present when endowed to the private foundation. Similarly, only in the case of revocation can the gift tax be refunded. A simultaneous takeover of liabilities also reduces the basis for tax assessment. It must be taken into account that where there is an endowment to beneficiaries, the speculative time span in Article 30 of the Austrian income tax law comes into operation, whereby any subsequent property purchases can be taxable. Furthermore, the issuing of property results in an inheritance and gift tax situation (KNAUS, 2001 and OBERNBERGER, 2005).

2.2.5 Value Added Tax

The introduction of assets into a foundation does not usually subject itself to VAT, but the businesses that are run from the foundation are eligible for VAT. While those farmers who are not obliged to carry out double-entry accounting do not have to pay VAT to the tax office, this does not apply for a private foundation. The VAT taxation that is applied in this case can be disadvantageous and must be taken into consideration.

3 PRIVATE FOUNDATIONS IN THE FIELD OF FARMING – POSSIBILITIES FOR THE ARRANGEMENT OF THE LEGAL STRUCTURE

Forming a private foundation with the aim of including farming businesses offers various alternatives for practical application. On the one hand, the whole business can be brought into and managed by the foundation. However, the possible restrictions to the farmers' influence over the management of the business must be considered, as the board of directors is the most important decision-making organ. From the taxation point of view, it should be considered that all taxable income of the farming business has to be declared through double-entry accounting. The often favorable estimation of profits after general rates, as well as the advantages in terms of the VAT, are not, under any circumstances, relevant in a foundation.

Due to these considerations, it is often worthwhile, instead of managing a business through a private foundation, to lease the farmland to the beneficiary. In this case, the properties can still be managed by the sole proprietor and the lease payments can be deducted from the tax base. In the foundation, the lease payments result in income from property. The beneficiaries can still enjoy practically unlimited freedom of action, although mortgage loans on properties are not possible due to missing ownership rights. The founder can therefore attain a securing of assets by utilizing the various structural possibilities. Due to the smaller equity capital of the remaining farm, it will be less credit-worthy. Generally, though, and dependent upon the formulation of the foundation document, the foundation can take the responsibility for credits of the beneficiaries (BOLLENBERGER and CSOKLICH, 2001).

Not applicable to the above variations is the inclusion of domestic and business buildings in the private foundation. Hereby, the founder can reserve the right of abode without being subject to taxation. Only if this right is conceded after forming the foundation are the beneficiaries taxable on this endowment. In the case of transferring buildings to the private foundation, it must be considered that analogous to the business management through the foundation, a considerable restriction of the beneficiaries' economic freedom is incurred. These various possibilities can only be of use in farming businesses if the buildings entail high capital investment and consequently high profit expectations through their usage, as, for example, stables, or storage and production buildings.

