Taxation of Trusts, Foundations and Similar Arrangements in a Global Setting

Taxation of Trusts, Foundations and Similar Arrangements in a Global Setting

Edited by

Andrés Báez Moreno
Mario Tenore
Vikram Chand
Svetislav V. Kostić

Wolters Kluwer

Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
E-mail: lrs-sales@wolterskluwer.com
Website: www.wolterskluwer.com/en/solutions/kluwerlawinternational

Sold and distributed by:
Wolters Kluwer Legal & Regulatory U.S.
920 Links Avenue
Landisville, PA 17538
United States of America
E-mail: customer.service@wolterskluwer.com

ISBN 978-94-035-2319-4

e-Book: ISBN 978-94-035-2329-3
web-PDF: ISBN 978-94-035-2339-2

© 2025 Andrés Báez Moreno, Mario Tenore, Vikram Chand & Svetislav V. Kostić

All rights are reserved, including those for text and data mining, AI training, and similar technologies. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher. Permission to use this content must be obtained from the copyright owner.

Printed in the Netherlands.

Editors

Prof. Dr Andrés Báez Moreno became Associate Professor of Financial and Tax Law at Universidad Carlos III de Madrid in 2011. Since January 2024, he has been serving as Senior Researcher at Max Planck Institute for Tax Law and Public Finance in Munich (Germany). His areas of expertise are domestic company taxation and international taxation, fields in which he has published three books and more than sixty articles and contributions. He regularly acts as an expert witness before the Spanish tax authorities and courts, providing legal opinions on Spanish and international corporate taxation. In recent years, he has also specialized in the international taxation of individuals. In 2022, he was awarded the Frans Vanistendael Award granted by the International Bureau of Fiscal Documentation for the best article on International and European Taxation of the year.

Dr Mario Tenore is a tax partner at Pirola Pennuto Zei & Associati (Milan), specialized in taxation of private clients, in particular high net worth individuals, family wealth management, succession planning and tax-related matters in the sport and entertainment industry. He holds a PhD in Tax Law from the Second University of Naples and an LL.M. in International Tax Law (cum laude) from Leiden University (the Netherlands). His practice blends academic rigour with extensive practical experience across the private clients industry. He has authored over hundred publications, and his research was recognized with the European Doctoral Tax Thesis Award, a joint initiative of the European Association of Tax Law Professors and the European Commission.

Prof Dr Vikram Chand is Professor of Tax Law & Policy at the University of Lausanne (UNIL), Switzerland. He currently also serves as the Program Director of the Executive Program in Transfer Pricing offered by UNIL and as a BEPS Advisor for the Asian Development Bank (ADB). His main areas of research include teaching and consulting expertise relate to Pillar Two (Global Minimum Tax Rules), Corporate and Personal Tax Incentives, Transfer Pricing (including Amount B), Tax Treaties, Tax Controversy Management and the intersection between international tax law and other areas of International Law (e.g., International Trade Law or Bilateral Investment Treaties).

Dr Svetislav V. Kostić, LLM (NYU), is Full Professor of Tax Law at the University of Belgrade Faculty of Law, teaching at both undergraduate and graduate levels. His primary areas of expertise are direct taxation, international taxation and tax treaty law. Until 2016, Prof. Kostić also held the post of a director with Deloitte Serbia Tax Services. He is one of the founders of the Serbian branch of the International Fiscal Association (IFA), currently in the capacity of its Secretary General. Prof. Kostić is a member of the Practice Council of the New York University School of Law LLM in International Taxation and has been one of the Vice Chairs of the IFA Europe Region. In addition to teaching at the University of Belgrade, Prof. Kostić has lectured at the New York University School of Law (LLM in International Taxation Lunch Lectures), University of Amsterdam, University of Lausanne, the Financial University with the Government of the Russian Federation, University of Sarajevo, Strathmore University (Nairobi, Kenya) and the East African School of Taxation (Kampala, Uganda), while in 2018 he spent half a year as a research fellow with the IBFD in Amsterdam.

Contributors

Dr Mark Brabazon practises as a barrister at 7 Wentworth Selborne in Sydney and is Senior Fellow of Melbourne Law School, where he teaches advanced topics in international tax law. He took silk in 2008 and completed a PhD at the University of Sydney in 2018. He is the author of *International Taxation of Trust Income: Principles, Planning and Design* (CUP, 2019) and of the chapter on 'The Application of Tax Treaties to Fiscally Transparent Entities' in the *Global Tax Treaty Commentaries* (IBFD Global Topics, online).

Carmen Carmona is a partner at Garrigues Tax Department, where she has built a remarkable career primarily focused on family businesses and private clients. Her expertise lies in offering comprehensive tax advice to family enterprises, with a particular emphasis on succession planning and the establishment of corporate and asset structures. These structures are meticulously designed to align the taxation of family businesses and business families with current legislation. Carmen's extensive experience encompasses advising on succession processes, ensuring a smooth transition of assets and leadership within family businesses. Additionally, she has specialized knowledge in the taxation of trusts and their implications for Spanish tax law.

Dr Álvaro de la Cueva is a partner in the tax practice area of Garrigues, with extensive experience in the provision of advice on international tax. Álvaro joined Garrigues in 2002, following three years at the IBFD in Amsterdam (the Netherlands). He has been a Doctor of Law since 2021 and an associate lecturer at Universidad Autónoma de Madrid since 2009, as well as a frequent author of articles and monographs related to tax law. He is also a member of the Madrid Bar Association, the Spanish branch of IFA and the Spanish Association of Tax Advisers.

Prof. Dr Javier Carrascosa González is Professor of Private International Law, the University of Murcia, Spain. He was born in Granada (12 October 1965). He holds a Bachelor's in Law, the University of Granada (Extraordinary Award, 1988) and Doctorate in Law (PhD in Law), University of Bologna, Italy (31 May 1991) (Summa Cum Laude): 'Il dépeçage del contratto internazionale'. He has received Cesare Lelli

Doctorate Award in Italy (1991). PhD in Law, University of Granada (Summa Cum Laude) (8 April 2002). Director of Studies of the Private International Law Seminars at the Hague Academy of International Law, English-speaking section, during the month of July 2005. Lecturer at the Hague Academy of International Law in July 2015 ('Internet, privacy and rights relating to personality'). Adviser to the Ministry of Justice of the Kingdom of Spain and representative of Spain in the negotiation of the 'Rome III' Regulation (Law applicable to divorce: years 2005-2008). Visiting Professor at the Università di Cagliari, Italy, Rome III, Insubria-Como and Bologna, Italy. Lawyer (non-practising) at the Bar Association of Lucena (Córdoba, Spain) since October 2013 until present.

Søren Friis Hansen is Professor of International Company Law at CBS LAW, Copenhagen Business School. He was a member of the Committee that prepared the Danish Companies Act of 2009. His research deals with Danish company and tax law as well as European company law and tax law and tax treaty law.

Prof. Dr Peter Hongler is Professor of Tax Law at the University of St. Gallen and has served as Director of the Institute for Law and Economics (ILE-HSG) since early 2020. He studied Law at the University of Bern (MLaw 2008) and earned his doctorate (Dr iur.) from the University of Zurich in 2011. He has held research positions at leading academic institutions, including as a guest researcher at the Institute for Austrian and International Tax Law at the Vienna University of Economics and Business and as a Postdoctoral Research Fellow at the IBFD in Amsterdam. In 2014, he qualified as a Swiss Certified Tax Expert after passing the Swiss advanced professional examination. Peter Hongler is experienced in advising political bodies on matters of tax policy. For an overview of his publications and speaking engagements, please check the website https://www.alexandria.unisg.ch/entities/person/Peter_Hongler.

