

vii

Contents

Acknowledgements		
Memb	ers of the Core Team of the European Foundation Project	5
СНАІ	PTER 1 DRAFT	
Part 1	Civil Law	6
Pream	ble	6
Art. 1	Definitions 1.1 General Definition 1.2 Public Benefit Purpose 1.3 Non-Distribution Constraint, Split-Interest Endowments	6 6 6 7
Art. 2	Legal Status	7
Art. 3	Formation 3.1 Right to Establish 3.2 Form of Establishment 3.3 Formation Deed 3.4 No State Approval 3.5 Registration 3.6 Statutes	7 7 7 7 8 8 8
Art. 4	Governance 4.1 Board of Directors 4.1.1 Responsibilities, Rights and Duties 4.1.2 Board Members 4.1.3 Admission, Expulsion and Resignation 4.2 Supervisory Board 4.3 Rights of the Founder 4.4 Rights of the Beneficiaries 4.5 Rights of Third Parties	8 8 8 9 9 9 9
Art. 5	Reporting, Transparency and Disclosure 5.1 Public Accountability 5.2 Disclosure 5.3 Auditor	10 10 10 10
Art. 6	Activities 6.1 Asset Management 6.2 Economic Activities (Trading) 6.3 Political Activities	11 11 11 11
Art. 7	State Supervision	11
Art. 8	Fundamental Decisions 8.1 Amendment of Statutes 8.1.1 Changes of Administrative Provisions 8.1.2 Modification of Purpose 8.2 Liquidation	12 12 12 12 12
Art. 9	Applicable Law	13



viii

Part 2	Tax Law	14
Pream	ble	14
Part 2	A Harmonized Tax Law	14
Art. 1	Definitions 1.1 General Definition 1.2 Public Benefit Purpose 1.3 Non-Distribution Constraint, Split-Interest Endowments	14 14 14 15
Art. 2	Competence and Procedural Rules	15
Art. 3	Tax Benefits 3.1 Foundation 3.2 Donors 3.3 Beneficiaries 3.4 Volunteers	15 15 16 16
Art. 4	Use of Funds and Timely Disbursement 4.1 De Minimis Rule 4.2 Timing Rule	16 16 16
Art. 5	Economic Activities 5.1 Related Business Income 5.2 Unrelated Business Income 5.3 Turnover Ceiling for Tax-Exempt Unrelated Business Activities 5.4 Passive Income	16 16 16 16 17
Art. 6	Restructuring	17
Part 21	BNon-Discrimination in a Non-Harmonized Context	17
Art. 1	General Rule	17
Art. 2	Tax Treatment 2.1 Tax Treatment of the European Foundation 2.2 Tax Treatment of Donors 2.3 Tax Treatment of Beneficiaries	17 17 17 18
СНАЕ	PTER 2 COMMENTARY AND COMPARATIVE VIEW	19
Part 1	Private Law	19
Pream	ble	19
Introd	uction Civil Law (Hopt/von Hippel/Then)	19
1.	Preliminaries 1.1 The European Foundation – a New European Legal Instrument 1.2 Initiatives to Introduce a European Foundation Statute	19 19 20
2.	Arguments for a European Foundation 2.1 Facilitation of Cross-Border Foundation Activities 2.1.1 Recognition and Transferring the Foundation's Office Abroad 2.1.2 Tax Relief for Donations 2.2 Positive Effects of a European Foundation	21 21 22 23 24
3.	Governance and Foundations	24
4.	Main Ideas of this Draft	25