4 MODEL ASSESSMENTS FOR EVALUATING TAXATION ASPECTS OF THE PRIVATE FOUNDATION IN THE FIELD OF AGRICULTURE

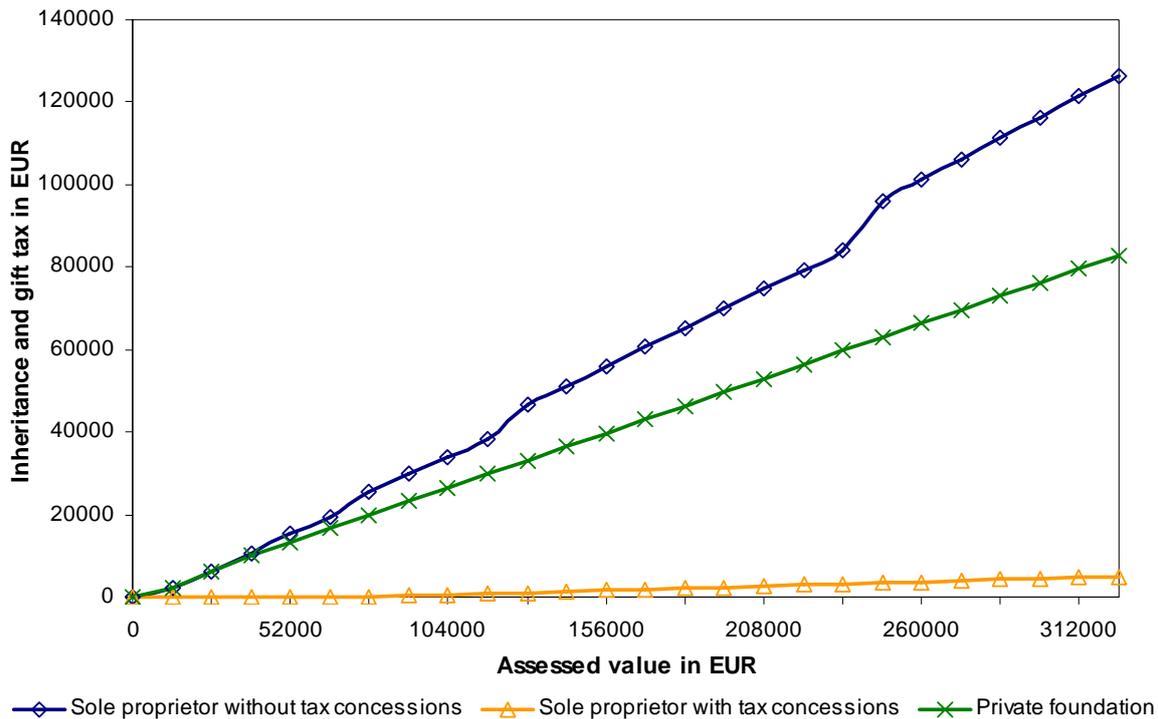
4.1 General

In the following chapter, the tax burden will be illustrated by means of quantitative model assessments. Because the structure and size of farming businesses are a decisive factor for the taxation advantageousness of a legal form, this criteria builds the central point of the considerations dealt with here. Alongside this, a farmer's dividend policy (private consumption) exercises considerable influence in profit taxation and must therefore be taken into account.

4.2 Tax burdens in transferring the farm

First, the taxation method of the transfer of assets can be seen within the context of all the framework conditions (Figure 1). The transfer of a farming business to close relations with a secured livelihood in reciprocation is not subject to property taxes up to a basic value of 75,000 EUR, where the "start-up promotion law" is applied. A larger amount is taxed at a rate of 2%, whereby there is only a minimal general tax burden. If the transfer is made without reciprocation, and where the beneficiaries are not eligible for the Promotion of "start-ups Act, taxes are considerably more. Where there is an assessed value of 65,000 EUR, for example, the inheritance and gift tax amounts to more than 19,000 EUR. This tax burden increases even more in the case of distant relatives being the beneficiaries. In the transfer of assets to a private foundation, there is a linear tariff which lies between the favorable and unfavorable farm transfer tax amount assessed. In addition to the tax, there are the founding costs, which amount to around 10,000 EUR (KRAUS, 2004). On the other hand, the costs involved with drawing up a contract along conventional lines for transferring the farm properties falls away.

Figure 1: Establishing an agricultural successor and the related inheritance and gift tax



Notes: Sole proprietor not benefited: Inheritance and gift tax in tax bracket 1 with a tax-free amount of 2,310 EUR, including the property tax equivalent, no application of the “Promotion of Start-ups” Act.

Sole proprietor benefited: transfer with “security” of livelihood, 2% property tax taken from the assessed value, application of the “Promotion of Start-ups” Act.

Private foundation: 5% gift tax plus 3.5% property tax equivalent, based on threefold assessed value.

Source: Own calculations based on the Austrian inheritance and gift tax law.