Prof. Dr Giedre Lideikyte Huber is Assistant Professor of Tax Law at the University of St. Gallen. She specializes in sustainable tax policies, the taxation of the social economy – including philanthropy and social enterprises – and the taxation of the aviation industry. She has been a visiting scholar at the University of Oxford, the Massachusetts Institute of Technology, Harvard Law School, and UC Berkeley. Giedre holds advanced degrees in law and European public affairs from universities in Geneva, Vilnius, and Maastricht. Her research has informed reports by the OECD, the European Commission, and Swiss national research projects.

Marcel R. Jung is attorney at law and certified tax expert: He practises as a tax partner at MME and is considered as a leading lawyer in tax and private client matters. He regularly advises private clients on international tax planning and structuring of wealth which often includes trusts and foundations. He holds a Doctor of Laws from the University of Basel, a Master's in International Tax Law from Queen Mary College of the University of London and a Master's in Economics from the University of St. Gallen. He was a visiting student at the International Tax Program at Harvard Law School.

Niklas Kaiser, MSc, is a German Chartered Tax Advisor, Academic Research Assistant and PhD Candidate at the Chair for Business Taxation and the Laws of International and Liechtenstein Taxation at the Liechtenstein Business Law School at the University of Liechtenstein in Vaduz.

Dr Ineke A. Koele – Koele Tax & Legal Perspecta – the Netherlands. Ineke advises private clients and a wide spectrum of foundations, charities and trusts. She is a dual-qualified Dutch tax and estate attorney with more than thirty years of international practice. She is a Harvard-trained conciliator and has a strong reputation in dispute resolution, both in a family context and in relation to the tax authorities. She combines an academic attitude and pragmatic advice across disciplines. Her work is internationally recognized by the Fellowship of IAETL and ACTEC, Chambers (Band One Top Tier), Who's Who (Thoughtleader) and Citywealth (Top 50 Global Tax Professionals, 2024).

Dominic Krenn, LLM (WU), is a research project associate at the Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business). He holds a Bachelor's and a Master's in Business Law from WU. Before joining the institute, he did several internships in law firms in Austria and abroad.

Ramona Lässer is a student research assistant at the Chair for Business Taxation and the Laws of International and Liechtenstein Taxation at the Liechtenstein Business Law School at the University of Liechtenstein in Vaduz.

Stefano Loconte is Professor of Trust Law at the LUM 'Giuseppe Degennaro' University of Casamassima (BA), Managing Partner of Loconte & Partners, a law and tax firm specializing in wealth planning, and President of STEP Italy.

Dr Michael McGowan is a visiting professor at King's College, University of London, where he teaches the UK taxation of business enterprises and EU law on the LLM programme in International Tax. For many years, he worked as a full-time UK tax adviser in major law firms, and for most of that time was a partner. He still works, as a senior tax adviser, for major law firms and accounting firms. The international taxation of trusts and foundations is one of his research interests, on which he has written extensively and has given seminars at the Universities of Oxford and Amsterdam.

Mark Ørberg is Assistant Professor of Law at the Department of Business Humanities and Law, Copenhagen Business School. His research focuses on comparative foundation law, specializing in the regulation and governance of enterprise foundations in Europe and the US.

Dr Leopoldo Parada, LLM, PhD, is Reader in Tax Law at King's College London. He also works as a tax policy advisor for different governments and international organizations and has participated in different legislative tax reforms worldwide, including the introduction of interest limitation rules in Indonesia and the OECD Pillar

2 in Curaçao. Dr Parada is the author of several books and academic articles, and he is also a regular speaker at specialized conferences around the world. His academic work has been cited by the US Congressional Research Service and by the EU Advocate General in the case C-342/20. In 2020, he was recognized by the 'TaxCOOP 35 Leaders of the Future in Taxation' (Canada) as one of the most promising tax policy experts worldwide.

Amanda Pletz is Managing Director at NERA and has over twenty years of experience applying economic and financial analyses to transfer pricing, international tax, and other issues involving litigation, arbitration, regulation, and subsidy control (state aid). She has directed numerous projects involving transfer pricing, economic risk modelling and valuation across a broad range of industries, including but not limited to private banking and asset management, fintech, private equity, real estate, insurance, trading, and broader banking sectors. She is a trusted advisor on capital structure issues; cash pooling; pricing of loans; hybrid instruments; guarantees; captive insurance arrangements; leasing and loans, and other asset valuations. In litigation, international arbitration, and disputes, she has been retained in numerous transfer pricing valuation, pricing and retrospective banking business valuations and other business valuations, financing arrangements, and trade analyses, including subsidy control issues. Ms Pletz has been repeatedly recognized as a Global Elite Thought Leader by the Lexology index and is also a member of a panel of experts of P.R.I.M.E Finance Foundation.

Kinga Romanovska is a research associate at the Tax Policy Center of the University of Lausanne and a PhD candidate focusing on the Pillar Two Global Anti-Base Erosion (GloBE) Rules and international tax competition. In addition, as an advocate at a leading Polish law firm specializing in private clients, she advises high-net-worth individuals and their businesses on international tax compliance matters.

Violeta Ruiz Almendral (Madrid, 1975) is Associate Professor of Tax and Financial Law at Universidad Carlos III de Madrid, where she has led and participated in various research projects. She is also the President of the Arbitration Board for the Basque Country Economic Agreement (Junta Arbitral del Concierto Económico). She served as a legal advisor (letrada) to the Spanish Constitutional Court from 2011 to 2020 and was a member of Spain's National Committee of Experts for Tax Reform (2021-2022). Ruiz Almendral has held visiting positions at institutions such as the University of Münster, the European University Institute, and the London School of Economics. Her main research focuses are fiscal federalism, subnational taxation, and European tax harmonization. She has received awards, including the Excellence in Research Award from Universidad Carlos III and the Estudios Financieros Award. Additionally, she has contributed to international projects in Iraq and Jordan, coordinated by the United Nations and other organizations.

Ayushi Rungta is an economist in the Transfer Pricing and Financial Services team at NERA London. She advises clients in the context of their cross-border transactions, assisting them in the implementation of optimal pricing policies. She has gained experience working on market evaluation cases in the financial services industry, specifically looking at issues such as pricing of various types of loans, guarantees, cash pooling transactions, valuation of intangibles, and business restructuring projects, including post-merger integrations. She has also worked on several dispute cases in the context of state aid claims and tax settlements. She holds an MSc in Economics from the London School of Economics and Political Science.

Moritz Scherleitner, Docent, LLD, MSc (WU), is an assistant professor (tenure-track) at Aalto University, Finland. His research focuses on European and international tax law. In addition, he is involved in various multidisciplinary teams conducting empirical research on selected tax-related topics.

Prof. Dr Karoline Spies is Professor of Value Added Tax Law at the Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business). Moreover, she is a member of the VAT Expert Group and a certified tax advisor.

Rita Szudoczky has been Associate Professor of Tax Law at the Institute for Austrian and International Tax Law since 2022. She has a law degree from Eötvös Lóránd University (Hungary), LLM degrees from the Central European University (Hungary) and Leiden University (the Netherlands), and a PhD from the University of Amsterdam (the Netherlands). Rita's research focuses on international tax law and governance, EU direct tax law and policy as well as EU State aid law. She is a frequent speaker at conferences and seminars on international and EU tax law, teaches as guest professor at various tax law LLM programs around Europe and publishes regularly on these subjects. She has been delegated by Hungary to the List of Independent Persons of Standing for the EU Arbitration Convention and the EU Dispute Resolution Directive.

Subiksha Thirumamany recently completed her MA HSG in Law and Economics at the University of St. Gallen. She is now continuing her academic journey as a PhD candidate and research assistant in Tax Law at the Institute for Law and Economics (ILE-HSG). During her studies, she gained practical experience through internships in both Switzerland and Spain and worked as a research assistant at two academic chairs.

