This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
http://www.icnl.org/knowledge/library/index.php
for further resources and research from countries all over the world.

Amendment to the application of the General Act on Duties (AEAO)

(letter issued by the German Federal Ministry of Finance (BMF) on September 10, 2002 – IV C 4 – S 0171 – 93/02 -)

The application of the General Act on Duties of July 15, 1998 (Federal Tax Journal (German Federal Fiscal Gazette) I, p. 630), last amended by the BMF letter dated July 1, 2002 (German Federal Fiscal Gazette I, p. 639) shall be amended as follows:

1. The **provision pertaining to § 51** shall be as follows:

   "In regards to § 51 – General:

   1. The following corporations may be eligible for tax privileges according to § 51: corporations, associations of individuals and legal estates according to the German Corporate Income Tax Law (KStG). Legal entities of the Public Law with their commercial operations (§ 1, para. 1, no. 6, § 4 KStG) shall be included herein, but not legal entities of the Public Law as such. Please see BMF letter dated October 18, 1988 (German Federal Fiscal Gazette I, p. 443) regarding regional divisions.

   2. The decision regarding the waiver of corporate taxes according to § 5, para 1, no. 9 KStG due to the promotion of tax-privileged objectives shall always be made for a certain assessment period (policy of period taxation). A corporation may only be tax-privileged according to this regulation provided it complies with all requirements for the assessment period in question. Subsequent fulfillment of any one of the conditions may not have a retroactive effect on previous, completed assessment periods.

   3. If corporations that have previously been subject to taxation become corporate income tax-privileged according to § 5, para. 1, no. 9 KStG, they shall be subject to final taxation according to § 13 KStG".

2. The **provision pertaining to § 52** shall be as follows:

“In regards to § 52 – Non-commercial objectives:

1. The non-commercial nature of a corporation requires that its activities benefit the public (§ 52, para. 1, p. 1). This condition shall not be considered if the circle of persons benefiting from the activities is constantly restricted due to its limitations, particularly based on spatial or occupational characteristics (§ 52, para. 1, p. 2).
   The following shall be applicable:

1.1 General

An association with activities mostly benefiting its own members (particularly sports clubs and associations promoting leisure activities outlined in § 52, para. 2, no. 4) does not benefit the public if it keeps its membership low with high admission or membership fees (including membership allocations)
Promotion of the public according to § 52, para. 1 shall be assumed for associations with activities mostly benefiting their own members, if

a) the combined annual average membership fee and membership allocations are not exceeding € 1023 per member and
b) the average admission fee for members accepted during the year is not exceeding € 1534.

1.2 Investment allocation

It shall be considered harmless to the non-commercial nature of an association with activities mostly benefiting its own members, if the association requests an investment allocation in addition to the above mentioned admission and membership fees (including other membership allocations), provided that the following conditions are met:

The investment allocation shall not exceed € 5113 per member within 10 years. The members shall have the possibility to divide the allocation payment to up to 10 annual payments. The allocation may only be requested for financing specific investment projects. In addition to the timely use of the funds for investment, the creation of savings for future investment projects within the scope of permitted reserves according to § 58, no 6 and their use for paying back loans raised for financing investments shall be considered harmless as well. The request for investment allocations may be limited to new members (and to youth paying supplementary fees, see 1.3.1.2).

Investment allocations shall not be considered tax-privileged donations.

1.3 Calculation of the average

The average membership and admission fees shall be calculated from the ratio of benefits provided to the members to the number of included members.

1.3.1 Benefits provided to the members

1.3.1.1 Principle

The applicable admission and membership fees shall include all cash benefits and monetary values required from a citizen to participate or remain in the association. Allocations requested from members shall be included in the calculation of the average admission and membership fees with the exception of permissible investment allocations (cp. 1.2).

1.3.1.2 Special fees and additional payments

So-called advance payments for games in association with the admission into the club shall be considered part of the applicable admission fees. Special allocations as well as additional fees payable by the members for example for the annual use of the

field shall be included in the calculation of the average as additional membership contributions.

As soon as young members who had been accepted into the club at reduced fees reach the specified age where they need to pay regular admission fees, they shall be included in the calculation of the average admission fees of the corresponding year.