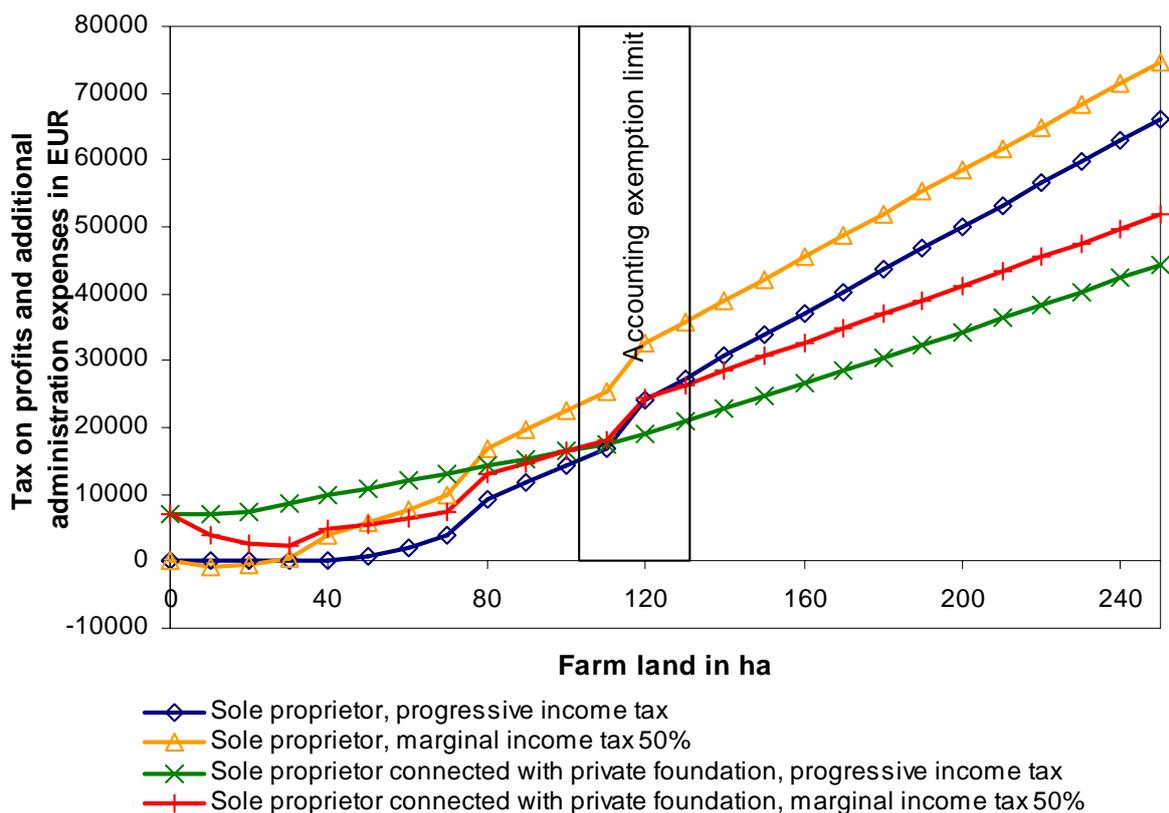
As can be deduced from this partial viewpoint, forming a private foundation is of greater advantage the larger the business is, the fewer beneficiaries entailed in a sole proprietorship and the more distant is the family relationship. Also, a private foundation can be of advantage in the case where, due to shorter intervals of inheritance succession, business transfers are expected to take place more often, because the inheritance and gift tax is payable only in the first instance.

4.3 Model evaluations of the profit tax burdens

Alongside the expenses incurred in a foundation, the current profit tax burden plays a significant role in the advantageousness of a legal form. Figure 2 illustrates that the annual income tax of a sole proprietorship is dependent upon the size of the arable farm itself. The spectrum of businesses that are mostly obliged to render taxable bookkeeping systems is illustrated in the diagram. For smaller farms, a private foundation is in all probability not advantageous for profit tax reasons, due to the possibilities of flat rate profit margins.

The model evaluations are based upon the assumption that all the illustrated farms show a profit that results from double-entry accounting. All the calculations are based upon the assumption that the land is solely owned and managed, with an average yield of 1,800 EUR per hectare. The taxable income from agriculture is simplified by using percentages ranging from 20 to 36% of the yields, according to the sizes of the business in question. In addition, social insurance contributions are deducted according to the respective sizes of the farms. It is also assumed that the sole proprietor withdraws 100% of the profit and the favorable taxation of profits that are not withdrawn is therefore not applicable. In the case of the private foundation, the sole proprietor pays a lease of 450 EUR per hectare to the foundation, and also in this case the farmer withdraws the same absolute amount from the business. Additionally, the annual management costs incurred in the foundation are given as 7,000 EUR and are already included in the profit tax calculation in the diagram.

Figure 2: Profit tax of an agricultural sole proprietor compared to a sole proprietor connected with a private foundation



Source: Own calculations based on the Austrian income tax law.