Jean-Philippe Van West is Tax Law Professor at the Vrije Universiteit Brussel and Senior Counsel at PwC Belgium.

Professor Dr Martin Wenz is Professor of National and International Tax Law and holds the Chair for Business Taxation and the Laws of International and Liechtenstein Taxation at the University of Liechtenstein. His main research interests are the international tax architecture and the re-design of tax systems, international tax standards and the international level-playing-field on taxation, the international tax treatment of individuals (UHNWI), companies, complex private and charitable wealth structures and the various aspects of the Liechtenstein tax law. Professor Wenz also gives comprehensive advice to the Liechtenstein Government on national and international tax law, including Double Tax Agreements and on the Implementation of International Tax Standards, including BEPS and Pillar 2 (GloBE).

Summary of Contents

Table of Contents

CHAPTER 19

Under What Circumstances Can Stewardship Foundation Structuring Be a Solution to Families, Enterprises and Society at Large?

Ineke A. Koele

1 CONTEXT: INCREASING INEQUALITY AND RESPONSE OF THE LEGISLATOR

1.1 Public Debate on the (Ultra-)Wealthy in a Societal Context

Inequality in income and wealth has grown in a non-sustainable way during the last twenty-five years. According to the Forbes Billionaires List 2024, there are now more billionaires than ever: 2,781 in all, with a record wealth of USD 14.2 trillion (USD 14,200,000,000,000) in aggregate, up by USD 2 trillion from 2023. The U.S. has the largest number of billionaires (813), followed by China (473) and India (200), while the planet's richest family (worth USD 233 billion) lives in France. As humans, it is difficult to grasp these figures in a sensible way, but we can compare them with the total expenditures of a country: the total budget of the country of Belgium amounts to approximately USD 300 billion.

Obviously, this is only the tip of the iceberg, as there are many more Ultra High Net Worth Individuals (UHNWs) without touching the level of a billion. According to the Oxford Dictionary, a UHNW is an individual with investable assets in excess of USD 30 million.

The corporate executives who helped bring about the financial crisis of 2008 still received their bonuses and induced central banks to buy bonds at an unprecedented scale, very logically leading to a path of inflation and a cost-of-living crisis. Now, governments all over the Western democratic world face a budget deficit of billions, waning public services and a serious cost-of-living-and-housing crisis. Consequently, governments are looking for ways to raise revenue without attacking the lower-class population. The easiest way to raise revenue is to increase taxes on the middle class and entrepreneurs, as a result of which the middle-class voter population has already been distanced from mainstream politics.

Where the global economy generates immense fortunes for a relatively small group of people, the call for redistribution of excessive wealth through taxes based on the mere ownership of high net wealth is found around the globe.

Simultaneously, an academic moral-philosophical discussion has emerged on the question of whether there is a maximum that an individual or a family should be able to own, and that any excess would have to be redistributed in whatever way.[1] In this philosophical discussion, it is stressed by an increasing number of academics from various disciplines that extreme wealth undermines democracy, is incompatible with ecological urgency and most often not deserved by personal merits alone, and accordingly, there is an argument for maximizing the amount of wealth an individual should have, similar to a minimum threshold that we demarcate as "poverty." This philosophical framework, referred to as "limitarianism,"[2] is a moral discussion and does not provide guidance as to how to reach this goal, whether it is "top down" by taxes or "bottom up" by families deciding themselves to give away the part of their wealth that does not add to their quality of life.

According to historical and biological scientists Jack Goldstone and Peter Turchin, selfish elites that seek to take a large portion of economic gains for themselves in this second Gilded Age, tighten up the path to mobility to favor themselves and their progeny and then do all they can to resist taxation of their wealth and profits, will lead the way to revolutions. They predicted the "Turbulent Twenties" at the brink of this decennium.[3]

Selfish elites create simmering conditions of greater inequality and declining effectiveness of, and respect for, government if they are not paying attention to the common good. Where UHNWs use their wealth to influence the legislator to protect their wealth at the expense of the common interest, based on historical considerations that should be morally condemned, as it puts the entire population of the society at severe risk. Turchin argues that when the equilibrium between ruling elites and the majority tips too far in favor of elites, political instability is all but inevitable. He calls

1. For example, from an economic perspective: Joseph Stiglitz, *The Price of Inequality; How Today's Divided Society Endangers Our Future,* New York, W.W. Norton, 2012; Thomas Piketty, *A Brief History of Equality,* Harvard University Press, 2021. From a philosophical perspective T.M. Scanlon, *Why Does Inequality Matter?,* Oxford University Press, 2018. From a social epidemiology perspective: Richard Wilkinson and Kate Pickett, *The Spirit Level: Why More Equal Societies Almost Always Do Better,* London, Allen Lane, 2009. From a political and policy analysis perspective Robert Reich, *Saving Capitalism: For the Many, Not the Few,* New York, Alfred A. Knopf, 2015.
2. Ingrid Robeyns, *Limitarianism: The Case Against Extreme Wealth*, Allen Lane, 2024, *see also*: Luke Hildyard, *Enough: Why It's Time to Abolish the Super-Rich*, London, Pluto Press, 2024.
3. https://www.noemamag.com/welcome-to-the-turbulent-twenties/; Jack A. Goldstone, *Revolutions: A Very Short Introduction*, Oxford University Press, 2014. Peter Turchin, *End Times: Elites, Counter-Elites and the Path of Political Disintegration*, New York, Penguin, 2023.

this process the "wealth pump"; as the number of UHNW positions remains relatively fixed, the overproduction of elites inevitably leads to frustrated elite aspirants, who harness popular resentment to turn against the established order.

Increasingly, the middle class shares the opinion that the UHNW population is directly influencing the legislator who is protective of their interests. As a matter of fact, it is often reported that UHNWs can often significantly reduce their effective tax exposure by exploiting preferential treatments and planning opportunities that are considered acceptable tax planning leading to statements that the wealthiest UHNWs in the U.S. are faced with an effective average tax rate of only 3.25%[4] or, as Warren Buffet puts it, pay much lesser tax than their secretary. Although people have respect for the efforts and success of UHNWs—leaving aside the "silver spooners" with inherited wealth—there is considerable skepticism about the prospect of anything ever being done about the huge divides between the super-rich and everybody else, as people consider the "selfish elite" is already intertwined with mainstream politics.

1.2 The Rise of the "Robin Hood" Wealth Tax?

The discussion about the desirability and eligibility of a wealth tax for UHNW individuals has also been reactivated during the last years, albeit net wealth taxes are far less widespread than they used to be in the 1990s, when most jurisdictions repealed this tax as it induced capital flight and the revenues were accordingly not as expected. In 1990, twelve OECD members had general net wealth taxes, while nowadays only Switzerland, Spain and Norway levy an explicit broad-based wealth tax.

The OECD issued in 2018 a report on The Role and Design of Net Wealth Taxes in the OECD.[5] Where at first, the report starts to argue that there is a strong case for addressing wealth inequality through the tax system, it concludes that from both an efficiency and equity perspective, there are limited arguments for having a net wealth tax in addition to broad-based personal capital income taxes and well-designed inheritance and gift taxes. The fact that net wealth taxes are imposed irrespective of actual returns that taxpayers earn on their assets makes it less equitable than capital income and gains taxation and a one-off inheritance or gift taxation.

Similar findings were the result of a Wealth Tax Commission established in the UK in 2020. This Commission, consisting of economists from the London School of Economics, held that it would be better to improve the existing taxes on wealth, such as inheritance tax and capital gains tax, as they, in practice, do not deliver the output in revenue due to wide margins of planning, especially for the wealthiest families. An annual wealth tax, like all other regular taxes, does affect behavior and reduces the value of work. The administration costs are substantial, and there is a huge issue of liquidity for families owning businesses, real property, pieces of art and other illiquid assets.

