

Charitable organisations in Germany: overview

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A Q&A guide to charity law and practice in Germany.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning charity law in this jurisdiction, including the legal framework and legal definition of a charity; principal sources of law; forms of organisation used for charitable purposes, and the qualification requirements/formalities to set these up; main regulatory authorities; management; accounting/financial reporting requirements; tax; overseas charities; and reform.

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Overview and main trends

1. Provide a brief overview of the historical background to charity law and charitable organisations in your jurisdiction.

The first charitable organisations in Germany were established as foundations in the Middle Ages, under the control of the church. During the 13th century, the appearance of foundations independent of the church increased, administered by laymen and supervised by public authorities. They pursued religious and social purposes by providing hospitals and hostels. During the 17th and 18th centuries, the foundations became more secular and focused, for example, on education and science.

Charitable objectives were considered to be an original function of the state, so private foundations were subject to very strict public regulation. Private foundations reached their prime before the First World War. In particular, industrialists supported art and science through donations and foundations. The foundation laws of the federal states have been revised since 2002. Today, they emphasise the will of the founder and the discretion of the board of directors.

In the mid-19th century, people were allowed to form associations without any public authorisation and to pursue charitable, benevolent, social, scientific and artistic purposes. Today, charitable organisations have become major economic forces and are some of the most significant contributors to social life and its improvement. These organisations serve important human needs, ranging from supporting the arts to combating poverty.

In 2007 the sector was strengthened by an improved donation law, allowing tax deductions of a considerable part of charitable contributions.

The charitable sector is quite complex, including very different institutions. It is divided into two parts, which has hindered the development of a unified sector identity. Organisations are active in:

- Areas such as culture, recreation and sports, and the environment. They show a remarkable degree of civic participation and rely heavily on membership dues and volunteer input to finance their activities.
- Health and social services, which are an integral part of the German welfare state, where the principle of subsidiarity is strongest. Health and social service organisations are highly professionalised and perceived as less civic, relying primarily on income from social insurance payments and direct state subsidies.

2. Are independent charitable organisations common and significant? What is the current size and scope of the sector and the main trends?

There are about 22,200 independent foundations, about 20,000 to 40,000 charitable corporations and non-independent foundations, and about 600,000 associations. The charitable sector is therefore a significant economic and social factor in Germany.

With 64.3% as opposed to the international average of 42.7%, public financing bears the biggest portion of the costs, while receipts from donors are at the lower level in Europe. The volume of donations amounted to EUR5.3 billion in 2016.

Legal framework

3. Is there a legal definition of a "charity"? What are the principal sources of law and regulations relating to charitable organisations and activities?

Definition of charity

In Germany, charity (*Gemeinnützigkeit*) as a legal term is only relevant in tax law. In particular, there is no separate body of law for charities.

Charity in terms of the Fiscal Code (*Abgabenordnung*) (*AO*) means to pursue aims that benefit the public (*gemeinnützige Zwecke*), benevolent aims (*mildtätige Zwecke*), or religious aims (*kirchliche Zwecke*). The list of public benefit purposes includes, among others:

- The advancement of science, religion, art and culture.
- Education.
- Protection of the environment.
- Public welfare.
- Support for persons persecuted for political, racial, or religious reasons.
- Internationalism.
- Protection of animals.
- Foreign aid.
- Consumer advice.
- Sport.
- (*Section 52(2)(1) to (25), Fiscal Code.*)

Recognition as a tax-privileged organisation does not depend solely on the pursuit of charitable purposes in accordance with the Fiscal Code. Charitable organisations must pursue such aims selflessly (*selbstlos*), exclusively (*ausschließlich*) and directly (*unmittelbar*). In addition, a charitable organisation is not allowed to accumulate income (*Gebot der zeitnahen Mittelverwendung*).

