

tax treatment of donors, tax privileges

foundations finances and tax treatment of donors, in particular tax privileges in Germany

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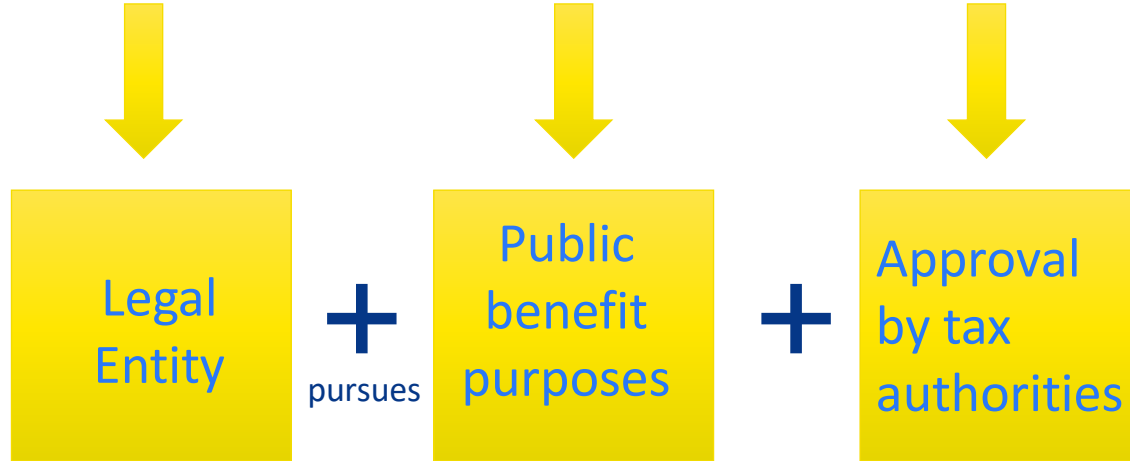


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Agenda

- 1. Legal framework for NPO**
- 2. Tax treatment of charitable foundations**
- 3. Tax treatment of donor**

Non Profit Organisation



Tax Treatment of NPO

- Applies to all legal forms which pursue non-profit purposes

Foundations	Incorporated	Association
autonomous (Legal personality under civil law)	limited liability corporation (gGmbH)	Eingetragener Verein (e.V.)
non autonomous (Trust – no legal personality)	joint-stock company (gAG)	
foundation under public law		
foundation under church law		

Tax privileges for NPO

- **Tax-exemptions**
- **no income tax on:**
 - ✓ grants and donations
 - ✓ investment income (asset management)
 - ✓ economic activity related to public interest
- **no gift- and inheritance tax on the transfer of assets to a NPO**
- **Value Added Tax (VAT): lower tax rates and tax-exemptions on some related business**

- The **legal requirements for this tax benefit** are governed by **sections 51-68 of the German Fiscal Code (Abgabenordnung - AO)**.
- The Application Decree for the Fiscal Code (Anwendungserlass zur Abgabenordnung, AEAO) and the tax laws are also decisive for the tax treatment.
- In order for a foundation to be recognized as a non-profit organization, its **articles of association** and **its actual management** must comply with the requirements of non-profit tax law.

Inheritance and Gift Tax

Inheritance tax or gift tax is generally payable on gifts made to a foundation upon death (inheritance) or inter vivos (gift).

➤ **Non-profit, charitable or church foundations are exempt from inheritance or gift tax.**

In principle, this benefit can still be claimed by the heir or donee if items acquired by gift or inheritance are donated to a charitable foundation within 24 months. However, if this provision is claimed, this precludes the simultaneous deduction of donations under income tax.

Corporate income tax and business tax

As legal entities under private law, foundations are generally subject to corporate income tax on their income and to business tax on any existing business operations.

- However, **tax-privileged foundations are generally exempt from these taxes**. This means that, in particular, income from:
 - **donations, asset management and economic activities that simultaneously serve charitable purposes** (special-purpose operations) are exempt from tax.
- The tax exemption does not apply to income generated by an economic activity that does not simultaneously serve the charitable purpose (taxable economic business operation).

Tax privileges for donors

System of tax deduction for donors enhance attractiveness for donations !

- **General rule for donors (natural person and legal entity):**
tax deduction on taxable income of the donor up to **20% of the yearly taxable income**
- **Additional Special rule for Corporate/legal entity donors:**
tax deduction up to **0,4% of the sum of the yearly turnover and salaries** – (if more advantageous to general rule) – as costs
- **Extra Rule** for all donors dedicated to the **asset pool of a charitable foundation to be maintained up to 1 Mio € (couples up to 2 Mio€)** tax deduction (period of 10 years)

Deduction of Income Tax

In the case of a donation to a charitable foundation, a distinction is made for tax purposes between the **donation to the assets of a foundation to be maintained (endowment)** and the **donation to be used in a timely manner**.

Pursuant to **Section 10b (1) of the German Income Tax Act (EStG)**, donations to a charitable foundation to promote tax-privileged purposes may be deducted as special expenses up to a total of **20 percent of the donor's total income**. Deductible donations that exceed the above-mentioned maximum amount or cannot be taken into account in the year of the donation can be deducted as special expenses in subsequent years within the limits of the maximum amounts.

Pursuant to **Section 10b (1a) sentence 1 of the German Income Tax Act (EStG)**, donations to the asset pool of a charitable foundation to be maintained may be deducted upon application by the taxpayer in the year of the donation and in the following nine years up to a total amount of **€1 million**. This deduction is available in addition to the donation deduction mentioned above. In the case of married **couples** assessed jointly, the amount is **doubled to 2 million euros**. Insofar as the founder was not able to deduct the amounts within the 10-year period, they are then transferred to the general unlimited donation carryforward.

Case 1

Donor is a couple, owner of a house; earnings each 75.000 €/year (no increase estimated); savings available; both inherited their parents assets; they plan on establishing a charitable foundation

- Regular tax deduction § 10b Abs. 1 S. 1 EStG: 15.000 € (**20 %**) per spouse = 30.000 € x 10 years = 300.000 €
- Special expense tax deduction – dedicated to the assets of a foundation to be maintained (endowment) , § 10b Abs. 1a S. 1 EStG: **1 Mio** per spouse = **2 Mio** in 10 years
- Regular tax deduction + special expense tax deduction in 10 years = **2,3 Mio €**

Case 2

Donor is a C- Company (GmbH), Numbers in 2020: Income 10 Mio €, 2020: 20 Mio €, Salaries 5 Mio €

estimated 15 % Corporate Tax Fee (KStG), business tax depends on region (GewStG)

- Regular tax deduction § 10b Abs. 1 S. 1 EStG, § 9 Abs. 1 Nr. 2 KStG € **(20 %)** = 2 Mio € - alternativ: 100.000 € (4 % of Turnover + Salaries) is not advantageous – (=costs – fully deductible, also for business tax)
- Special expense tax deduction – dedicated to the assets of a foundation to be maintained , § 10b Abs. 1a S. 1 EStG, § 9 Nr. 5 GewStG): **1 Mio** in 10 years
- Regular tax deduction + special expense tax deduction: 1 Mio in 10 years + 2 Mio in 2020

Thank you for your attention.

Dziękuję bardzo.

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