---

4. https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax.
5. The Role and Design of Net Wealth Taxes in the OECD | OECD Tax Policy Studies | OECD iLibrary (oecd-ilibrary.org).

Instead, the commission held that a one-off wealth tax, also referred to as capital levies for a specific cause (such as recovering costs of COVID-19), would be very efficient and difficult to avoid.

Until today, the political landscape has not allowed the case of introduction of a generic or even one-off wealth tax, but the call is growing to "get the wealth of the one per cent flowing instead to the workers who actually create it."[6]

In a recent publication of the International Monetary Fund, "How to Tax Wealth,"[7] it is concluded that taxing actual returns is less disruptive and more equitable than a wealth tax. Hence, rather than introducing wealth taxes, reform priorities should focus on strengthening the design of capital income taxes (notably capital gains) and closing existing loopholes, while harnessing technological advances in tax administration to foster tax compliance. Interesting to note that the economists of the IMF conclude from several research findings that estimates of elasticities that capture real effects of wealth taxes are often negative, suggesting that higher wealth taxes result in a lower accumulation of invested capital. Simultaneously, tax evasion and plain emigration are other behavioral responses to the taxation of wealth.

The IMF is less negative on the recent proposal of U.S. President Biden to impose a billionaire tax of 25% on the total (realized and unrealized) income in a year of Americans with a wealth of more than USD 100 million. The reason is that it is less likely that such a tax on the "super-rich" will distort investment or residence decisions, but this cannot be based on any empirical evidence yet.

In addition, the IMF Note also considers inheritance tax (much more than an estate tax), accompanied by gift taxes, both with strong progressive tax rates, preferable to reduce inequality upon the transfer of assets. Inheritance taxes restore the equivalence between consumed income and income that is not spent over a lifetime.

In order to offset the cost-of-living crisis, Spain has introduced, as of 2023, a federal solidarity tax on large fortunes on wealth owners above EUR 3 million of wealth for the years 2023 and 2024, with a deduction of the existing regional general wealth taxes (progressive tax rates from 0.2% up to 3.5% as of approx. EUR 10 million wealth). Spanish law grants regions authority to legislate and collect the wealth tax in the respective regions and what happened is that the regions started to compete with each other: several regions provided full or substantial relief of the wealth tax. The proceeds of the wealth tax are also limited due to the fact that it is rather easy to avoid the wealth tax; by restructuring the assets, one can make use of the restriction that the accumulated wealth tax and personal income taxes may not exceed 60% of the taxable income in a year.

For the year 2023, a total of 12,010 wealthy individuals paid the federal solidarity tax, representing 0.1% of all taxpayers in Spain. The tax raised EUR 632 million for 2023, although 1.5 billion was expected. However, the tax and also the fear that it may be made permanent have put entrepreneurs and investors off from moving to Spain,

6. Luke Hildyard, *Enough: Why It's Time to Abolish the Super-Rich*, Pluto Press 2024.
7. https://www.imf.org/en/Publications/imf-how-to-notes/Issues/2024/03/08/How-to-Tax-Wealth-544948.

and also seem likely to drive existing HNW residents away.[8] It is impossible to create empirical data based on distinct scenarios, and obviously, the loss of HNW taxpayers would not only reduce the other tax proceeds, such as income tax, VAT, and social security contributions but also reduce the number of employments created and the economic fabric of the country in general, while all these indirect factors are seldom accounted for.

Another strong reaction has been seen in Norway, a country where people have in general a very high esteem for the government and are happy to pay taxes. However, when the government increased the wealth tax for UHNW from 1% to 1.1% on an annual basis for wealth in excess of NOK 20 million (USD 1.8 million) of which 0.7% is paid to municipalities and 0.4% to the central government, a record number of 70 UHNW Norwegians left Norway and moved to Switzerland and other lower-taxed countries in one year. Those who left the country on this occasion had an estimated combined fortune of at least NOK 600 billion.[9]

According to the Henley Private Wealth Migration Report 2024, the UK has faced an outflow of 9,500 millionaires following the restriction on the favorable non-domicile tax regime for UHNW people, most of whom are heading for tax haven Dubai.[10] The same report shows record migration flows of millionaires in 2023 and 2024 globally, with Dubai and the U.S. as the jurisdictions with the strongest inflow.

The lesson from all of this is that policy concerns about wealth inequality do not imply that governments should use net wealth taxes as a "solution."

The same count for the recent call of the EU Tax Observatory, which backs a call for a global wealth tax of 2% on the world's billionaires which could potentially raise USD 250 billion a year while a group called Patriotic Millionaires states that according to a poll organized by them found[11] that 75% support the proposal for the 2% tax on billionaires while 58% of millionaires from G20 countries back a 2% tax on wealth in excess of USD 10 million.

This all does not seem to be very realistic. What is realistic, though, as is recommended by both the OECD and the IMF, is to improve the existing tax legislation on capital gains tax and inheritance & gift tax.

1.3 Family Business Transfer Relief Scrutinized

Among one of the most striking opportunities for UHNW families to pay significantly less tax compared to more modest families is the relief that exists across the board for the transfer of family business assets to the next generation.[12] Jurisdictions tend to

8. https://www.sovereigngroup.com/news/news-and-views/spains-new-wealth-tax-pushing-many-hnwis-towards-the-exit/.
9. https://www.theguardian.com/world/2023/apr/10/super-rich-abandoning-norway-at-record-rate-as-wealth-tax-rises-slightly.
10. https://www.henleyglobal.com/publications/henley-private-wealth-migration-report-2024/.
11. https://patrioticmillionaires.uk/latest-news/pmuk-davos-2024-release.
12. For a very short, however incomplete koversight of the respective facilities in practice, the KPMG global family business tax monitor 2023 can be used https://kpmg.com/xx/en/home/insights/2023/02/global-family-business-tax-monitor.html.

have an inheritance and/or gift tax upon transfer to the next generations,[13] a deemed capital gains tax upon decease or both—the latter is the case in the Netherlands. Exemptions however decrease the effective tax exposure for family business owners in nearly all jurisdictions,[14] with at least 80% of the tax.

The rationale for these very generous exemptions of taxes upon the transfer to the next generation is traditionally found in the fact, that it may be very difficult to withdraw funds from a family business to pay for the taxes that are counted on the basis of the value of the same, and there is a liquidity argument, not a principled argument. In practice, also in cases where there is no real liquidity issue, families benefit from very generous exemptions relative to other wealthy families owning real estate, art or other illiquid assets or wealth owners with liquid assets altogether.

The question therefore should be from a public policy perspective whether and if so, to what extent it is prudent to have these family business owners benefit from generous exemptions of inheritance, gift and/or capital taxes upon transfer of wealth to the next generation. Payments in installments or in kind are in nearly all situations typical solutions to overcome the rationale for an exemption of tax and may lead to more equitable relations with other less wealthy taxpayers or taxpayers who are not meeting the conditions for the family business relief. Another mechanism could be a conditional exemption that would be withdrawn if dividends or other gains were received by the family business owners from the business, as a way to effectuate that the equitable tax levy ultimately has to be paid if the family business owners benefit from their capital in the business as well.

The current situation is that the family business owners benefit from the family business without paying their fair share compared to other citizens in the country. That seems to be unsustainable, as there is no sound argument for this. Large family businesses united hire lobbyists that use artificial arguments such as “family businesses do not face the same playing field as listed companies.” What they mean to say is that the shareholders do not wish to sell their shares, and accordingly, use that as an argument why they are unable to find the liquidity to pay. By upholding this kind of fallacy, family business owners demonstrate their anxiety about holding on to their fortunes, and why they do all they can to resist taxation of their wealth. That is exactly the behavior that Jack Goldstone and Peter Turchin have identified as the source of revolutions in our democratic societies that is currently unfolding.[15]

In conclusion, it may be said that there is an impetus for governments to restrict the relief for family business transfers to the next generation and remedy other flawed legislation that allows UHNW to plan around existing tax legislation in order to reduce the effective tax exposure relative to less wealthy individuals. This all stems from the urge to restore the balance between different diverging groups of people within our society in order to maintain peaceful cohabitation.