Income tax is dealt with in two aspects, firstly under the assumption of a progressive income tax rate without income outside of the farming income; and secondly, that there is a marginal tax rate of 50%. In this case, further income of at least 5,100 EUR annually must be presented. To begin with, it is determined that arable farms of up to approximately 20 hectares show book losses under the

assumed circumstances, whereby the income tax of 50% is incurred due to the possible balance of losses, which can result in a tax credit. It must be pointed out however, that if this situation persists, there is the danger of the business being classified as a hobby by the tax authorities.

Figure 2 shows that the annual income tax burden of the private foundation (including additional management expenses), in connection with a sole proprietor farm that has a tax limit of 50% from approximately 50 hectares of farming land, is less than a business run without a foundation. Taking into account that the tax is assessed by progressive tax rates, the inclusion of agricultural land is advantageous from 75 hectares or more. It must be stressed again, however, that the options of flat rate profits have not been taken into consideration here.

To provide an intermediate summary, it has been established that the profit tax burden in arable farms that are obliged to audit their books due to the size of the business, and that withdraw tax profits entirely, can be reduced by forming a private foundation. If the profits are, on the contrary, fully retained and as a result favorably taxed, then the profit tax burden, including the additional management costs associated with a foundation, would only be of advantage to the sole proprietor with land over 120 hectares, even if the business is obliged to show bookkeeping records.

4.4 Conclusive taxation evaluation of the private foundation in agriculture

To achieve a comprehensive quantitative evaluation it is necessary to compare the costs of forming a private foundation against the annual profit tax burden. To illustrate this, a model based on dynamic amortization calculations has been constructed. The amortization time span is taken to be that period of time in which the invested capital, in addition to the interest due, is released. Sources in the literature regard this method as unsuitable for evaluating profitability, but still feel that it could be informative as a risk estimate (SEICHT, 1997). This applies to the premise that the longer the regain period lasts, the more probable it becomes that there will be unpredictable disadvantages (THOMMEN and ACHLEITNER, 2003). Because the taxation framework has the tendency to change rapidly and because a short amortization time span seems favorable for a private foundation, the dynamic investment calculation that follows seems suitable. The following equation (1) is the starting point for the calculations:

$$I_0 = \sum_{t=1}^m R \cdot r^{-t} \quad (1)$$

I_0 = amount to be invested

m = time of return flow

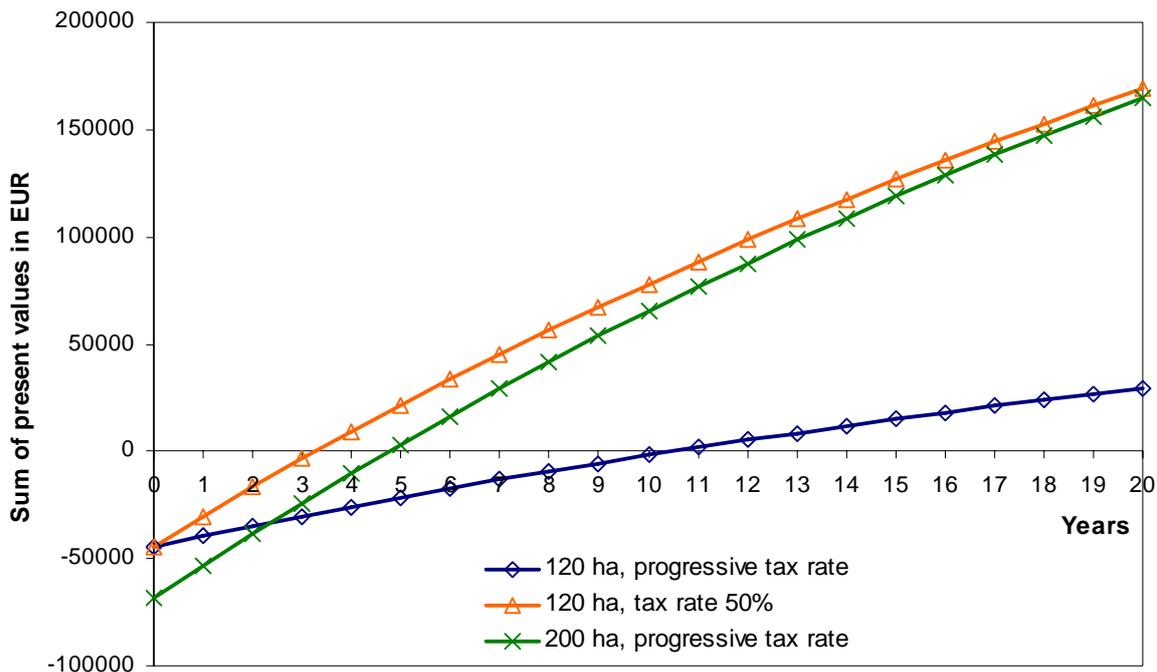
- r = discount rate
 R = return flow in the years t
 t = time in years.

