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# CHARITABLE CONTRIBUTIONS IN THE OECD

A Tax Study

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## FEDERAL REPUBLIC OF GERMANY

### I. TREATMENT OF RECIPIENTS

#### A. QUALIFIED RECIPIENTS

1. *Describe the types of persons, legal entities or institutions which qualify as recipients of a charitable contribution, i.e., one which results in a direct or indirect income tax benefit to the donor.*

German tax law permits the following institutions and organizations to qualify for tax exemptions: legal entities established under public law, that is, public institutions such as universities and research institutes; and corporations, associations of persons, trusts and estates, operating pursuant to statute and exclusively for a non-profit, charitable or religious purpose. In addition, a tax-exempt status may be available for special organizations recognized by the tax authorities as qualified recipients (i.e. organizations to foster sports, nature, literature, music, art, etc.). Tax exemptions are only available to recipients established under German law.

2. *Must recipients of a qualifying charitable contribution be registered with, certified or approved by government authorities?*

German recipients of qualifying contributions need not be registered with, certified or approved by the Government in order for the donor-taxpayer to receive a tax benefit. Note, however, that the German tax authorities do publish a list (which is incomplete) of those organizations which have established their tax-exempt status so as to assure potential donors that their contributions to these organizations will be deductible under German law.

3. *Are certain types of organizations precluded from being recipients of a qualified charitable contribution? For example, are they precluded because of their political affiliation?*

Charitable contributions, if made to certain organizations, do not confer any tax benefit upon the donor as a result of their specific status. Among those organizations are included certain political parties (e.g., Communist party), non-German organizations (unless a contribution is made through a German based feeder organization), chambers of commerce and social clubs. German law stipulates that a tax-exempt organization loses its status to the extent that it operates for profit purposes.

#### **B. QUALIFIED ACTIVITIES**

1. *Describe the types of activities in which a qualified recipient may engage.*

A qualified recipient may engage in activities in support of charitable, ecclesiastical, religious, scientific or specially qualified purposes such as: public health care, youth welfare, sports, culture, education, welfare, care for refugees, fire protection, animal protection, nature protection, consumer consulting and environmental protection.

2. *Are there specifically listed activities in which a qualified recipient may not engage?*

Tax-exempt organizations may not engage in activities which exclusively benefit an individual, a certain family or employees of a corporation. The activities must be exclusively recognized by law in order for the charitable organization to be a qualifying recipient under German charitable tax law.

3. *Must the activities of a qualified recipient be restricted to a certain class of beneficiaries or to a certain locale?*

On the contrary, German law requires that the activities of a qualified recipient not be restricted to a certain class of beneficiaries or to a certain locale. The law does require, however, that a tax-exempt organization operates exclusively according to its stated purpose for which the exemption is granted. In this case, the class of beneficiaries or the locale may be restricted.

### C. USE OF FUNDS

1. *Does the law specify the manner in which funds received by a recipient must be used?*

Generally, German law requires that a tax-exempt organization apply the charitable contributions it receives in a manner consistent with the purpose for which the organization's exempt status is granted. Note that the organization's tax-exempt status would not necessarily be affected if the organization were to engage in insignificant business activities which are unrelated to the organization's stated purpose.

2. *Does the law impose any tax on investment income received by recipients of qualifying contributions?*

No tax on investment income received by recipients of qualifying contributions is imposed provided that the investment income is related to the tax-exempt purpose. Note that the normal tax rates will be imposed to the extent that investment income is received by a qualifying recipient that engages in business activity.

3. *Is a qualified recipient required to use a specific percentage of its receipts annually in connection with its qualified activities?*

German tax law does not require that a qualified recipient spend a specific percentage of its receipts annually. On the contrary, the recipient is allowed to set up reserves so as to enable the organization to fulfill its stated charitable purposes.

### D. TAX TREATMENT OF RECIPIENT

1. *Describe the income tax consequences to a qualified recipient upon the receipt of a contribution.*

A tax-exempt organization is generally exempt from income tax upon the receipt of a charitable contribution of money or property.

2. *Are there restrictions placed on the types of gifts or donations, i.e., securities, land, fine arts, etc. which a qualified recipient can receive without being subject to any income tax liability?*

German law generally does not restrict the types of gifts or donations which charitable organizations may receive without being subject to tax liability.

3. *What are the tax consequences if a qualified recipient engages in profit-oriented activities?*

Income derived from profit-oriented activities is taxed at normal tax rates for business income.

#### E. NON-TAX INCENTIVES

1. *What incentives exist for establishing charitable organizations other than for income tax purposes?*

Although exemption from taxation is an incentive underlying the creation of a charitable organization, there are important non-tax reasons for setting up a charitable organization such as personal, social and philanthropic interests.