ix

5.	Comparison with the EFC Proposal		
6.	Subsidiarity and National Regulatory Competences		
7.	Questions of Implementation 7.1 Legal Basis 7.1.1 Potential Legal Basis: Art. 95 or Art. 308, EC Treaty? 7.1.2 Applicability to the Establishment of European Non-Profit Legal Entities? 7.2 Passibilities of Insular potentials.	27 27 27 27 28	
	 7.2 Possibilities of Implementation 7.3 Special Rules 7.3.1 Co-determination 7.3.2 Conversion of a National Foundation to a European Foundation 	28 28	
	and vice versa	28	
Art. 1.		29	
1.	Commentary on Art. 1.1 (Hopt/von Hippel) 1.1 General Introduction to Art. 1 1.2 The Four Criteria of Art. 1.1 1.2.1 Organisational Independence 1.2.2 Assets 1.2.3 No Membership	29 29 29 29 29 30	
	 1.2.4 Public Benefit Purpose 1.3 No Further Mandatory Criteria 1.3.1 No European Dimension Necessary 1.3.2 No Perpetuity Necessary 	30 30 31 31	
2.	Comparative View to Art. 1.1 (von Hippel) 2.1 The Different Legal Approaches of Civil Law and Common Law 2.2 Conceptual Criteria 2.2.1 Organisational Independence 2.2.2 Assets 2.2.2.1 Minimum Value of Founding Assets 2.2.2.2 Adequate Founding Assets to Fulfil the Purpose of the Foundation 2.2.2.3 No Founding Assets Necessary 2.2.3 No Membership 2.2.4 Pursuance of a Specific Purpose 2.2.4.1 Public Benefit Purpose 2.2.4.2 'Useful' Purpose 2.2.4.3 'Any Lawful' Purpose 2.2.4.4 Relating Family Foundations to 'Private' Distributions 2.2.4.5 Particularity of Purpose	31 31 33 34 34 34 36 36 38 39 39 40 40	
Art. 1		42	
1.	Commentary on Art. 1.2 (Fries) 1.1 Introduction 1.2 Proposed Rule 1.3 Explanation 1.3.1 The List of Art. 1.2, para. 2 1.3.2 Meaning of 'Public' 1.3.3 Public Policy 1.3.4 Pursuance of More Than One Public Benefit Purpose 1.4 Determination of Public Benefit Status	42 42 43 43 43 44 45 45	



х

2.	Comparative View to Art. 1.2 (von Hippel) 2.1 Introduction: The Concept of Public Benefit in Organisational Law 2.2 Statutory Definition of Public Benefit Purposes 2.2.1 Closed List of Public Benefit Purposes 2.2.2 Open List of Public Benefit Purposes 2.2.3 No Definition	40 40 40 40 40 40
At 1 :	2.3 Accepted Purposes 3, para. 1	48 50
1.	Commentary on Art. 1.3, para. 1 (Melz) 1.1 Introduction	50 50
	1.2 Clarifications1.2.1 Self-Dealing and Remuneration1.2.2 Relatives as Beneficiaries	5(5) 5)
2.	Comparative View to Art. 1.3, para. 1 (von Hippel)	52
Art. 1.	3, para. 2	54
1.	Commentary on Art. 1.3, para. 2 (Moosmann) 1.1 The Need for Split-Interest Endowments 1.2 Proposed Rule	54 54 54
2.	Comparative View to Art. 1.3, para. 2 (von Hippel) 2.1 Family Foundations 2.1.1 Prohibition 2.1.2 Restrictions 2.1.2.1 Limited Circle of Family Members 2.1.2.2 Necessitous Family Members 2.1.2.3 Limited Duration	55 56 56 56 56 57
	2.1.3 No Restriction2.2 Split-Interest Endowments	5°. 5°.
Art. 1.	3, para. 3	59
1.	Commentary on Art. 1.3, para. 3 (Melz)	59
2.	Comparative View to Art. 1.3, para. 3 (von Hippel) 2.1 Distribution Rules 2.2 Restrictions on the Accumulation of Income 2.3 Tax Law Rules	59 59 60
Art. 2		62
1.	Commentary on Art. 2 (Richter/Moosmann)	62
2.	Comparative View to Art. 2 (von Hippel) 2.1 Civil law countries 2.1.1 Legal Personality Without Restrictions 2.1.2 Limited Capacity 2.1.3 Acquisition of Legal Personality 2.2 Common Law Countries 2.3 Dependent Foundations and Trusts	62 62 62 63 63 64
Art. 3.	-	6.
1.	Commentary on Art. 3.1 (Künzle/von Hippel) 1.1 General Introduction to Art. 3 1.2 Right to Establish (Art. 3.1)	6: 6: 6:
2.	Comparative View to Art. 3.1 (von Hippel)	6.