1.3.1.3 Nonresident members

Membership and admission fees paid by nonresident members to other similar associations shall not be included in the calculation of the average. This is also true if the membership in the other club is a prerequisite for the admission as a nonresident member or if it represents the eligibility for playing in the club's own sports field.

1.3.1.4 Legal entities and companies

Expenses paid by legal entities and companies of different legal form to achieve and maintain their own membership within the association (so-called company memberships) shall not be included in the calculation of the average (see 1.3.2).

1.3.1.5 Loans

Loans granted to the association by members in connection with their admission into the club shall not be included as additional admission fees. If the loan is granted free of interest or at an interest rate lower than common on the capital market, the annual waiver of interest shall be included as additional membership fee. For this purpose, a typical interest rate of 5.5 % shall be assumed (verdict by the German Federal Fiscal Court (BFH) dated November 13, 1996, German Federal Fiscal Gazette 1998 II, p. 711). Therefore, in case of interest-free loans, 5.5 % of the amount of the loan and in case of loans at reduced interest rates, the amount that the club is paying less than if the interest rate was 5.5 %, shall be applicable.

These principles shall be equally valid if membership fees or allocations (including investment allocations) have been granted as loans.

1.3.1.6 Investment in companies

Sometimes the sports facilities required by a club for playing the games are established or managed by a company other than the club. If this is the case and the members are required to invest in the company to be accepted into the club or to purchase so-called rights of use to be eligible for playing in the club, the expenses for purchasing the company shares or rights of use shall be considered additional admission fees.

1.3.1.7 Donations

If citizens allocate money labeled as donations to the sports club in association with their acceptance, it shall be verified whether these payments are voluntary free allocations, i.e. donations, or whether they are special payments required from new members.

Special payments shall be included in the calculation of the average admission fee. This is equally applicable if the club is not legally entitled to these payments according to the Articles of Incorporation or the decision by the general meeting, but admission to the club in fact depends on the payment of this special fee.

A factual obligation shall be assumed in any case where more than 75 % of new members are paying an equal or similar special payment in addition to the regular admission fee. Passive or promoting members, youth and nonresident members as well as company memberships shall be excluded. To assess whether the special payments by new members are equal or similar, the members shall add the special payments made

within three years of the admission application or, if an exceptionally long time has passed between admission application and admission into the club, after the admission, as far as these payments are not allocations requested from all members.

The 75 % limit is a disputable assumption for the existence of mandatory payments. The actual ratios of the individual cases shall be applicable. Therefore, special payments shall be treated as additional admission fees even if they have been paid by less than 75 % of new members, but these members have reportedly been obligated to pay these fees according to the circumstances of the individual cases.

The above mentioned principles including the 75 % limit shall be applicable accordingly for the differentiation between actual donations and membership allocations. In this case, mandatory payments shall be included in the calculation of the average membership fee.

Mandatory payments of a permissible investment allocation (cp. 1.2) shall not be included in the average calculation of admission and membership fees.

According to § 50 of the German Income Tax Executive Order (EStDV), no receipts for donations may be issued for mandatory payments (such as admission fees, membership fees, transfer payments for performances and allocations including investment allocations). The principles outlined in the German Federal Finance Court verdict of December 13, 1978 (German Federal Fiscal Gazette II, 1979, p. 488) shall not be applicable as far as they do not comply with the afore mentioned principles.

1.3.2 Included members

The number of persons who were members of the club during the assessment period (calendar year) shall serve as divisor for the calculation of the average membership fee. Members who left or joined the club during the year, shall be included as well,

provided that they have been a permanent member or a permanent membership still exists.

The number of persons newly admitted permanently to the club during the assessment period shall serve as divisor for calculating the average admission fee. Promoting or passive members, youth and nonresident members shall be included in these calculations. Nonresident members shall always be considered members residing outside the catchment area of the club and / or persons who are an ordinary members of a similar other sports club and therefore do not pay any or limited membership and admission fees. Legal entities or companies of other legal form as well as sole proprietors, who have access to the club based on the membership of their organization, shall not be included.

Non-active members shall not be included if the club is using their inclusion in the average calculation for improper objectives, such as for example if the number of non-active members is exceptionally high or if it is observed with respect to the average calculation, that non-active members have systematically been admitted without paying membership fees or at reduced fees.