The rule of altruistic activity (*Gebot der Selbstlosigkeit*) is stipulated in section 55(1) of the Fiscal Code:

- The legislature's definition of altruism is based mainly on a negative description: an organisation acts altruistically if it does not primarily serve the corporation's own economic purposes.
- A charity is subject to a non-distribution constraint: it is a violation of the altruistic nature of a charitable organisation if its employees or third parties are given unreasonably high remuneration. Salaries or payments in the commercial sector are used as a standard in determining a reasonable level of remuneration, so that the permissible level varies depending on the particular case.
- If the corporation is dissolved or liquidated, or where its former purpose ceases to apply, the corporation's assets that exceed the members' paid-up capital shares and the fair market value of their contributions in kind can only be used for tax-privileged purposes (dedication of assets).

Charities gain legal recognition as tax-exempt entities (*see Question 9*) from recognition of the charitable nature of their objectives, as stated in their statutes. Charities can only pursue those objectives (*section 56, Fiscal Code*), unless the law permits certain exceptions (for example, a restricted possibility to maintain the founder and his relatives). If an organisation carries out other activities, it can lose tax benefits.

In addition, a charitable organisation must carry out its activities as stated in its statute directly (*Grundsatz der Unmittelbarkeit*). According to section 57(1) of the Fiscal Code, an organisation pursues its tax-privileged statutory purposes directly if it serves those purposes itself. Depending on the circumstances, the requirement can still be met even if an auxiliary person (*Hilfspersonen*), for example an individual or another charitable or non-charitable organisation, is in charge of pursuing the charity's goals. In this case, all actions undertaken by the auxiliary person are deemed to be the actions of the charity itself. Several exceptions to the principle of directness are in section 58 of the Fiscal Code, especially the possibility to procure funds for other charities.

A charitable organisation must use its funds in a timely manner for the tax-privileged purposes stipulated in its articles (*Grundsatz der zeitnahen Mittelverwendung*) (section 55(1)(5), *Fiscal Code*). This is fulfilled if the funds are disbursed for the tax-privileged purposes in its articles by the end of the second year following receipt of the funds (for example, funds received in 2018 must be spent by the end of 2020). However, the tax law also grants exemptions, especially the possibility of allocating to reserved capital (section 62, *Fiscal Code*).

Principal sources of law

Charities are regulated by the *Fiscal Code* and special tax rules. Under the heading of tax-privileged purposes (*steuerbegünstigte Zwecke*), the *Fiscal Code* clarifies the concept of charity (*Gemeinnützigkeit*) in sections 51 to 68.

In contrast, there are no specific rules for the variety of charitable (that is, tax-exempt) legal forms in the law relating to foundations, associations and corporations. While there is no uniform tax law for charities, the recognition that an organisation is pursuing charitable purposes is reflected in individual tax laws, for example:

- Section 5(1)(9) of the Corporate Income Tax Act (*Körperschaftsteuergesetz*) (*KStG*).
- Section 13(1)(16b) of the Inheritance and Gift Tax Act (*Erbschaft- und Schenkungsteuergesetz*) (*ErbStG*).

Legal bodies

4. What are the forms of organisations that are used for charitable purposes? What are their advantages/disadvantages?

According to tax law, all charitable organisations are considered corporate bodies (*Körperschaften*) regardless of the organisations' definition according to civil law and their membership and legal capacity. Partnerships (for example, *Gesellschaften bürgerlichen Rechts*, *Offene Handelsgesellschaften* and *Kommanditgesellschaften*) are excluded from tax-exempt status. Individual persons as receivers of donations are also excluded from the tax advantages.

In the charitable sector, there are three principle organisational forms:

- Registered association (*Verein* or *e.V.*).
- Foundation (*Stiftung*).
- Limited company (*GmbH*).

Charitable purposes can also be achieved by donations as specific purpose funds, which are not legal persons. The funds must be entrusted to another individual or legal person. This trust-like device is often called a non-independent foundation (*unselbständige Stiftung*).

The choice of legal form is also influenced by subjective preferences. In particular, the foundation is associated by the public with positive aspects such as benevolence, welfare and doing good deeds. Because of the different needs

and requirements, for example the influence of the executive director, it is not possible to recommend a specific legal form in every case.