xi

	 2.1 Approval by an Administrative Body With Discretion 2.2 Approval by an Administrative Body Without Discretion 2.3 Control by the Registration Authority 2.4 Control by a Notary Public 2.5 No Femal Public Act November 1987 	66 66 67
Art.	2.5 No Formal Public Act Necessary	67
		68
1.	Commentary on Art. 3.2 (Künzle/von Hippel) 1.1 Foundations Established Inter Vivos (Art. 3.2(a)) 1.2 Foundations Established Mortis Causa (Art. 3.2(b))	68 68 68
2.	Comparative View to Art. 3.2 (von Hippel) 2.1 Establishment Inter Vivos 2.2 Establishment Mortis Causa	68 68 69
Art.	3.3	71
1.	Commentary on Art. 3.3 (Künzle/von Hippel)	71
2.	Comparative View to Art. 3.3 (von Hippel)	72
Art.	3.4	73
1.	Commentary on Art. 3.4 (Künzle/von Hippel)	73
2.	Comparative View to Art. 3.4 (von Hippel)	73
Art. 3		74
1. 2. Art. 3 1. 2.	Commentary on Art. 3.5 (Künzle/von Hippel) 1.1 Registration in a National Public Register (Art. 3.5, para. 1) 1.2 Recommendations for National Legislators 1.2.1 Registration Procedure 1.2.2 Contents of the Register 1.3 Publication (Art. 3.5, para. 2) 1.4 Inspection Rights (Art. 3.5, para. 3) 1.5 Appeals (Art. 3.5, para. 4) Comparative View to Art. 3.5 (von Hippel) 2.1 Registration of Foundations 2.2 Access to the Register	74 74 74 74 75 75 75 75 77 78 78 79 79
Art.	4.1.1, para. 1	81
1.	Commentary on Art. 4.1.1, para. 1 (Doralt/Hemström/Kalss) 1.1 General Introduction to Art. 4 1.2 Responsibility and Delegation (Art. 4.1.1, para. 1) 1.3 Procedural Remarks 1.3.1 Meetings 1.3.2 Chairing the Board 1.3.3 Board Decisions 1.3.4 Auditor	81 81 82 82 82 83 83
2.	Comparative View to Art. 4.1.1, para. 1 (von Hippel) 2.1 Responsibility of the Board of Directors	84 84



xii

		Delegation Procedural Rules	84 85	
Art. 4.1.1, paras. 2–4				
1.	1.1	Duties of Loyalty, Diligence and Care (Art. 4.1.1, para. 2) 1.1.1 Introduction 1.1.2 Duty of Loyalty 1.1.3 Duty of Care 1.1.4 Provisions by Individual Member States	86 86 86 86 88	
		Rights of the Board of Directors; Reasonable Compensation and Reimbursement of Expenses (Art. 4.1.1, para. 3) Liability (Art. 4.1.1, para. 4)	89 90	
2.	2.1	Duty of Loyalty 2.1.1 Conflicts of Interests, and Self-Dealing 2.1.2 Remuneration 2.1.2.1 Permissibility of fair and reasonable remuneration 2.1.2.2 Restrictions 2.1.2.3 Prohibition of Remuneration 2.1.2.4 Enforcement Duty of Care	91 91 92 93 93 94 95 95	
	2.3	Liability and Standard of Diligence	97	
Art. 4.1.2				
1.	1.1 1.2 Cor 2.1	At Least Three Members Personal Requirements for Board Members 1.2.1 Eligibility and Other Restrictions 1.2.2 Natural Persons 1.2.3 Independence 1.2.4 Unrelated Inparative View to Art. 4.1.2 (von Hippel) Number of Board Members Personal requirements 2.2.1 Eligibility	99 99 99 100 100 101 101 101 103 103 104	
		 2.2.2 Legal persons as Board Members 2.2.3 Board Members to be Independent of Each Other 2.2.4 Founders as Board Members 2.2.5 Beneficiaries as Board Members 2.2.6 Employees as Board Members 2.2.7 Persons with a Financial Interest as Board Members 2.2.8 Persons Who Supervise the Foundation as Board Members 2.2.9 State Officials as Mandatory Board Members 	104 104 105 105 106 106	
Art. 4.	1.3		107	
1.	1.1	Introduction Election (Art. 4.1.3, para. 1) 1.2.1 Electoral Procedures 1.2.2 Initial Board Members 1.2.3 Subsequent Board Members	107 107 107 107 108 108	