2. § 52, para. 2 shall be considered a non-conclusive list of examples of non-commercial objectives. Accordingly, the public can equally benefit from objectives similar to the ones listed in § 52, para. 2, no. 1 and 2. This shall be applicable mainly to objectives (excluding the non-commercial objectives according to § 52, para. 2, no. 4, cp. no. 9) considered particularly worthy of promotion according to § 10b, para. 1 of the German Income Tax Law (EStG) (attachment 1 to § 48, para. 2 EStDV) in addition to the objectives listed in § 52, para. 2 no. 1 and 2. Some examples are: the promotion of rescue from danger to life, fire protection, occupational health and safety, civil protection and defense, animal welfare, accident prevention, consumer advice and protection, equality between men and women, protection of marriage and family as well as

prevention of crime. The Promotion of road safety shall be considered promotion of accident prevention and shall become a non-commercial objective too.

3. Internet associations shall be considered non-commercial due to their promotion of education, provided their objective does not serve the promotion of (privately operated) data communication through the provision of access to communications networks as well as the set up, promotion and maintenance of corresponding networks for private and commercial use by members or other persons.

4. Corporations operating or supporting private schools shall be distinguished between replacement schools or supplementary schools. The benefit of the public shall always be assumed in case of replacement schools because the authorities in charge may approve the establishment and operation of replacement schools only if the segregation of pupils according to assets is not being promoted (art. 7, para. 4, clause 3 of the Basic Law of the Federal Republic of Germany (GG) as well as German Private School Laws of the various states). In case of supplementary schools, the benefit of the public shall be assumed if the company's Articles of Incorporation stipulate that no segregation based on the parent's assets according to art. 7, para. 4, clause 3 GG as well as German Private School Laws of the various states may be carried out.

5. Neighborly help associations, exchange circles and similar corporations in which the members provide minor services of various nature to other members of the association (e.g. minor repairs, house cleaning, cooking, child care, tutoring, home care) shall generally not be considered non-commercial because the mutual support mainly benefits its own members and therefore contravenes the principle of unselfishness (§ 55, para. 1). However, such corporations may be considered non-commercial, if their activities are limited to support the elderly and persons in need of help in their daily performances, thereby promoting elderly welfare and charitable objectives (§ 53). As far as the objective of the corporation additionally extends to tutoring services and childcare, it may be recognized as promotion of youth welfare. The non-commercial nature of these corporations shall be recognized, provided the active members render their services as auxiliary persons of the corporation (§ 57, para. 1, clause 2).

6. One of the main elements of sports (§ 52, para. 2, no. 2) is the physical activity. Motor sports shall be considered sports (German Federal Finance Court verdict of October 29, 1997, German Federal Fiscal Gazette II, 1998, p. 9) as well as ballooning. Skat (German Federal Finance Court verdict of February 17, 2000, German Federal Finance Court /NV, p. 1071), bridge, GoGame, gotcha or paintball however shall not be considered sports in the sense of the Law on Public Welfare. This shall be equally applicable to amateur radio, model planes and dog sports, which shall however, be considered own non-commercial objectives (§ 52, para. 2, no. 4). Shooting clubs may be recognized as non-commercial even if they are promoting shooting customs (cp. no. 11) in addition to the shooting sport (as main objective) according to their Articles of Incorporation. The organization of folkloristic shooting festivals shall not be considered a benefit to the public.
7. Promotion of paid sports activities shall not be considered an objective to benefit the public because it promotes the interests of paid athletes. However, under certain circumstances, it shall be harmless to the non-commercial nature of a sports club (see §§ 58, nos. 9 and 67a).

8. A tax-privileged, general promotion of the democratic political system shall be present only if the corporation is extensively concerned about the basic democratic principles and complies with them in an objective and neutral manner. However, if the corporation’s objective is political education concerned with the creation and promotion of political consciousness and political responsibilities based on the standards and ideas of a constitutional democracy, it shall be considered public education. It must not necessarily consist of theoretical instruction only, but may be complemented by the call for specific action. In contrast, unilateral agitation, uncritical indoctrination or party-oriented motivational influence (German Federal Finance Court verdict of September 23, 1999, German Federal Fiscal Gazette II, 2000, p. 200) shall not be considered political education.
9. Promotion of leisure activities outside the field of sports shall only be recognized a promotion of the public if in terms of characteristics that justify their tax-privileged promotion the leisure activities are identical with the ones listed in § 52, para. 2, no.4. It shall not suffice that the leisure activity is reasonable and similar to one listed in § 52, para. 2, no.4 (German Federal Finance Court verdict of September 14, 1994, German Federal Fiscal Gazette II, 1995, p. 499). The promotion to construct and operate models of ships, cars, trains and kites is identical to the promotion of modeling in the afore mentioned sense, while the promotion of CB radio is