2. *How easy or difficult is it to establish a charitable organization?*

In Germany, charitable organizations are normally organized as either a registered association (eingetragener Verein), a corporation or a foundation (Stiftung). The process of establishing such a charitable organization is as routine as setting up a normal corporation.

3. *Are there cumbersome reporting and regulatory requirements with which charitable organizations must comply?*

Based on the type and/or the size of the organization, the organization must meet certain reporting and auditing requirements like any other similar entity in Germany. Furthermore, the organization must file special tax returns annually. Note that as a practical matter, a special tax audit of a charity is conducted every three years as a requirement for renewing its privileged status.

4. *Are government authorities helpful or what position do government authorities take regarding the formation of charitable organizations? For example, do government authorities facilitate or interfere with the formation of charitable organizations?*

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The German Government takes a neutral to positive position regarding the formation of charitable organizations.

5. *Describe any municipal or other non-income tax benefits available to a donee.*

Tax-exempt organizations may enjoy collateral tax-exemption or partial tax-exemption under certain property, sales, gift or other forms of taxation.

## II. TREATMENT OF DONORS

### A. QUALIFIED DONORS

1. *Describe the types of persons, such as individuals, corporations, foundations or other legal entities which may receive tax benefits from making a qualified contribution.*

Individuals, corporations, estates and trusts that are German taxpayers may deduct charitable contributions to qualified tax-exempt organizations.

2. *Can a foreign person or entity receive a direct or indirect tax benefit from making a contribution?*

A foreign national or corporation, if subject to German tax, may receive a tax benefit for making a charitable contribution.

### B. NATURE OF CONTRIBUTION

1. *Describe the types of contributions which qualify the donor for a tax benefit. For example, can the gift be in the form of cash, securities or services?*

Generally, all contributions of money and property are deductible provided that they are made to qualified organizations during the donor's tax year. No deductions are allowed for the value of services or the use of property made available by the taxpayer to a charitable organization. However, a taxpayer's out-of-pocket expenses, which were incurred in connection with rendering services for the organization, are deductible.

2. *May a donor receive a tax benefit for a gift of blocked currency located in a country other than that of the donor's, i.e., currency*

*that cannot be repatriated? Describe the tax consequences to a donor for a gift of blocked assets, i.e., assets that cannot be repatriated.*

German tax law will grant the donor a tax benefit for a gift of blocked currency or a blocked asset located in a foreign country, provided that the donor is able to assign the gift to a charitable organization. If the transfer of funds and/or title of the property to the tax-exempt organization is possible, then the donation to a German charitable organization will be considered valid.

3. *Can a donor receive any tax benefit in the context of a debt-equity swap?*

A German donor is only entitled to a tax benefit under German tax law if the donor actually donates money or property. The structuring of an assignment of funds must result in unrestricted transfers of the donor's title to the property. If a debt-equity swap results in an increase in assets of a charitable organization and assuming there is either a decrease in the donor's assets or an increase of the donor's debt, then the transaction will be valid taxwise.

4. *May a donor receive a direct or indirect income tax benefit for a contribution made directly to a foreign charitable organization, i.e., an organization formed in a country other than the donor?*

Under German tax law, neither an individual nor a corporate owner is permitted any tax benefit for a contribution made directly to a charitable organization created or organized in a place other than Germany.

5. *May a donor receive a direct or indirect income tax benefit for a contribution made to domestic charitable organization which plans to disperse all or part of the funds to a foreign charitable organization?*

German law allows an individual donor to receive a tax benefit for a contribution made to a domestic charitable organization which conducts various charitable activities in a foreign country. Individual donors may also receive a tax benefit for a contribution made to a domestic organization which \_\_\_\_\_ in \_\_\_\_\_ turn

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grants the funds it receives to charitable groups, organized or chartered in a foreign country, so long as the granting of such funds is in furtherance of the domestic organization's charitable purposes. Earmarking the destination of funds given to a domestic charitable organization for use by a foreign organization may jeopardize the donor's German tax benefit. The same result applies to corporate donors who earmark funds for use by a foreign charitable organization.

6. *Does a contribution, which is conditioned on a direct benefit to be received by the donor, qualify the donor for tax benefits (e.g., a grant given for research and development with the condition that the donor be given access to the results of research and development before those results can be published)?*

Where the donor derives an economic benefit under German law from transferring property to a charity, the transfer is deemed neither a gift nor a qualified contribution.

#### C. VALUATION AND DOCUMENTATION

1. *Describe the rules governing the valuation of non-cash contributions.*

Non-cash contributions are generally valued at fair market value. If property which was used in a business is contributed, then the value of the property may not be higher than the book value of the property.

2. *Are independent appraisals of non-cash contributions required?*

German law does not require a qualified appraisal of non-cash contributions.