xiii

		Limited Tenure of Office (Art. 4.1.3, para. 2) Resignation (Art. 4.1.3, para. 3)	109 109
		Dismissal (Art. 4.1.3, paras. 4 and 5)	110
2.		mparative View to Art. 4.1.3 (von Hippel)	111
	2.1	Appointment	111
		2.1.1 Discretion of the Founder	111
		2.1.2 Restrictions	111
		2.1.3 Subsidiary Appointment by the State Supervisory Authority in Co	ases 112
	2.2	Limited Tenure of Office	112
		Resignation	113
		Removal	113
		2.4.1 Discretion of the Founder	113
		2.4.2 Removal by the State Supervisory Authority	114
Art. 4	1.2		115
1.		nmentary on Art. 4.2 (Doralt/Hemström/Kalss/von Hippel)	115
		Introduction	115
	1.2	Composition of the Supervisory Board (Art. 4.2, paras. 1 and 5)	116
		1.2.1 At Least Three Members (Art. 4.2, para. 1)	116
		1.2.2 Personal Requirements for Board Members (Art. 4.2, para. 5)	116
		1.2.2.1 Eligibility, Natural and Legal Persons	116
		1.2.2.2 Independent and Unrelated	117
		1.2.3 Election of the Members of the Supervisory Board	117
		1.2.4 Limited Tenure of Office	117
		1.2.5 Resignation and Dismissal	118
		Rights and Duties (Art. 4.2, paras. 2 and 3)	118
2		Procedural Remarks	118
2.		mparative View to Art. 4.2 (von Hippel)	119
		Discretion of the Founder	119
		Mandatory Two-Tier System	119 120
		Incompatibilities	
Art. 4			121
1.		mmentary on Art. 4.3 (Doralt/Hemström/Kalss)	121
		Introduction	121
		Intervention Right	121
		Further Rights of the Founder	121
2.		mparative View to Art. 4.3 (von Hippel)	122
Art. 4	.4		124
	1.	Commentary on Art. 4.4 (Doralt/Hemström/Kalss)	124
	2.	Comparative View to Art. 4.4 (von Hippel)	125
Art. 4			126
	1.	Commentary on Art. 4.5 (Doralt/Hemström/Kalss)	126
	2.	Comparative View to Art. 4.5 (von Hippel)	126
Art. 5			128
1.		mmentary on Art. 5.1 (Dawes)	128
		Annual Report (Art. 5.1, para 1)	128
	1.2	Annual Accounts	129
		1.2.1 Coverage	129
		1.2.2 Accounting Standards	129



xiv

		Accounting Records Credibility	130 130
2.	2.1 2.2	nparative View to Art. 5.1 (von Hippel) Annual Reports and Accounts Standards Accounting Records	131 131 132 133
Art. 5.	2		134
1.	Cor	nmentary on Art. 5.2 (Crook)	134
	1.1	Proposed Rule	134
2.	Cor	nparative View to Art. 5.2 (von Hippel)	134
Art. 5.	3		136
1.	Cor	nmentary on Art. 5.3 (Dawes)	136
2.		nparative View to Art. 5.3 (von Hippel)	137
Art. 6.			139
1.	Cor 1.1 1.2 1.3	nmentary on Art. 6.1 (Ferrer Riba/Moosmann/Then) Capital Maintenance Asset-classes and Investment Strategies Infringement of the Rule and Imposition of Sanctions Competence of the State Supervisory Authority	139 139 140 141 141
2.	2.1 2.2	nparative View to Art. 6.1 (von Hippel) Rule of Capital Maintenance Investment Rules Approval of Certain Transactions by the State Supervisory Authority	142 142 143 144
2.4	Adı	ministration Costs	144
2.5	Res	trictions on the Ownership of Corporations	145
2.6	Dis	tributions	145
Art. 6.	2		146
1.	1.1	Introduction Proposed Rule 1.2.1 Trading Foundations (Art. 6.2, para. 1)	146 146 147 147
		1.2.2 Foundations in Control of a Subsidiary Business Enterprise carrying on a Related Economic Activity (Art. 6.2, para. 2)1.2.3 Foundations in Control of a Subsidiary Business Enterprise carrying	148
	1.2	on an Unrelated Economic Activity (Art. 6.2, para. 3)	148
	1.3	European Foundation and Group Law 1.3.1. Group Direction	149 149
		1.3.1.1 General Intra-Group Conflicts	149
		 1.3.1.2 Foundation-Specific Intra-Group Conflicts 1.3.1.3 No EU-Wide Harmonisation of the Foundation-Specific Intra-Group Conflict 	149 149
		1.3.1.4 Risk of Statutory Liability and Amount of Endowment	150
		1.3.2 Corporate Group-forming	150
		1.3.3 Group Accounting	150
		1.3.4 Dependent Foundations1.3.5 Conclusion	151 151