identical with the promotion of amateur radio. Therefore, these objectives shall be considered a benefit to the public. The following examples shall not be considered identical with the leisure activities listed in § 52, para. 2, no.4 in the afore mentioned sense and shall consequently not be considered own non-commercial objectives: the promotion of amateur film and photography, cooking, board and card games and the collection of objects such as stamps, coins and autograph cards as well as activities related to clubs involved in travel and tourism, sauna, sociability, cosmetics and old-timers. However, tax privileges may be considered for associations involved in amateur film and photography as well as old-timers due to their promotion of the arts or (technical) culture.

10. Fruit-growing and horticultural associations usually promote plant breeding according to § 52, para. 2, no. 4. The promotion of bonsai art shall be considered plant breeding, while the promotion of aquariums and terrariums shall be considered animal breeding according to the regulations.

11. Historic rifle clubs may be treated as beneficial to the public due to the promotion of traditions (cp. no. 6) as may hobby winegrower associations due to the promotion of patriotism, which shall be considered part of traditions. The same shall be applicable for bachelor and fellow associations, which promote the traditions of a certain region, such as the planting of May trees (May clubs). Special mentions of the traditional customs as non-commercial objective in § 52, para. 2, no. 4 however shall not signify a general expansion of the term customs in terms of German Public Welfare Law. Therefore, student associations such as fraternities, similar associations such as rural youth organizations, country and western clubs and associations with the main objective of organizing local fairs (e.g. parish fairs, country fairs and town guards festivals) shall usually not be considered non-commercial.

12. Particular attention shall be paid to unselfishness (§ 55) and exclusivity (§ 56) of animal and plant breeding as well as bachelor and fellow associations. For example, a corporation is not acting unselfish if its main objective is the promotion of its members interests. The stipulation of exclusivity is being violated if the organization of festivals (e.g. Vintage Festival, May Ball) is included in the Articles of Incorporation as an objective. When analyzing the actual business management of hobby wine grower, bachelor and fellow associations, particular attention

shall be paid to the fact that the promotion of sociability is not the main objective of the association's activities.

13. Military and reservist associations usually pursue non-commercial objectives according to § 52, para. 2, no. 4 if they support active former as well as regular and professional soldiers, e.g. by discussing questions related to being a soldier, offering possibilities for meaningful leisure activities or providing help with the transition to civil life. Maintaining traditions through military and reservist associations shall neither be considered tax-privileged maintenance of traditions nor support of soldiers and reservists according to § 52, para. 2, no. 4. The promotion of camaraderie in addition to a tax-privileged objective may be considered an objective of the association if the Articles of Incorporation stipulate that it shall serve the creation of a bond between the members arising from the non-commercial activities of the association only (German Federal Finance Court verdict of March 11, 1999, German Federal Fiscal Gazette II, p. 331).

14. Establishments providing activities geared toward the recreation of working people (e.g. operation of leisure facilities such as camp grounds or boat rentals) shall not be considered non-commercial unless a certain circle of persons worthy of protection (e.g. persons who are ill or youth) is benefiting from the provision of recreation, or if it is carried out in a specific way (e.g. based on sports) (German Federal Finance Court verdicts of November 22, 1972, German Federal Fiscal Gazette II, 1973, p. 251 and September 30, 1981, German Federal Fiscal Gazette II, 1982, p. 148). Please refer to § 68, no. 1, letter a with respect to rehabilitation centers.

15. Political objectives (influencing political opinions, promotion of political parties etc.) shall not be considered non-commercial objectives according to § 52.