Simultaneously, the call for ethically responsible wealth should be made more loudly toward UHNWs. As a start, a very practical restriction UHNWs should abide by

13. This is not the case for, e.g., China, Italy and Sweden.
14. Notably exceptions to this are Canada and South Africa.
15. *See supra* n. 3.

is to prevent lobbying activities to maintain or even expand their privileges and relief, if compared to other taxpayers in the same jurisdiction.

2 THE FAMILY PERSPECTIVE

In the former paragraph, it has been demonstrated that it is very likely that in the future, substantially higher tax pressure will be experienced by traditionally owned family businesses on the occasion of a decease, divorce or exit sale of its shareholders.

Numerous studies have demonstrated that 90% of all traditional inheritance plans will fail. We all know the proverb "shirtsleeves to shirtsleeves in three generations," which indicates that nine out of ten families have lost the wealth accumulated during the first generation at the end of the third generation. Despite lots of attention from researchers and practitioners, there are very consistent patterns that make it difficult to avoid this consequence.[16] There are several reasons for this, and existing conflicts of interest make it difficult to change behavior. Nonetheless, there is a growing awareness of the toxic effects of fear and protection, the "control and command" culture in a family business, whereas the "trust and inspire" culture is the path going forward.[17]

Historical research also shows clearly that long-term successful families are foremost determined by their culture of trust and togetherness.[18] Successful family business owners maintain a culture of abundance, trust, inspiration and support and share a lack of a sense of "entitlement" to the family's assets. Ownership in this perspective is considered a responsibility vis-à-vis the next generations, while the owners are deeply committed to the values and stakeholders of business; this is also referred to as a culture of "borrowed from the grandchildren." In fact, this is very close to a definition of stewardship, which may be referred to as a dedication to a greater cause, whether it is a family, the business and/or society at large. Families who historically have adopted a culture of stewardship have succeeded in maintaining a family business over multiple generations.[19]

Navigating tax legislation in various jurisdictions is a critical exercise for every UHNW. Nonetheless, it is my view that all too often tax advisers consider their own discipline dominant in the succession planning process and, by doing so, render harmful advice to families as they consider themselves not accountable to other critical considerations in the succession planning process. Tax advisers across the spectrum advise UHNW families to transfer their family business assets to the next generation as soon as possible, as this may save taxes in the future, as the tax relief for gift tax and

16. For example, Perry L. Cochell and Rodney C. Zeeb, *Beating the Midas Curve, Why Does Hard Work and Financial Success Lead to Disaster for so Many Families, and How Can You Save Yours?*, Heritage Institute Press, 2005; Roy Williams and Vic Preisser, *Preparing Heirs*, Robert Reed Publishers, 2003; Maarten de Groot, *Cracking the Code on Wealth Preservation: It Is Not About Money*, ARBI Dissertation Series, 2021.
17. Stephen M.R. Covey, *Trust & Inspire*, Shimon and Schuster, 2022.
18. Dennis T. Jaffe, *Borrowed from Your Grandchildren,"* John Wiley & Sons, 2020.
19. *See* for an interesting overview: Family Business—The World's Oldest Family Companies (griequity.com).

capital tax in most jurisdictions is still very generous. Whether the next generation is ready to become an owner is not considered relevant, and all too often, the new owners will not participate fully in their ownership role as the older generation retains power in the setup. As a result, the next generation is lacking preparation and consultation in their new role and the consequences are predicted to be devastating over time, fulfilling the prophecy of the shirtsleeves proverb. This is not exclusive to UHNW families but applies to any family with any amount of wealth.[20] Any amount is enough to destroy a family if not handled with utmost care. Where families do not really understand why they have certain legal structures in place, it is quite often the case that the family leaders do not trust the family members as they should to keep the harmony and leave it all to legal advisors who maintain their involvement with ongoing fees, keeping everybody "kidnapped" in the status quo. These are all recipes for disaster, by which I mean the collapse of the family as a cooperative unity and source of social capital and ultimately, quite often followed by the decline of the enterprise.[21]

When people receive a financial inheritance without an emotional inheritance, or "money without a meaning," and money is the primary focus of estate planning, inheritors are very likely to equate their self-worth with their net worth and develop a dysfunctional relationship with money with low future motivation, low self-confidence, emotional isolation, a false sense of entitlement and even an inability to form intimate relationships.[22]

The paradox is found here that families who acknowledge stewardship as an overriding family value and vision for the future, focusing on the long-term interest of all the stakeholders, are most likely to flourish over the generations. The notion of a pursuit of a higher purpose that serves the (family business) community and even society at large is bonding the family together.[23] Increasingly, families gain the insight that a successful business is like a child that needs to be fostered on its own, without being entitled by others and subject to the risks of conflict, decease and divorce. Although the reasons for entropy are known and an integrated legacy planning can help to avoid the "Midas curse," many families do not find the courage or will to embrace this challenge adequately.

From the perspective of family cohesion and happiness, therefore, the creation of a stewardship foundation, by way of institutionalization of a family business where the family members do not have an economic ownership title to the business, is a prudent choice for many. It follows that at least in the Northern European countries, owners of family firms increasingly transfer their business interest at least partially to foundations instead of engaging in traditional succession.[24]

20. Philip Marcovici, *The Destructive Power of Family Wealth*, Wiley, 2016, Chapter 1.
21. This may have also severe consequences for the advisors, who can be said to have acted in breach of their reasonable duty of care towards their clients.
22. Cochell and Zeeb, *supra* n. 16, p. 46.
23. Ineke A. Koele and Rasmus K. Feldthusen, *Shareholder Foundations of Enterprises: The North European Style of Securing Family Businesses for the Long Term—Rising Up to the Global Challenge*, Oxford University Press, Trusts & Trustees, September 2020, pp. 654-662.
24. J. Block, et al., Performance of Foundation-Owned Firms in Germany: The Role of Foundation Purpose, Stock Market Listing, and Family Involvement, Journal of Family Business Strategy, 2020, https://doi.org/10.1016/j.jfbs.2020.100356.

3 THE CASE FOR STEWARDSHIP FOUNDATIONS

When we take the societal perspective into consideration, it does not make a lot of sense to provide very generous tax relief with respect to the succession of ownership of family businesses that are not likely to sustain in the long run due to their traditional ownership structure. To put it differently, it would be much more prudent for the legislator to provide tax relief to families who foster the kind of stewardship culture that is required for the long-term survival of a family business. Given the size and impact of family enterprises in Western societies, which encompass, on average, more than 60% of GDP and employment, the society at large has a substantial interest in the resilience of family enterprises in the long run and therefore against the biological transfer to the next generation of wealth owners with an inherent high risk of discontinuity. From the perspective of society at large, the relief for succession of UHNWs in traditional ownership structuring is not a very rational investment. To put it differently: upon a severe restriction of tax relief for family business succession, only the families with a stewardship culture would be sustainably able to pay the taxes upon ongoing succession to the next generations. From that perspective, it would be prudent for governments to invest in the culture of stewardship by family business owners as well.