Associations

A registered association is regulated at federal level by sections 21 to 70 of the Civil Code (*Bürgerliches Gesetzbuch, BGB*). It is described as a coalition of several natural or legal subjects organised in a corporative way, to act over a certain period of time to reach a common purpose. Both public benefit and mutual benefit associations are permitted.

The Civil Code distinguishes between a non-profit incorporated association (*Idealverein*) and an economic association (*wirtschaftlicher Verein*) with a business purpose. The latter is not relevant to charitable organisations. The non-profit incorporated association is the main form for civic activities, and there are several hundred thousand in Germany.

The association has at least two institutions: the general meeting and the management board. A supervisory board is optional.

The general meeting is the decision-making body. It can change the purpose and statutes of the association and elect the management board. The management board is the legal representative of the association. Its power of representation in relation to third persons cannot be restricted.

There is no external regulatory body for associations. The main reason for this is that the members in the general meeting make the fundamental decisions and the association is not intended for extensive economic activities. Due to this open self-regulatory structure, the association can be recommended if an organisation expects many members and a frequent change in membership.

Foundations

There is no legal definition of a foundation in the Civil Code. They are characterised by having no shareholders, a permanent object and a need to have endowment property. Generally, a foundation must preserve its endowment property. However, the possibility of spend-down foundations has been legally clarified. A spend-down foundation can use its endowment property, in addition to its earnings, to further its purpose.

In the past, other legal forms of organisations such as associations, stock companies and limited companies were allowed to bear the name *Stiftung*. Currently, the local association or commercial register determines whether the name *Stiftung* is accepted, whereas there are generally no objections to the name foundation.

The term foundation in tax law, with privileges primarily concerning tax deductibility, only covers a foundation in the sense of sections 80 et seq. of the Civil Code and the non-independent foundation (*unselbstständige Stiftung*). Certain tax-privileges for foundations do not apply to other charities, such as associations or corporations (see [Question 9](#)).

Companies

The limited company (*Gesellschaft mit beschränkter Haftung*) (*GmbH*) is a legal person and liable for its obligations to third parties. It can be founded for any purpose permitted by law (*section 1, Limited Companies Act*) and can therefore be used for business purposes and charitable purposes.

The main difference between a limited company for a typical business and a charitable company is its purpose and permitted adaptations of the corporate structure to tax law requirements for non-distribution of profits. There are no

general legal requirements for charitable companies, but tax privileges are only available if the purpose and company are set up according to tax law (see [Question 9](#)).

The law on companies and directors' duties is well settled. Due to its flexible structure, the limited company is often used by charitable entities. However, given the need to notarise each assignment of shares, the limited company can be more suitable for an organisation with a stable membership.

Charitable limited companies can use the abbreviation gGmbH instead of GmbH. The "g" means *gemeinnützig* (tax-exempt).

5. What are the qualification requirements/formalities to set up these organisations?

Associations

A non-profit incorporated association, whose main aim and activity cannot involve the conduct of business, becomes a separate legal person on registration with the federal register of associations (*Vereinsregister*). When registered, it puts eV (*eingetragener Verein*) at the end of its name. To register, an association must have at least seven members. A copy of the articles of association signed by at least seven members and a copy of the appointment of the board members must be enclosed with the application for registration.

Associations can also be unincorporated and unregistered, without legal personality (*nichtrechtsfähiger Verein*) (section 54, *Civil Code*). An unincorporated association is mainly used by political parties.

Foundations

A foundation under the Civil Code (sections 80 to 88, *Civil Code*) has legal personality, which it receives on recognition by the competent authority in the state (*Bundesland*) in which the foundation will have its headquarters.

The authority will recognise the foundation if the (sections 80(2) and 81(1), *Civil Code*):

- Declaration of the settlor (*Stiftungsgeschäft*) meets certain legal requirements (that is, certainty of name, domicile, purpose, assets, and organisational structure).
- Purpose can be pursued permanently.
- Purpose does not breach the public interest.

In most cases, it takes two to four weeks until a foundation is recognised. Before recognition, the supervisory authority can be asked if the draft articles meet the legal requirements or if there is a need for clarification.

Although the law does not specify a minimum capital amount, the authorities usually require at least EUR50,000 to EUR100,000.