    A certain degree of influence of political opinion however shall not exclude the non-commercial nature (German Federal Finance Court verdict of August 29, 1984, German Federal Fiscal Gazette II, p. 844). Based on this verdict, political activity is harmless to the public benefit if it is mandatory that the non-commercial activity is associated with the political orientation according to the individual circumstances and the immediate influence on political parties and national will power compared to the promotion of the common benefit are taking a back seat. Therefore, a corporation shall still be considered exclusively promoting its tax-privileged non-commercial objective, even if it sometimes comments on current political issues within the scope of the objective outlined in the Articles of Incorporation.

The crucial factor is that current politics are not and shall not become the focus of the corporation's activities but shall serve the mediation of the tax-privileged objectives (German Federal Finance Court verdict of November 23, 1988, German Federal Fiscal Gazette II, 1989, p. 391).

In contrast, benefit of the public shall not be present if a political objective is stipulated in the corporation's Articles of Incorporation as the sole or main objective or if the corporation is actually exclusively or mainly pursuing a political objective.

16. A corporation according to § 51 shall be considered beneficial to the public only if its activities comply with the scope of the constitutional organization. The constitutional organization shall be violated by the mere non-compliance with ordinances issued by police (German Federal Finance Court verdict of August 29, 1984, German Federal Fiscal Gazette II, 1985, p. 106). In principle, nonviolent opposition such as sit-ins against planned measures by the government shall not violate the constitutional organization (cp. resolution by the German Federal Constitution Law (BVerfG) of January 10, 1995, New Legal Weekly Journal (NJWS), p. 1141)"

3. The **provision pertaining to § 53** shall be as follows:

"In regards to § 53 – Charitable objectives:

1. The term "charitable objectives" shall include the support of persons who require help due to their emotional state. This is significant for example for the telephone counseling line.

2. It is not required that charitable activities are completely free of charge, while charitable activities may not be carried out solely for the objective of being compensated.

3. A corporation for which the objective outlined in the Articles of Incorporation is the support of needy relatives of members, shareholders, comrades or founders, shall not be considered for tax privileges. The key objective of such a corporation is not promoting charitable objectives, but the support of relatives. Therefore, its activities are not geared toward the unselfish support of persons in need as stipulated in § 53. With respect to foundations, § 58, no. 5 shall not be opposed to this. The regulation merely represents an exception of the stipulation with respect to unselfishness (§ 55), but shall not warrant its own charitable objective. With respect to the actual business management, the support of relatives in need shall generally not be harmful with

respect to the privileges. However, relatives shall not be considered a criterion for the corporation's provision of benefits.

4. Support according to § 53, no. 1 (support of persons who are dependent on the help of others due to their physical, psychological or emotional state) may be granted irrespective of the economical need for support. When assessing the need according to § 53, no. 1, it shall not depend on whether the need for support is constant or long-term. Support services such as "meals on wheels" for example shall be tax-privileged. The need for support of persons older than 75 years shall be recognized without further verification.

5. § 53, no. 2 regulates the limits of economical need for support. It stipulates that those persons may be supported whose acquisitions amount to less than four times, in case of singles or main caregivers five times the standard rate of social welfare according to § 22 of the German Federal Social Welfare Law (BSHG). Possible supplements to the standard rate for additional needs shall not be taken into consideration. Expenses for accommodation shall not be considered separately. Please refer to H 190 (tax credit for own income and acquisition) of the German Income Tax Advice (EStH) as well as R 180 e and R 190, para. 5 of the German Income Tax Guidelines (EStR) for a definition of the terms "income" and "acquisitions".

6. Acquisitions according to § 53, no. 2 shall include all other acquisitions of all members of the household intended or suitable as maintenance expenses in addition to income according to § 2, para. 1 EStG. Income not registered within the scope of the fiscal revenue assessment, i.e. non-taxable income as well as tax-free declared income (German Federal Finance Court verdict of August 2, 1974, German Federal Fiscal Gazette II, 1975, p. 139) shall be included herein.

7. In case of life annuities, the part of the pension beyond the profit share registered in § 53, no. 2, letter a shall be added to the acquisitions according to § 53, no. 2, letter b.

8. When determining the acquisitions according to § 53, no. 2, letter b, a total of € 180 shall be deducted per calendar year for simplification reasons, provided no higher expenses associated with the corresponding commercial revenue are established or accredited.