3. *Describe any documentation and validation requirements regarding the amount and nature of non-cash contributions.*

The recipient must provide a contribution certificate to the donor. The value and the exact description of the contributed property must be shown on that certificate.

#### D. TAX BENEFITS

1. *Describe the direct or indirect tax benefits available to a donor. Is the donor allowed a tax credit or deduction?*

Individuals and corporations are allowed to deduct from adjusted gross income the total amount (within limits) of the gift contributed to a charitable organization.

2. *If appreciated property is donated, is gain required to be recognized on the unrealized appreciation? If no gain is recognized, does the donor get a tax benefit for the full market value of the property or just his basis in the property?*

The donor has the choice between donating the appreciated property at fair market value, realizing and recognizing the gain and obtaining a tax deduction for the fair market value, or donating the property at its book value without realizing and recognizing any gain and obtaining a tax deduction only for the amount of its book value.

3. *Can a taxpayer make a contribution to a qualified recipient in lieu of paying taxes?*

German taxpayers may not directly make a contribution to a qualified recipient instead of paying income taxes.

4. *Describe any limits on the amount of tax benefits which may be claimed by a donor. Are deductions limited to a certain percentage of income?*

Generally, corporate and individual donors are allowed to deduct from their taxable income that amount of their charitable contributions which does not exceed certain German deduction ceilings. Individual and corporate donors are allowed to deduct the greater of 5 percent of gross income or 1/10 of 2 percent of the total sales, wages and salaries spent during the calendar year. Expenses to support certain state political purposes are deductible as itemized deductions to the extent that the total amount exceeds any available tax credit. Note that for scientific and specially qualified cultural purposes, the amount of the deduction is increased to 10 percent. Note that individual and corporate donations to a political party exceeding DM 20,000 are only deductible if that amount is reported by the party in its annual report. Such donations can be made directly to the political party. Among the types of allowable expenses incurred in the support of state political purposes are included membership fees and donations to political parties.

5. *Describe any municipal or other non-income tax benefits available to a donor.*

Real property tax is not imposed on real estate held by a qualified charitable organization and used for carrying out its intended purposes.

6. *Are charitable contributions exempt from gift taxes?*

Contributions made to qualifying charitable organizations are generally exempt from German gift tax.

7. *Are charitable contributions exempt from death or estate taxes?*

Charitable contributions are generally exempt from estate and gift taxes. The organization to which the contribution is made must be a qualifying recipient under German law.

#### E. OFFICIALLY SPONSORED CONTRIBUTIONS

1. *Does the government provide any fiscal incentives to engage in public interest activities? For example, can gifts be made to educational institutions in lieu of a compulsory payment to a government sponsored training program?*

The German Government has a neutral position with regard to charitable organizations. Therefore, no additional incentives are granted by the German Government.

2. *Are there any officially sponsored or endorsed contributions? For example, are there rules relating to gifts through a payroll deduction or gifts that can be made in connection with the filing of a tax return on voluntary basis?*

No officially sponsored contribution programs are available in Germany.

3. *Are there any compulsory payments made through the tax system which are aimed at collecting funds for a particular organization (such as a church tax)?*

Employers in Germany are usually obliged to withhold a certain amount of church tax (generally 8 percent to 10 percent of the income tax payable) from compensation payments made to

employees. The church tax can be avoided, however, if the employee has departed from the parish organization. The "church" tax is also applicable to other ecclesiastical organizations, i.e. Protestant churches, Roman Catholic churches.

Note that corporations are not required to pay church tax.

4. *Do government authorities provide matching contributions?*

The German Government does not provide any matching contributions on a regular or permanent basis. Such contributions may be available only for special projects.

5. *Do private individuals or corporations have matching programs?*

Although matching programs by individuals or corporations are not common in Germany, they are possible.

F. MISCELLANEOUS

1. *Are there any important aspects of the treatment of donors, recipients or contributions not covered in the above-mentioned questions?*

Statistics are not readily available which indicate how many organizations qualify for receipt of charitable contributions in Germany. Only 48 organizations are listed in the tax authorities' register. It is estimated that there are thousands of charitable organizations which are unlisted in the register.

Regarding the size of the charitable sector in West Germany, actual data are not available. It should be noted that the percentage of the Gross National Product the charitable sector accounts for is higher in West Germany than in the United States because many charitable programs and activities sponsored in the U.S. by private enterprises are sponsored in West Germany by charitable associations.

It is expected that growth in the level of charitable giving will be above average in the near future.

2. *Are there any recent changes, trends or patterns in the legal or fiscal regulation of donors, recipients or contributions that should be noted?*

Because of a scandal in a charitable organization, which provided subsidized housing for underprivileged people, and,

because of the funding methods of political parties in Germany, the fiscal authorities have scrutinized the various purposes for which charitable organizations have been established, as well as the requirements which donors must meet.

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