While the law permits both public benefit and private purpose foundations, private purpose foundations are not tax-exempt.

Federal legislation in the Civil Code is complemented by laws in the 16 states, which deal with issues such as state supervision.

Foundations without legal personality are called *nichtrechtsfähige* or *unselbstständige Stiftungen*. Their establishment is subject to general contract law. The contract between the settlor and the trustee (individual or legal person) can be compared with a common law trust. As they are not registered, their total number is unknown. However, they have become more popular and are often administered by other charities seeking additional funds.

Companies

To establish a limited company, the memorandum and articles of association must be signed and notarised and the first managing directors must be appointed by the signatories. The notary then submits an application for registering the company with the local commercial register.

Further:

- The articles of association must comply with the minimum content requirements of the Limited Companies Act.
- At least 50% of the statutory capital must be paid in before filing the registration.
- The limited company is deemed to exist on registration.
- The limited liability company must have a minimum capital of EUR25,000.
- In a tax-privileged limited company, the tax-authorities must provide an opinion stating that there are no objections to the tax privilege.

Ongoing regulatory requirements

6. What are the main regulatory authorities for charitable organisations? What are their powers of investigation/audit/sanctions?

Associations, charitable companies, and foundations each require the approval of a public authority to become established (see [Question 5](#)). There are 16 public authorities (see, for example, www.berlin.de/sen/justiz/service/stiftungsaufsicht/artikel.275316.php).

A foundation is subject to ongoing supervision by the state authority that decides on its recognition. The state authority has power to enforce compliance with the rules without requiring a court order. As its main task, state supervision must ensure that the original intention of the founder is protected. A decision of the board of directors cannot contradict the founder's intention, as recorded in the statute. The state authority is only allowed to examine whether the requirements made by the foundation law and the statute are met. It cannot make its own decisions concerning the administration of the foundation.

All tax-exempt charitable organisations are supervised by the regional tax authorities. They monitor compliance with the tax exemption requirements.

As of 1 October 2017, foundations with legal personality and (charitable) limited liability companies, like most other corporate entities generally (exemptions apply), are required to report their "beneficial owners" to a newly-established Transparency Register (<https://www.transparenzregister.de/treg/en/start?o>). The register does not monitor tax-exempt status, but serves the purpose of preventing criminal activities such as money laundering and terrorist financing. The beneficial owners of foundations are generally the foundation's board members. The information on the register has been accessible to interested parties since 27 December 2017. Any party seeking access must prove a legitimate interest.

7. Which bodies or persons manage charitable organisations and what general requirements must they meet?

Association and foundation

A foundation and an association must have a board of directors. It can consist of one or more persons. Board members can be both individuals and legal persons. Additionally, it is possible to provide for further bodies in the statutes, for example a supervisory board.

Board members of an association or a foundation can only be remunerated if the statutes provide for remuneration exceeding reimbursement of expenses. Statutory board members receiving remuneration of up to EUR720 per year are only liable to the association or the foundation for wilful intent or gross negligence (*sections 31a and 86, Civil Code*).

Companies

The mandatory corporate bodies of a limited company are the shareholder's meeting (*Gesellschafterversammlung*) and management (*Geschäftsführung*). There must be at least one managing director (*Geschäftsführer*). The responsibility for administration and management of the company is delegated to the managing director(s) by the shareholders, subject to company law and the company's articles. Managing directors can only be individuals, including foreign persons.

There is no case law on whether a legal person can be a member of a supervisory board of a limited company. Most commentators think that a legal person cannot be so.

Any individual or legal person, including foreign persons with legal personality, can be a shareholder of the company.

8. What are the accounting/financial reporting requirements?

Tax-exempt entities must file a report on their activities, their accounts on the use of funds, and reports on the accumulation of reserves with the tax authorities. Generally, accounts must be filed annually. On approval by the tax authorities and depending on the extent of business activities, charitable associations and foundations can file accounts every third year.

Associations and foundations

A foundation or an association can prepare a cash accounting scheme with an inventory, or a commercial annual financial statement with a balance sheet and profit and loss account. They generally do not have to be published.