We have learned from notable stewardship foundation structures, also referred to as “industrial foundations” or “commercial foundations” (Denmark), holding foundations (Switzerland), Shareholding foundations (Germany), or simply alternative ownership structures, that this leads to very flourishing and sustainable enterprises responsible for expansive and outstanding research and innovation in their field.[25] Also, at least where the larger enterprises are concerned, enterprises held by stewardship foundations outperform, which is explained by the typical advantages of this kind of structuring: no short-term pressure of the market and corresponding myopia, no succession issues while benefiting from a strong reputation in relation to social responsibility.[26]

Denmark, the jurisdiction where commercial foundations have become very popular in a time when families could transfer their ownership to such a foundation with an exemption of capital gains that otherwise would have been due, has converted its former foremost agricultural economy to a flourishing economy where 70% of the stock market capitalization consists of companies held by commercial foundations, including three of the four largest Danish companies—A.P. Moller-Maersk, Novo-Nordisk and Carlsberg. Since 1999, the transfer of a family business interest would lead to a capital gains tax at a rate of 42% which effectively blocked the creation of new shareholder foundations. The Danish government has reconsidered this position and reintroduced in 2021 an exemption of capital gains for gifts of shares to a foundation with nonprofit or charitable purposes. The same qualifies for a transfer to a foreign foundation (in a jurisdiction whose competent authorities must adequately exchange

25. *See also* Koele and Feldthusen, *supra* n. 23, p. 657.
26. Steen Thomsen, *The Danish Industrial Foundations*, Djöf Publishing, Copenhagen 2017, Chapter 7.

information with the Danish jurisdiction) if the shareholder has given a final and irrevocable waiver to dispose of the assets of the transferred company.

By providing tax relief for the one-off transfer of a family business interest to a qualifying stewardship foundation, the societal tension between the "wealthy" citizens and other taxpayers is substantially resolved and reduces inequality to a large extent. Governments obviously would lose the potential to tax the succession to the next generation with gift, inheritance and/or capital gains taxes since now the foundations are the rightful owners of the business. Leaving aside the tax framework applicable to these new owner-foundations,[27] they will raise less taxes if compared to private ownership structures, as there will not be any future successions. The advantage, however, is that the foundations foster the maintenance of the business as a purpose and use excessive results for societal interest purposes and therefore become an ally of the government while sustaining long-term employment and economic sustainable vitality of the family enterprises. The sustainable and expanding businesses raise a lot of other taxes for the government on an annual basis. Accordingly, from an overall economic perspective, there is a great case for stewardship foundations in the ongoing succession of family businesses.

This does not mean that families should not be involved in the family business anymore. Families would only be willing to transform their businesses into stewardship foundation structures if it would also protect their legacy and identity, at least in so far this identity is intertwined with the business. The dedication of family members to the business is a valuable source of social capital that should add to the continuity of the business. In Germany, recent research has demonstrated that the involvement of family members in the governance of a foundation has positive results on the performance of the business.[28]

In a stewardship foundation owning the majority of the shareholders' interest in a business, the surplus profits that are not needed to maintain or expand the business would be used for social or public interest causes, whether qualifying as charitable or nonprofit activities. The case of stewardship foundation-owned family businesses thus stems from the Gospel of Wealth, as expressed by Andrew Carnegie back in 1889 during the first Gilded Age, in which he describes the ethical responsibility of the wealthy people to administer their wealth for the common good as a true antidote for the temporary unequal distribution of wealth, the reconciliation of the rich and the poor. He favors capitalism and public spending by the wealthy over taxation: "Under its sway we shall have an ideal state, in which the surplus wealth of the few will become, in the best sense the property of the many, because administered for the common good, and this wealth, passing through the hands of the few, can be made a much more potent force for the elevation of our race than if it had been distributed in small sums to the people themselves. Even the poorest can be made to see this, and to agree that great sums gathered by some of their fellow-citizens and spent for public purposes, from which the masses reap the principal benefit, are more valuable to them

27. In some jurisdictions, foundations are subject to alternative succession duties that are levied every thirty years. This is, e.g., the case in Belgium and Germany to some extent.
28. Block, *supra* n. 24.

than if scattered among them through the course of many years in trifling amounts through the course of many years. "[29]

Carnegie favored high inheritance or estate taxes as a default and motivation for wealthy people to devote their wealth to the common good themselves. He considered the man who dies thus rich dies disgraced and did not entrust the traditional estate planning, as "in many cases the bequests are so used as to become only monuments of his folly." His daughter inherited approximately 10% of his wealth, and he spent 90% on many public causes himself.

At the present time, Bill Gates, Melinda French Gates and Warren Buffett are living examples of the same attitude. In 2010, they initiated the Giving Pledge,[30] which led forty of America's wealthiest people to make a commitment to give the majority of their wealth to address society's most pressing problems. As Warren Buffett has written in his pledge letter: "Were we to use more than 1% of my claim checks on ourselves, neither our happiness nor our well-being would be enhanced. In contrast, that remaining 99% can have a huge effect on the health and welfare of others." This attitude coincides with a reflection on society's mechanisms for "distribution of long straws." According to Bill Gates, these long straws are distributed wildly capriciously in an economy that rewards someone who saves the lives of others on a battlefield with a medal, rewards a great teacher with thank-you notes from parents, but rewards those who can detect the mispricing of securities with sums reaching into the billions.

4 WHAT CONDITIONS SHOULD APPLY FOR STEWARDSHIP FOUNDATION STRUCTURING?

4.1 The Perspective of the Family and the Business

From the perspective of families, there would be a number of conditions that should be met in order for responsible business owners to consider the irrevocable transfer of a (part of) their shareholding interest in the family business to a stewardship foundation. Although this looks very counterintuitive for many family business owners at face value, the purpose of considering this is to retain family harmony, to generate and regenerate productive and happy younger family generations, to avoid liquidity issues and other tax-related financial discomfort and of course to mitigate inequality in general.

The other reason why many family business owners may initially react rather cynically to this is that the conditions for them to consider this at true value do often not exist or, if they do exist, are not well known to them. It is therefore a matter of culture that starts with the culture of professionals dealing with the family business owners.

29. https://www.carnegie.org/about/our-history/gospelofwealth/.
30. https://givingpledge.org/.

4.1.1 Purpose: Maintenance and Flourishing of the Business and Societal Purpose

First, the foundation should have as its *primary purpose* the maintenance and flourishing of the business itself. This sounds very straightforward; however, in many jurisdictions, there are ample restrictions for foundations to have a self-serving purpose.[31] This explains why the use of stewardship structures is lagging behind in Anglo-Saxon jurisdictions, as the concept of a trust—often used in lieu of a foundation—requires a well-designated class of beneficiaries and normally has a limited validity in time (the rule against perpetuities). Only where trusts have a charitable purpose, a jurisdiction's attorney-general is designed to act as public enforcer instead of a beneficiary. Nonetheless, in recent years, a few U.S. states have adopted the concept of purpose trusts to continue in perpetuity, and these states are expected to gradually rewrite business succession planning in the USA.[32] In the UK, the "human beneficiary" requirement is only relaxed if a purpose trust meets the requirement of a charity under UK law, which is strictly regulated. Nonetheless, there are also commentators who plead for a statutory scheme for validation of private purpose trusts in the UK. But also in Europe, in the classical Germanic foundation jurisdictions such as Liechtenstein, Austria and Germany, there are similar restrictions to avoid an invalid "*Selbstzweckstiftung.*"

Stewardship foundations can take the form of a foundation, trust or nonprofit corporation and may have a charitable status or not. Obviously, in many jurisdictions, a charitable entity currently has more generic tax exemptions. In this chapter, however, I will focus on the *ius constituendum* from a family's perspective that suits the interests of society at large and the business as well. Where I do refer to "foundations" in this contribution, the use of a trust or nonprofit corporation should be implied if used in the same circumstances and purpose.

Where a foundation takes the form of a charitable foundation, many jurisdictions do not allow charities to own a substantial interest in a business whereas this is considered unwise from the perspective of diversification of investments (e.g., in the UK) or may be seen as competitive to other businesses with private shareholders who are not exempt from corporate income tax (this is the case with the private foundation rules in the U.S.) or where the interdependence between the business and the foundation is considered burdensome (*see* the chapter on Swiss practice from Prof. Dr. Giedre Lideikyte Huber).