Working from this general formulation, the following equation (2) for the dynamic evaluation of tax effects in a private foundation has been deduced:

$$\begin{aligned}
 (IGT_{PF} + FE_{PF} - IGT_{SP} - FE_{SP})_0 &= \sum_{t=1}^m IT_{SP} \cdot r^{-t} - \sum_{t=1}^m IT_{SP,PF} \cdot r^{-t} - \\
 - \sum_{t=1}^m CT_{PF} \cdot r^{-t} - \sum_{t=1}^m CYT_{SP,PF} \cdot r^{-t} - \sum_{t=1}^m AE_{PF} \cdot r^{-t} & \quad (2)
 \end{aligned}$$

- AE_{PF} = administration expenses of the private foundation
 CT_{PF} = corporate tax of the private foundation
 $CYT_{SP,PF}$ = capital yields tax of the sole proprietor connected with a private foundation
 FE_{PF} = formation expenses of the private foundation
 FE_{SP} = formation expenses of the sole proprietor
 IGT_{PF} = inheritance and gift tax of the private foundation
 IGT_{SP} = inheritance and gift tax of the sole proprietor
 IT_{SP} = income tax of the sole proprietor
 $IT_{SP,PF}$ = income tax of a sole proprietor connected with a private foundation.

For the amount to be invested, the difference between the costs of a favorable transfer of the farm and the costs involved in the formation of a private foundation is calculated. Returns during individual years are mirrored in the expected profit tax savings, minus additional costs incurred in managing the private foundation, whereby the 12.5% intermediate tax on specified capital income is not considered. The taxation framework conditions and the profit situation in agriculture are assumed to be constant. The relative amortization time span is illustrated in Figure 3 for two chosen farms of different size, with the comprehensive withdrawal of profit and with a discount rate of 3%. If a marginal tax rate of 50% is assumed, then the formation of a private foundation amortizes itself in a business with 120 hectares of acreage land after the third year, and by the acceptance of a progressive tax burden, in a time span amounting to 10 years. In a business with 200 hectares, the invested amount and the calculable interest is released after 5 years.

Figure 3: Dynamic amortization of a private foundation in agriculture

Source: Own calculations based on the Austrian inheritance and gift tax law as well as the Austrian income tax law.

5 CONCLUSIONS

Farmers have two motives for choosing the private foundation as a legal form. On the one hand is a surety of assets, and on the other hand are positive tax effects. The first aspect has been discussed with reference to the legal stipulations of private foundation law, and subsequently a quantitative analysis of the taxation effects was demonstrated.

Evolving from the comments made regarding private foundation laws, it can be deduced that the guarantee of lasting capital security is decisively dependent upon the declared will of the founder. In order to meet the demands of farming enterprises, the inclusion of the farm land in the foundation, together with running the farming business as a sole proprietor seems to be the most favorable arrangement. This allows for a compromise between capital security aims and the extensive influence of the beneficiaries over the asset management.

Under the assumed circumstances, the private foundation is advantageous in arable farms that are obliged to audit books for tax assessment purposes. As long as the amount of the basic assessed value allows for a flat rate profit determination, the private foundation would not prove to be favorable as far as profit tax perspectives are concerned. Further influential factors are the profitability of a farm and the dividend strategy of the business. As far as taxation is concerned, the private foundation is to be considered when farms not in the family are transferred, thereby creating a higher inheritance and gift tax burden.

In this contribution, general tendencies concerning the effects of private foundations in agricultural businesses have been discussed. Due to the broad spectrum of organizational possibilities, it is important that decisions should be made by looking at comparisons with the acceptance of specific plan information. It is to be assumed, however, that with the continuous growth in farm size, the legal form of private foundations will gain more recognition in the future.

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