Companies

For charitable companies, the requirements for publishing annual accounts vary depending on the size of the company. Small companies only need to publish their annual accounts. The bookkeeping, annual accounts and business report of large and medium-sized companies must be audited by qualified auditors or, in the case of medium-sized companies, by certified accountants:

- Small companies do not exceed two of the following: EUR6 million balance sheet total, EUR12 million turnover in the last 12 months, and 50 employees per year on average.
- Medium-sized companies exceed at least two of the above criteria, but do not exceed two of the following: EUR20 million balance sheet total, EUR40 million turnover in the last 12 months, and 250 employees per year on average.
- Large companies exceed at least two of the following: EUR20 million balance sheet total, EUR40 million turnover in the last 12 months, and 250 employees per year on average.

Tax

9. How are charities taxed, and what (if any) principal exemptions and/or reliefs from taxation apply to them?

There are two significant tax benefits for organisations that pursue a charitable purpose in an altruistic manner:

- No inheritance and gift tax, and basically no corporate income tax.
- Donations and endowments can be deducted from the taxable income of donors.

Tax on income

All "corporations, associations, and endowments" can be exempt from corporate income tax if they are organised and operated exclusively for public benefit, benevolent or religious purposes, in terms of sections 51 to 68 of the Civil Code (*section 5(1)(9), Corporate Income Tax Act*). This tax exemption applies to income in the "ideal" sphere of a charity (for example, membership dues or donations) or income from capital investments (sphere of *Vermögensverwaltung*). In contrast, income from unrelated business activities (*wirtschaftlicher Geschäftsbetrieb*) is basically taxable (currently at 15%) (*section 64, Fiscal Code*).

Income from related business activities (*Zweckbetriebe*) is tax-exempt, and includes the following (*sections 65 to 68, Fiscal Code*):

- Operating homes for the elderly, orphans or young people, people with disabilities, and so on.
- Hospitals.
- Schools, colleges and universities.
- Museums and art institutions.
- Workshops for the disabled.
- Joint service businesses of charities (for example, laundries serving only charitable hospitals).

To facilitate small unrelated business activities, section 64(3) of the Fiscal Code assumes that annual turnover up to EUR35,000 does not produce any taxable income.

In addition to corporate income tax, trade tax (*Gewerbesteuer*) applies at a rate determined by the local authorities. Basically, charities do not pay trade tax. However, this tax exemption does not apply to unrelated business activities.

Tax on capital gains

Capital gains as income are tax-exempt, if the criteria are met (*see above, Tax on income*).

Tax on property used by the organisation

The organisation is exempt from property tax (*Grundsteuer*), provided that the property is used for tax-exempt purposes.

Value added tax (VAT)

Generally, sales of goods and services are subject to VAT (*Umsatzsteuer*). However, many charitable activities are exempt from VAT, including health-related, educational, cultural and scientific activities. Charitable status is not usually required for this exemption. A certificate from the state authorities is sometimes required.

If an activity is subject to VAT, charities are allowed to apply a reduced VAT rate (7%), except for unrelated business income to which the general VAT rate (19%) applies. Grants are generally not subject to VAT.

Other

Charities are exempt from inheritance and gift tax, provided that their tax-exempt status lasts for at least ten years after the inheritance or the transfer between living persons (*section 13(1)(16b), Inheritance and Gift Tax Act*).

10. What, if any, are the taxation benefits for donors to charities?

The Income Tax Act (*Einkommensteuergesetz*) (*EStG*) and the Corporate Income Tax Act give special tax treatment to donations for tax-exempt purposes (as defined in the Fiscal Code) (see [Question 3](#)).

Individual donors and corporate donors receive similar tax benefits for their charitable contributions.

Donations

The general rule for tax benefits is that the deductibility of a donation is limited to a maximum of 20% of total income (*section 10b(1)(1), Income Tax Act*, and *section 9(1) (2)1, Corporate Income Tax Act*). In other words, instead of being taxed on 100% of his income, a donor can make the maximum donation of 20% and be taxed on 80% of his income.