xv

	1.4	Should Co-determination Apply? 1.4.1 Introduction	151 151			
	1.5	1.4.2 Proposal	152			
	1.5	Foundations as an Anti-Takeover Device?	152			
2.		nparative View to Art. 6.2 (von Hippel)	152			
	2.1	Scope of the Permitted Economic Activities	153			
		2.1.1 No Special Restrictions	153			
		2.1.2 Trading Subordinated to Public Benefit Activities	154			
		2.1.3 Restriction on Foundations Having Trading Subsidiaries	155			
	2.2	2.1.4 Necessity of Using a Subsidiary Company	156			
	2.2	Comparable Standards to Business Organisations 2.2.1 Special Provisions for Foundations carrying on Economic Activities	156			
			156			
		2.2.1.1 The Danish Act on Enterprise Foundations	156			
		2.2.1.2 Other Countries	157			
		2.2.2 Application of the Rules of Commercial Law	158			
	2.3	Special Questions	158			
		2.3.1 Danger of Inefficient Trading because of the Non-Profit Objective?	150			
		2.3.2 Trade Protection Foundations	158 159			
A	,	2.3.2 Trade Protection Poundations				
Art. 6.3		A . (2/F:)	160			
1.		nmentary on Art. 6.3 (Fries)	160			
2.	Con	nparative View to Art. 6.3 (von Hippel)	160			
Art. 7			162			
1.	Commentary on Art. 7 (von Hippel/Trstenjak/van Veen)					
	1.1	Introduction	162			
		1.1.1 Meaning of State Supervision	162			
		1.1.2 Proposed Rule	162			
	1.2	State Supervision and Private Supervisory Mechanisms	163			
		1.2.1 The Need for State Supervision	163			
		1.2.2 State Supervision and Alternative Solutions to the Monitoring	1.64			
	1 2	Problem Supervisory Authority (Art. 7, page 1)	164			
		Supervisory Authority (Art. 7, para. 1)	164			
	1.4	Tasks of the Supervisory Authority	165			
		1.4.1 Overview	165			
		1.4.2 Review of the Annual Report and Annual Accounts				
		(Art. 7, paras. 2 and 3)	165			
		1.4.3 Enforcement (Art. 7, para. 4)	166			
		1.4.1.2 Significant Breach of Law/Statutes				
		(Art. 7, para. 4, clause 1)	166			
		1.4.1.2 Proportionality of Supervisory Procedures				
		(Art. 7, para. 4, clause 2)	166			
		1.4.1.3 Necessary Supervisory Measures (Art. 7, para. 4, clause 2)	166			
	1.5	1. 0 . (1 . 7	166			
_		Appeal to a Court (Art. 7, para. 5)	166			
2.		nparative View to Art. 7 (von Hippel)	167			
		Introduction	167			
	2.2	State Supervisory Authority	167			
		2.2.1 Public Administrative Body	167			
		2.2.2 Public Independent Body	168			
		2.2.3 Combination of a Governmental Body and a Court	168			
	2.3	Extent of Supervision	169			



xvi

		2.3.2	State Supervisory Officials as Board Members Approval for Certain Decisions of the Board of Directors 2.3.2.1 Acquisitions 2.3.2.2 Asset Management 2.3.2.3 Conflicts of Interest 2.3.2.4 Amendments, Liquidation Information and Inquiries 2.3.3.1 Provision of Annual Reports and Annual Accounts 2.3.3.2 Special Inquiries	169 170 170 171 172 172 172 173
Art. 8.1	ı	2.3.4	Enforcement Measures	173 176
			A . 01/ TT 1	
1.			tary on Art. 8.1 (von Hippel)	176
			duction	176
		-	proposed Rule	177
	1.3		nges of Administrative Provisions (Art. 8.1.1)	177
			Special Reason (Art. 8.1.1, para. 1) Procedural Requirements	177 178
		1.3.2	1.3.2.1 Normal Procedure (Art. 8.1.1, paras. 2 and 3)	178
			1.3.2.2 Exceptional Procedure (Art. 8.1.1, paras. 5)	178
	1 4	Modi	ification of Purpose (Art. 8.1.2)	178
			Qualified Special Reason	179
			Procedural Requirements	179
	1.5		versions, Mergers, and De-Mergers	179
2.	Con	nnarat	tive View to Art. 8.1 (von Hippel)	179
2.	2.1	Amer	ndment by a Foundation's Organ or by the Founder Without Public Intervention ndment by a Foundation's Organ, or by the Founder, with Approval	179
	2.2	From 2.2.1	n the State Supervisory Authority Procedure	180 180
	2.2		Cause	181
	2.3	Amei	ndment by the State Supervisory Authority	182
Art. 8.2	2			184
1.	Con	nment	tary on Art. 8.2 (von Hippel)	184
	1.1	Quali	ified Special Reason	184
	1.2	Proce	edural Requirements	184
2.			tive View to Art. 8.2 (von Hippel) nination by a Foundation's Organ or by the Founder Without Public	184
			vention	184
	2.2	the A	nination by a Decision of the Foundation's Governing Body and with Approval of the State Supervisory Authority	185
			Procedure	185
	2.2		Cause	185
			nination by the State Supervisory Authority	186
	2.4		sfer of the Remaining Endowment	186
			Cy-Près Rule Other Public Benefit	186 187
			Determination by the Founder	187
		∠.+.೨	Determination by the Founder	
Art. 9				189