Even if it is allowed to maintain a shareholding in a business, the purpose of maintaining and expanding the business as such is, in most jurisdictions, hard to reconcile with the requirements of a charity. Only if the expansion of the business is seen as an investment in the public interest itself or if the business may be qualifying

31. For an overview and the comparison with Dutch stewardship foundations, *see* Ineke A. Koele, *Stewardship Purpose Planning with Dutch Private Foundations in an International Context*, Oxford University Press, Trusts & Trustees, July 2022, pp. 572-579.
32. A. Bove, Jr. and M. Langa, The Perpetual Business Purpose Trust: The Business Planning Vehicle for the Future, Starting Now, ACTEC LAW Journal, Fall 2021.

as a fundraising activity for the other, exclusively public interest activities of the charity, this twofold purpose can be upheld without any scrutiny in a sustainable way. The latter can be found in the Netherlands, which is a jurisdiction with a rather flexible legal framework for stewardship foundations. Whereas the foundation is a purely corporate entity in the Netherlands, there is also the possibility to contractually stipulate that the transferred interest in a business is an endowed fund of the foundation that may never be expended for public interest purposes and should be maintained in real terms, while the excess profits should be expended for public or societal interest purposes. The fact that a charitable foundation assumes a contractual obligation leads to an intended lack of accountability with regard to the business interest in the context of its charitable purpose. This is another practical way to reconcile the interests of the charitable foundation and the business.

In general, however, it would be prudent to allow *non-charitable* foundations to own business interests in a legal and tax framework that would inspire families to transform their business interests into a foundation with qualifying purposes. The all too narrowly regulated framework for charities is in many jurisdictions not designed for holding long-term business interests.

4.1.2 No Tax Burden for Family on the Disinterested Family Business Assets

Families will never transfer their ownership of an interest in a family business to a foundation with societal purposes and disinterest themselves from their economic benefits from the business; if not simultaneously, they will be freed from the complex tax consequences of maintaining this ownership. That applies not only to income tax on dividends and gains received by the stewardship foundation but also on any deemed attribution of income or capital to family members.

If a family were to transfer their business interest to a stewardship foundation without consideration and would face a capital gains tax on a deemed disposition at the economic value of this interest,[33] that would be prohibitive. The same is true if a family gives up their ownership interest and still faces an inheritance or estate tax with regard to the family business interest that they have divested themselves from, as these assets would fictitiously be attributed to the family for these purposes. If a family were to sell their interest to a foundation, they would obviously pay capital gains tax or income tax in relation to the purchase price received. Whereas tax legislation in many jurisdictions increasingly is designed by anti-abuse provisions with a wide scope, it is essential that stewardship foundations do not become subject to this type of anti-abuse legislation and should therefore not be treated as “dodgy schemes” but wholeheartedly be treated as a liberated legal structure for wealthy families. There should be no cynical backlash by tax legislators on the desirability of the autonomous stewardship foundations as

33. This is not a hypothetical scenario, as this is currently the case in the Netherlands since 2023. There are however practical ways to avoid this, which however do complicate the transaction substantially.

independent owners of the family business. That is a crucial requirement that would need to be embraced by politicians across the board.

The trade-off is of course that all profits of the family business are destined for public or social causes and not for private use. As it would be prudent to allow non-charitable foundations to qualify in this respect, it would be key for tax legislators to define the conditions under which the stewardship foundation alternative ownership structure would resolve the family sustainably from their tax responsibilities with regard to the former family-owned business.

The history of the tax framework in Denmark in relation to stewardship foundations provides clear evidence of the realistic necessity of this condition. Where the exemption of capital gains tax was abolished, the inspiration for new stewardship foundations apparently evaporated. When, later, first by case law and later codified in the 2021 legislation, the same exemption was introduced again, a substantial amount of new cases of transformation into stewardship foundations were identified.[34]

Obviously, it is important as well to consider to what extent families could still be involved in their family business if they do not have any tax responsibilities anymore in relation to the transferred assets. We have to make a distinction here between financial benefits and influence in the governance of the family business.

4.1.3 Family Involvement in Governance and Operations

From the perspective of the family, it would also be crucial to remain to have the opportunity of being active in the operations of the business—now held by the stewardship foundation—and eventually also in the governance of the stewardship foundation itself. Not only has the business often psychologically been a very important function for the family and identifies the family itself with the history of the business it created but also seldom do we see that it is in fact treated as the "first child," however, a child that will never go its own way. The compulsory independence of the foundation from the family in every financial aspect is in that context the completion of adulthood of the business. It will from now on be professionally managed also by nonfamily members and will face more opportunities than before the transformation. On the other hand, the devotion and loyalty of the family should never be taken for granted and should continue to serve for the benefit of the business. There is no reason whatsoever why the family should be deprived of the opportunity to work for the business—at reasonable compensation—or be active in the management or governance of the business or the foundation itself.

If the foundation were a charitable organization, the governance would need to be independent. This may raise issues if only family members are serving as board members. In many jurisdictions, however, this is not forbidden as long as it can be demonstrated that the family members do not act as one voice but in fact have meaningful governance between themselves. In other jurisdictions, this is strictly regulated, like in Denmark, where 30% of board members should consist of nonfamily

34. *See* the chapter on Denmark in this book.

members. Most families would benefit from the intervention of nonfamily members in order to create a more neutral and rational governance, and the compulsory appointment of at least one neutral nonfamily member (not being a paid service provider or friend of the family) is highly recommended. In addition, an advisory board with external individuals would help the governance to combine both aspects of the business purpose and the societal purpose of the foundation.

There are large differences in jurisdictions as to the level of supervisory oversight. In Denmark, the state has a very strong control over stewardship foundations, but similar oversight does exist in Germany on a local level, while in the Netherlands, we have scarcely any regulatory oversight.[35] The existence of extensive governance with different organs is therefore of greater importance in a jurisdiction without strict regulatory oversight and offers also the freedom to create tailored corporate frameworks for every stewardship foundation and respective family.

4.1.4 Reputation

Reputation is an important factor for families to consider. If their transformation of ownership into stewardship for societal interests would harm their reputation as a family, that would seriously put them off. This is an increasing concern that we face in conversations with families.

Philanthropy has in the recent past been the subject of populist critique. This is partly because of the entanglement of critiques of wealth and inequality in general with the critique of philanthropists, leading to a confusing and unfortunate critical focus on the wealthy who give to society, rather than on the wealthy who do not give.[36] The underlying presumption is that by taxing the wealthy, it could be used to tackle poverty, while many philanthropists serve merely the interest of their own "pet" charitable purposes, such as museums, art collections and African nature reserves (to name a few) without being serious about societal unmet needs.

First, it should be clear that stewardship, philanthropy and taxation are not mutually exclusive. The business will be ongoing, raising taxes of all kinds (corporate tax, wage tax, value-added tax), and the foundation itself may, depending on the jurisdiction, also be subject to tax on the income or a tax in lieu of the inheritance tax that otherwise would have been due every generation by the family itself (e.g., in Belgium). The ongoing continuity of the business therefore will continue to raise taxes without the discontinuity risks of death, divorce conflict, or just affluenza (the next generation of "trust fund children").

Second, it would be important to choose societal purposes that have a critical meaning to society at large and not only to cultural or other public interest purposes in which the donor may have a private interest to defend (such as the private use of a large house in the African nature reserve it sustains). It would therefore be critical to choose very professionally and strategically the purposes that are uniquely suitable for this

35. *See* Koele and Feldthusen, *supra* n. 23.
36. Beth Breeze, *In Defence of Philanthropy*, Agenda Publishing, 2021, p. 142.

specific family, taking into account their specific skill set and knowledge as perceived through their business cycle. For example, an entrepreneur who has developed software in the past would be keen to raise awareness for new innovations in the education of young people.