Alternatively, an entrepreneur or a self-employed professional who produces turnover can deduct up to 0.4% of turnover, plus wages and salaries as special expenses, under the VAT Act (*Umsatzsteuergesetz*) (*UStG*).

Endowments to charitable foundations

Donations to foundations enjoy greater tax relief than donations to associations or corporations. The term foundation in tax law covers both a foundation under sections 80 et seq. of the Civil Code (*rechtsfähige Stiftung bürgerlichen Rechts*) and a non-independent foundation (*unselbstständige Stiftung*). However, this additional tax relief does not apply to the endowment of a spend-down foundation.

In addition to general tax deductibility (see above, *Donations*), an individual donor can deduct up to EUR1 million if the contribution endows a charitable foundation (*section 10b(1a), Income Tax Act*). There is no similar provision in the Corporate Income Tax Act, so corporate donors do not receive additional tax benefits for donations to foundations.

An endowment to a foundation can be spread over ten years for income tax purposes. It is therefore up to the donor to ask the tax authority to apply an amount in any given year in the most beneficial way.

The main justifications for this unequal treatment based on legal form are specific to foundations. They are characterised by not having any members, a permanent object, government supervision (but not for non-independent foundations) and the need to have endowment property.

Certificate of tax deductibility (*Zuwendungsbescheinigung*)

Charitable organisations can receive tax-deductible donations directly, and can independently confirm receipt of donations to the donor. Special regulations on the recipient certifying donations are in section 50 of the Regulations on the Income Tax Act (*Einkommensteuereinführungsverordnung*) (*EStDV*).

For donations of up to EUR200, tax laws provide an abridged system of obtaining a deduction. In certain cases, a bank receipt is sufficient proof that a donation was made.

Those donating in good faith can rely on certificates of deductibility issued to them. Negligence or deliberate abuse incurs, for the person in charge at the charity's office, liability to pay of 30% of the amount donated as compensation for tax evaded (*section 10b(4) 2, 3, Income Tax Act*).

Exemption from inheritance and gift tax

Heirs to assets are exempt from inheritance and gift tax if they wholly or partly donate the assets to a charitable foundation (*section 29(1)4, Inheritance and Gift Tax Act*). They must donate the assets within 24 months of receiving the inheritance or gift, to obtain the tax exemption. However, they cannot both reduce their inheritance and gift tax and deduct the amount from their taxable income, so a choice must be made between the two reliefs.

Disadvantages

11. What are the main disadvantages of charitable status?

The principal disadvantage for charities is the difficulty in giving up charitable status. In case of an exit, a charity is subject to tax for the previous ten years, which makes it practically impossible in most cases.

The level of remuneration of directors and other charity staff is still under the level of for-profit organisations of a comparable size. However, if the remuneration is at an appropriate level, it may approximate to the compensation of for-profit managers.

Overseas charities

12. Is it possible to operate an overseas charity in your jurisdiction? What are the registration formalities? How (if at all) are overseas charities treated differently in your jurisdiction from charities set up under domestic law?

Foreign charities operating in Germany

Generally, to be tax-exempt in Germany, a foreign charity must meet the same conditions as a German entity. The Court of Justice of the European Union (ECJ) has held that, if a charity recognised in one EU member state also satisfies the charitable requirements of another EU member state, and its object is to promote the same public interest (which is for the national authorities of the other state, including its courts, to determine), the authorities of that member state cannot deny the foundation the right to equal treatment solely because it is not established in

its territory (*Stauffer*, Case C-386/04, 14 September 2006, available at <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=64058&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=874419>).

Accordingly, foreign organisations subject to limited tax liability can generally be tax-exempt in Germany, under section 5(2)2 of the Corporate Income Tax Act, which was adopted in response to this ECJ ruling.

However, foreign organisations applying for tax exemption in Germany still have practical difficulties. For example, it has not been determined which German tax authority is competent to recognise the tax exemption of a foreign charitable organisation that has no German income.