xvii

1.		Introduction 1.1.1 Possible Solutions 1.1.2 The 'Real Seat' Principle as a Rule for the Existing European Legal Forms 1.1.3 New Developments in International Company Law 1.1.3.1 The Decisions of the ECJ in the Cases Centros, Überseerin	189 189 189 189 190 g 190
		and Inspire Art 1.1.3.2 The Dominance of the Incorporation Doctrine in the New European Legislation 1.1.4 Relevance of the New Developments for Foundation Law Proposed Rule Alternative Solutions 1.3.1 State Supervision in the State of the Head Office of the European Foundation 1.3.1.1 Advantage of an Easier Enforcement 1.3.1.2 Complications 1.3.2 Application of the 'Real Seat' Principle	191 192 193 193 193 194 195
Introdu	ictio	n Tax Law (Walz/von Hippel/Schäfers)	196
1.	Arg	uments For Facilitating Cross-Border Donations	196
2.	Init	iatives to Facilitate Cross-Border Donations	197
3.	3.1	estions of Implementation Legal Basis The Dual Approach of Implementation	198 198 198
4.	4.1	es a General Non-Discrimination rule for Donations Already Exist? Principle of Non-Discrimination Application to Cross-Border Activities of, and Donations to, European Foundations and Other National Public Benefit Organisations?	198 199 199
Art. 1	Гах 1	Law	202
1.	1.1 1.2	nmentary on Art. 1 Tax Law (Walz/von Hippel/Fries) Similarities and Differences Between Civil Law and Tax Law Closed List Questions of Determination 1.3.1 Divergences Between Civil Law and Tax Law 1.3.2 Divergences Between the Different National Tax Law Authorities	203 203 204 204 205 205
2.	2.1 2.2 2.3 2.4 2.5	nparative View to Art. 1 Tax Law (Bater/von Hippel) Organisational Requirements Public Benefit Purpose Non-Distribution Constraint Family Foundations Split-interest Endowments Timing Rule	205 206 206 206 206 207 207
Art. 2	Гах 1	Law	208
1. 2.	Cor 2.1	nmentary on Art. 2 Tax Law (Bater/Melz) nparative View to Art. 2 Tax Law (Bater) Income Tax Net Wealth Taxes	208 209 209 210
Art. 3	Гах 1	Benefits	211