Third, families must insist on their journey of knowledge and insight and should acknowledge that they, like everybody else, are children of their time. Where it might have been very normal to have been exploiting natural resources thirty years ago, families may now have rightfully come to another conclusion and have the right of "progressive insight." That should encourage families to try to create innovative structural changes, exactly *because* they are knowledgeable about the systems that have created their extractive wealth. A proactive stance would best defend against attacks of donors' "conscience laundering" in cooperation with governments and other proactive stakeholders.

4.1.5 Possibility for Employees and Investors to Participate in Business

For the flourishing of the business, it is critical that employees and investors have the opportunity to participate in the business. The participation of employees is often also referred to as "stewardship" in a more narrow way. For most family businesses, it is far from the norm to have employees participate in the business. For the long-term thriving of the business, however, this may be a very favorable mechanism.

In the design of the stewardship foundation legal framework, it should therefore be possible for employees and investors to invest in the business and, accordingly, to partner with the stewardship foundation. Within a philanthropic framework, this may create tensions due to the claim that nonprofits should not compete with for-profit entities, and this kind of triangular structure would, in some jurisdictions, blur the harsh distinctions between charitable and other organizations. In that way as well, it is recommended to envisage the alternative of a non-charitable alternative for a stewardship foundation.

4.2 The Perspective of Society

4.2.1 Strict Separation of Financial Interest of Family Members

The liberation of the family from a tax burden on the family business ownership when transferred to a stewardship foundation should align with the strict separation of financial interest of the family that has divested itself from the economic interest of (a part of) the business. It goes without saying that the wish to be exempt from ongoing taxes cannot be reconciled with any private benefit for the family members resulting from the transferred business assets. This would also imply that the stewardship foundation cannot enter into transactions with family members under conditions that are not at arms' length (such as a mortgage loan at preferential conditions).

More detailed conditions may be imposed, such as the requirement that the stewardship foundation will not be moving its effective seat of management outside the jurisdiction and requirements with regard to an appropriate audit on these critical requirements.

Obviously, family members can stipulate that only part of the business interest will be transformed into a pure stewardship foundation. Alternatively, they could enter into other more creative agreements stipulating the retention or the consideration of, e.g., lifetime benefits to family members to a certain degree, on which they would obviously remain taxed accordingly. Many alternatives can be designed to suit the wishes of the family here, and the tax treatment varies accordingly.

It can be expected that many families would rather not immediately transfer their full ownership into a stewardship foundation but keep one foot in their traditional ownership model. The addition of a neutral corporate steward can, if certain quality requirements are met, already provide an enhanced governance of the family business and an enhanced impact on society. That is why it would be rational and prudent to maintain the same tax privileges pro rata parte for the part of the business interest that will be disinvested to the stewardship foundation, alongside the same conditions.

4.2.2 Legal Requirements for Stewardship Foundation

Where a charitable foundation may not be easily reconciled in many jurisdictions with the function of a stewardship foundation holding a family business, it would be sensible to think of a secondary regime to regular charities that have more flexibility in holding business assets and simultaneously have a more specific scope of societal purposes. In order to balance public trust in these autonomous foundations with a mingled purpose of stewardship and societal funding, legislators have the opportunity to create the ideal regulatory framework that ensures the conditions for the independent tax status of the foundation.[37] As it would be naïve to rely on foxes alone to guard henhouses, I would also recommend including tax penalties to sanction these conditions.

The government may very well be giving more direction to stewardship foundations and their societal role by, e.g., prescribing that any purpose that would enhance one or more of the UN Sustainable Development Goals in a direct or indirect way would qualify for this more flexible regime. Where our institutions have so far not been very successful in meeting the UN SDGs at a pace that is likely to succeed in 2030, it would be prudent to cooperate with successful business families in order to unlock private capital for this purpose. That would automatically reduce the likelihood of cynicism and popular critique on stewardship foundations as "phonylanthropy," promoting a fake change that primarily benefits the families that are driving them, as has been expressed by the high-profile populist critic of Giridharadas.[38] Important promoters of

37. This can be understood as a specific social contract between wealthy family business owners and the public, or a "Great Bargain" as it has been referred to by Dana Brakman Reiser and Steven A. Dean, *In Their Book on the US Regulatory Practices of Charitable Foundations over the Last Fifty Years: "For-Profit Philanthropy,"* Oxford University Press, 2024.
38. Anand Giridharadas, *Winners Take All, the Elite Charade of Changing the World*, New York, 2018.

impact philanthropy, such as Dan Pallotta,[39] who strive for the resolution of unnecessary restrictions on nonprofits that undermine their potential, could be used as courageous promoters of inspiration for an improvement of tax and legal frameworks around the world.

It would be expected that rather specific rules on "self-dealing" prohibiting any transactions by family members with the foundation that are not at arm's length should be applied. Also, it would be recommended that these rules be sanctioned with effective (tax) penalties for non-compliance. In this regard, it is very effective if board members of a foundation can be held liable for these tax consequences directly, as this would ensure sensitive governance.

In terms of governance, it would be important that the stewardship foundation has dynamic governance, and the foundation therefore cannot be considered as the institutionalization of the founder's wishes as laid down in its constitutional documents. This would in effect mean that the organs of the foundation should have the power to amend the articles of the foundation in order to adjust the operations and purposes of the foundation to dynamic circumstances and in light of the societal interest destination of its income. The founding family should not exert specific voting power over the foundation; instead, any stipulations should be laid down in a bilateral contractual agreement that presumes equality and at arms' length relationship between the parties. The foundation therefore is seen as a *universitatis rerum,* a corporate entity with a perpetuating however dynamically adjustable purpose. This practice is very well developed in the Netherlands and may serve as an example, specifically in relation to the classical Germanist legislature on foundations.[40]

More complex provisions can be designed to distinguish between the governance vis-à-vis the underlying enterprise(s) on the one hand and the societal interests pursued on the other, with the purpose of balancing these purposes in a meaningful way.

Last but not least, I would expect specific rules on the accountability of the board with regard to its expenditure responsibility in accordance with its spending purpose, eventually sanctioned as well with tax penalties.

5 CONCLUSION

Governments need new inspiration to create the legal framework for a meaningful reconciliation of the interests of UHNW families and society at large. Inequality should be reversed, but how can this work effectively? When tax measures are considered to curtail inequality without any compromise that meets the interests of wealthy families, harsh resistance is to be expected, and accordingly, it may be questionable whether

39. Dan Pallotta, Uncharitable, *How Restrains on Nonprofits Undermine Their Potential*, Tufts University Press, 2008. The recent documentary Uncharitable is also highly recommended: https://www.danpallotta.com/uncharitable#uncharitable-1.
40. *See* I.A. Koele, The Dutch Private Foundation in Comparison with Trusts: For the Same Purpose but Rather Different, Trust & Trustees, 2016, pp. 140-145 https://doi.org/10.1093/tandt/ttv222.

this will be materialized at all.[41] From a conciliation perspective, the sharp increase in taxes on succession to the next generation of substantial wealth (as the stick) and the introduction of well-designed stewardship foundation structures (as the carrot) are proposed as the fine ingredients of such new framework.

In such a way, an inspired tax and legal framework can make a world of change in the increasingly important concept of responsible wealth ownership if it takes into account the aspirational needs of families and the directional interests of society at large.

It goes without saying that the professionals dealing with family business owners simultaneously have to adapt their advisory culture from maintaining equity and traditional succession structures toward maintaining welfare for the family within a larger context.

In alignment, these changes in attitude can substantially improve the functioning of modern societies.

41. Reiser and Dean, *supra* n. 37, pp. 227-237.