An organisation which furthers tax-exempt purposes abroad must assist persons resident or domiciled in Germany or, among other things, make some contribution to the prestige of the German state abroad (*section 51(2), Fiscal Code*). These criteria must be generally fulfilled by a domestic entity or a foreign entity promoting charitable purposes in Germany. In practice, this provision only becomes relevant if a foreign organisation is subject to limited tax liability in Germany without carrying out charitable purposes in Germany.

Donors giving to foreign charities

In the past, German tax law did not generally allow donations to a charity in a foreign country to be tax-deductible in Germany. This was because the German tax authority cannot verify whether a foreign charity fulfils its charitable purposes, and has no control over amendments to the charity's purposes. Misuse of funds cannot be sanctioned according to German tax law.

To overcome these restrictions, a domestic charity had to be set up and the annual proceeds of the invested capital then transferred to foreign recipients (*section 58(1), Fiscal Code*). Due to some recent rulings by the ECJ, options for tax deducting cross-border donations in the EU have improved and German legislation has been amended. However, in practice, the new rules have no significant impact.

Cross-border donations to charitable organisations in other EU member states or a state in the European Economic Area (EEA) that are subject to limited tax liability in Germany are tax deductible (*section 10b, Income Tax Act, in conjunction with section 5(2)2, Corporate Income Tax Act*). However, in practice, the German taxpayer must prove that the foreign organisation meets the conditions for charity (*Gemeinnützigkeit*) (see [Question 3](#)), so the provision has practically no impact.

The ECJ has ruled that donations by a taxpayer to charitable entities resident in another EU member state must generally be tax deductible under the law of the donor's jurisdiction. The taxpayer must have the opportunity to show that a donation made to an entity established in another EU member state satisfies the requirements imposed by the other member state for tax deductibility (*Case C-318/07, Persche*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=76813&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=873648>). If a charity recognised in one member state satisfies the charitable requirements imposed by another member state, and its object is to promote the same public interest, equal treatment must not be denied solely because it is not established in the other member state. Further, the need to safeguard fiscal supervision cannot justify a restriction on the tax deductibility of donations. However, the tax authorities can ask the taxpayer to provide such proof as they consider necessary, to determine whether the conditions for tax deductibility have been met.

Further to this ECJ ruling, in 2010 the German parliament adopted provisions enabling the deduction of cross-border donations. Donations for charitable, benevolent or religious purposes to EU corporate bodies under public law are deductible, if individuals resident or domiciled in Germany benefit from the entity's activities, or the activities

contribute to the prestige of Germany. Donations for charitable, benevolent or religious purposes to EU tax-exempt entities are deductible if both:

- The entity would be tax exempt if it was subject to tax liability in Germany.
- The member state provides administrative assistance (*Directive 77/799/EEC on mutual assistance by the competent authorities of the member states in the field of direct taxation and taxation of insurance premiums*) and assistance in the collection of taxes (*Directive 2008/55/EC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures*) (*sections 10b(1), 2(1) and (3), 3 et seq. Income Tax Act*).

Given the increased requirements for taxpayer co-operation under the ECJ ruling, and the procedure for recognising foreign tax-exempt entities under the new section 10b of the Income Tax Act, the ECJ judgment and the new legislative provision only have a small practical impact.

Donations by a German taxpayer to foreign charities can be exempt from inheritance and gift tax if the beneficiary's country of residence has entered into a reciprocity agreement (*Gegenseitigkeitserklärung*) with Germany (*section 13(1) 16c, Inheritance and Gift Tax Act*). Such an agreement is contained, for example, in Article 10 of the Convention for the Avoidance of Double Taxation between Germany and the US with respect to taxes on estates, inheritance and gifts. Under this agreement, property transferred to an organisation pursuing public benefit purposes, which is resident and tax-exempt in one state, is exempt from inheritance and gift tax in the other contracting state, if that property transfer would be tax-exempt if made to a domestic organisation.

13. Is it possible to register a domestic charity abroad, and has your jurisdiction entered into any international agreements or treaties in this area?

Gemeinnützigkeit or German tax law is not opposed to the idea of charities operating abroad. In other words, charities do not lose their tax-exempt status if they pursue their purposes outside Germany. The US-German Double Taxation Treaty contains a provision regarding the mutual recognition of the tax-exemption in the respective other country.