xviii

1. 2.	Commentary on Art. 3.1, para. 1 Tax Law (Bater) Comparative View to Art. 3.1 Tax Law (Bater)	211 211
3.	Policy Recommendation for the Legislator	212
Art. 3 1. 2. 3.	3.1, para. 2 Tax Law Commentary on Art. 3.1, para. 2 Tax Law (Bater) Comparative View to Art. 3.1, para. 2 Tax Law (Bater) Policy Recommendation for the Legislator	213 213 213 214
Art. 3 1. 2.	3.1, para. 3 Tax Law Commentary on Art. 3.1, para. 3 Tax Law (Bater) Comparative View to Art. 3.1, para. 3 Tax Law (Bater)	215 215 215
Art. 3 1. 2.	3.1, para 4 Tax Law Commentary on Art. 3.1, para. 4 Tax Law (Bater) Comparative View to Art. 3.1, para. 4 Tax Law (Bater)	216 216 216
Art. 3 1. 2. 3.	3.1, paras. 5 and 6 Tax Law Commentary on Art. 3.1, paras. 5 and 6 Tax Law (Bater) Comparative View to Art. 3.1, paras. 5 and 6, Tax Law (Bater) Policy Recommendation for the Legislator	217 217 219 219
Art. 3 1. 2. 3.	3.2 Tax Law Commentary on Art. 3.2 Tax Law (Bater) Comparative View to Art. 3.2 Tax Law (Bater) Policy Recommendation for the Legislator	222 222 224 225
Art. 3 1. 2. 3.	3.3 Tax Law Commentary on Art. 3.3 Tax Law (von Hippel) Comparative View to Art. 3.3 Tax Law (Bater) Policy Recommendation for the Legislator	226 226 226 226
Art. 3 1. 2. 3.	3.4 Tax Law Commentary on Art. 3.4 Tax Law (Bater) Comparative View to Art. 3.4 Tax Law (Bater) Policy Recommendation for the Legislator	227 227 227 227
Art. 4 1. 2. 3.	4.1 Tax Law Commentary on Art. 4.1 Tax Law (Melz) Comparative View to Art. 4.1 Tax Law (Bater) Policy Recommendation for the Legislator	228 228 228 229
Art. 4 1. 2. 3.	4.2 Tax Law Commentary on Art. 4.2 Tax Law (Melz) Comparative View to Art. 4.2 Tax Law (Bater) Policy Recommendation for the Legislator	230 230 231 231
Art. 3.	Commentary on Art. 5.1 and Art. 5.2 (Beltrame) Comparative View to Art. 5.1 and Art. 5.2 Tax Law (Bater) 2.1 Distinction Between Related and Unrelated Business Income 2.2 Demarcation 2.3 No Preponderance of Unrelated Business Activity Policy Recommendation for the Legislator	232 232 233 233 233 234 235
Art. 3 1. 2. 3.	5.3 Tax Law Commentary on Art. 5.3 Tax Law (Beltrame) Comparative View to Art. 5.3 Tax Law (Bater) Policy Recommendation for the Legislator (Beltrame)	236 236 236 237



xix

Art. 5.4 1. 2. 3.	4 Tax Law Commentary on Art. 5.4 Tax Law (Beltrame) Comparative View to Art. 5.4 Tax Law (Bater) Policy Recommendation for the Legislator (Beltrame)			238 238 238 239
	Tax Law Commentary on Ar 1.1 Conceptual Co 1.2 The Path Towa		rt. 6 Tax Law (Habighorst) onsiderations onds European Foundation Status Through the Restructuri on-Profit Corporations Tax Treatment of Change of Form, (Cross-Border) Change of, De-Merger, and Asset Transfer, by Change of Form Change of Form Change of Location of a National Tax-Privileged Corpo From One Member State to Another Merger of a Non-Profit Corporation With a Foreign Tax Paying/Tax-Advantaged Corporation to Establis	241 Non- 241 241 ration 241 sh a
	1.2.2	1.2.1.4 1.2.1.5 Treatmen	Foundation as a European Foundation at Home or Abro- De-Merger of (National) Non-Profit Corporations for the Purpose of Establishing European Foundations Transfer of Assets nt of Corporations Not Serving Non-Profit Purposes	242
2.	Comparative View to Art. 6 Tax Law (Habighorst)			243
3.				243
Art. 1	Tax Law Pa			245
1.	Commentary on Art. 1 Tax Law Part B (Schäfers) 1.1 Introduction 1.2 Status Quo - International Tax Law 1.3 Treaty Law 1.4 Limited Possibilities for Private Initiatives 1.5 Conclusion			245 245 246 247 248 248
1.	Commentary on Art. 2.1 Tax Law Part B (Schäfers) 1.1 Introduction 1.2 Existing Provisions 1.3 The Non-Discrimination Provision in Detail			249 249 249 250
Art. 2.2	2 Tax Law	Part B		253
1.	Commentary on Art. 2.2 Tax Law Part B (Schäfers) 1.1 Introduction 1.2 The Term 'Donation' 1.3 Tax Treatment of Donations			253 253 253 253
1.	Commentary on Art. 2.3 Tax Law Part B (Schäfers) 1.1 Introduction 1.2 The Regulation in Detail			
Bibliography				258
Abbreviations of Law Journals				266
Country Index				267