Reform

14. Are there any proposals for reform in the area of charity law?

A working group consisting of representatives from the federation and the federal states proposed in 2016 a reform of the law relating to foundations. A ministerial draft bill was presented in June 2018, which is now revised until it is ready to be discussed in Parliament, eventually leading to a reform of German foundation law.

Proposals include, among others:

- New general provisions in the Civil Code, which set out the nature and general characteristics of a foundation.
- Protection of the name *Stiftung*.
- Codification of the “Business Judgement Rule”.
- A legal framework for the capital preservation of foundations.
- Legal amendments relating to fundamental changes of foundations.

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Professional qualifications

- Admitted to the Bar in 2000.
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Areas of practice. Domestic and international tax law; asset management; trust and estate planning; family-owned companies; expatriation taxation; alternative investments; philanthropy; foundation law.

Recent transactions

- Negotiations with the foundation authorities regarding the implementation of a spend-down option in the statutes of an existing foundation (client wealth over EUR5 billion).
- Advising a charitable foundation on a secondary transaction of a bond (volume: EUR102 million).
- Advising three shareholders of a stock corporation on the tax-exempt endowment of a family foundation with shares (value: EUR180 million).

- Setting up a family office, structuring the family owned business and setting up a foundation to run a museum (client wealth of EUR1 billion).

Languages. German, English, French

Professional associations/memberships

- Academician of the International Academy of Estate and Trust Law.
- Managing director of the Berliner Steuergespräche e.V. (www.berlinersteuergespraech.de).
- Chairman of the Executive Board of the postgraduate course Business Succession, Inheritance Law, Asset Management (www.uni-muenster-llm.de).
- Country Correspondent for Trust & Trustees (Oxford University Press).

Publications

- *Von Campenhausen/ Richter (Ed.), Stiftungsrechts-Handbuch, 4 vol., C.H. Beck, 2014.*
- *Richter/Haag, German Gift Tax on Trust Distributions in: Tax Notes International, vol. 70, no. 13, June 24, 2013, p. 1307-1308.*
- *Richter/Gollan, Charity Law: Chapter Germany in: International Charitable Giving. Ed.: Clive Cutbill, Alison Paines, Murray Hallam, Oxford, 2012, p. 285-300.*

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Professional qualifications

- Academic assistant of the Institute for Foundation Law at the Bucerius Law School in Hamburg (PhD, awarded the W. Rainer Walz prize by Bucerius Law School, 2009).
- Admitted to the bar in 2005; admitted as specialist taxation lawyer in 2012.
- Studied law in Erlangen, Rennes (France), Munich and Münster (LLM, 2009).

Areas of practice. Succession; foundations; charity tax.

Recent transactions

- Advising the Global Crop Diversity Trust (www.croptrust.org) in relation to German charity law.
- Advising on the implementation of social impact bonds by a charitable entity.

- Advising on a charitable gift amounting to EUR100 million.
- Application for a private letter ruling with the tax authorities, regarding the taxation of German-based beneficiaries of a Liechtenstein family foundation.

Languages. German, English, French

Professional associations/memberships

- Member of the Inheritance Law Committee of the German Bar Association (*anwaltverein.de*).
- Member of the jury in the German Federal Association of Foundations, awarding the seal of quality for responsible trusteeship for non-independent foundations (www.stiftungstreuhaender.org).
- Member of Alumni-Verein Private Wealth Management e.V. (2008 to 2015 managing director) and of Bucerius Alumni e.V.

Publications

- *Gollan, Stiftungsrecht – Werkzeugkasten, ErbR 2016, p. 237-243 and p. 294-299.*
- *Gollan/Fisher, The establishment of a German presence by UK-based charities - corporate and tax law aspects, in: Trust & Trustees, Volume 24, 2018, p. 569-573.*
- *Richter/Gollan, Fundatio Europaea - Der Kommissionsvorschlag für eine Europäische Stiftung (FE), in: Zeitschrift für Unternehmens- und Gesellschaftsrecht (ZGR) 2013, 551-595.*

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