9. If a corporation provides services to persons in economic need, it shall be obligated to provide documentary proof that the amount of revenue and acquisitions as well as the assets of the persons supported are not exceeding the limits stipulated in § 53, no.2. A declaration issued by the supported

person confirming that the limits according to § 53, no. 2 have not been exceeded, shall not be sufficient by itself. A copy of the calculations of relevant revenue and acquisitions shall always be included."

4. The **provision pertaining to § 55** shall be as follows:

"In regards to § 55 – Unselfishness:

In regards to § 55, para. 1, no. 1:

1. A corporation shall be considered acting in an unselfish way if it is not pursuing objectives for its own economical benefit or for the benefits of its members. If a corporation's activities are mainly geared towards the increase of its own assets, it is not acting in an unselfish way. If a corporation is financed exclusively with loans from its founding members and this foreign capital is to be repaid including interest according to the Articles of Incorporation (German Federal Finance Court verdicts of December 13, 1978, German Federal Fiscal Gazette II, 1979, p. 482, of April 26, 1989, German Federal Fiscal Gazette II, p. 670 and of June 28, 1989, German Federal Fiscal Gazette II, 1990, p. 550), the corporation shall be considered pursuing goals mainly in its own interest.

2. If a corporation is maintaining taxable commercial business operations, both its tax-privileged as well as commercial activities shall be assessed carefully. The corporation shall not be tax-privileged if on an overall assessment the commercial activities represent its key characteristics.

3. According to § 55, para. 1, any funds of the corporation may exclusively be used for purposes stipulated in the Articles of Incorporation (for exceptions, please refer to§ 58). Likewise, the profit arising from single purpose and taxable commercial business operations (§ 64, para. 2) as well as the surplus from the asset administration may only be used for purposes stipulated in the Articles of Incorporation. This shall not exclude the creation of reserves within the commercial business operations and in the area of asset administration. The reserves shall be economically justified based on reasonable administrative assessment (according to § 14, para. 1, no. 4 KStG). A specific reason shall be required for the formation of reserves within the commercial business operations that equally justifies its creation from an objective business point of view (e.g. planned relocation, plant renovation or expansion). An almost complete allocation of the profit to the reserves within the

commercial business operations shall only be considered harmless in terms of tax-privileges, if the corporation provides proof that the commercial use of funds was crucial with respect to its existence (German Federal Finance Court verdict of July 15, 1998, German Federal Fiscal Gazette II 2002, p. 162). In the area of asset administration, reserves may only be formed outside of the regulations detailed in § 58, no.7 to carry out specific repair or maintenance work of assets according to § 21 EStG. The measures for which the reserves are being formed shall be necessary for the maintenance or restoration of the proper state of the asset and they shall be carried out within an appropriate period of time (e.g. planned renovation of a leaking roof).

4. Generally, it shall not be permitted to use non-material funds (particularly membership fees, donations, subsidies, reserves), profits from single purpose operations, returns from asset administration and the corresponding assets for taxable commercial business operations, for example to offset a loss. To establish a loss, the returns of the uniform taxable commercial business operations (§ 64, para. 2) shall be applicable. Therefore, the use of non-material funds to offset a loss of an individual commercial division shall be considered non-existent as far as the loss can be charged against profits of another taxable commercial division in the year it developed. Should the loss remain, no use of non-material funds to balance it shall be assumed, provided the profits of the uniform taxable commercial business operations of at least the same amount have been added to the non-material area during the past 6 years. In this respect, the loss compensation shall be considered as a return of previous shifting of profits prescribed by the German Public Welfare Law.

5. The loss of a taxable commercial business operation determined based on income tax principles shall be considered harmless with respect to the tax-privileges of the corporation if it developed exclusively based on the consideration of pro-rated accruals on assets used for various purposes, provided the following conditions are met:

   - the asset had been purchased or produced for the non-material area and shall be used partially or temporarily for the improved capacity utilization and fundraising with

respect to the taxable commercial business operations only. The corporation may not have purchased or produced more assets than required for the non-material activities in light of a temporary or partial use of the taxable commercial business operations.

- the corporation shall charge customary prices for the performances of its taxable commercial business operations.

- the taxable commercial business operations shall not form an own sector of a building (e.g. restaurant operations within a sports hall).

These principles shall be applicable accordingly for the consideration of other mixed expenditures (e.g. temporary use of staff of the non-material area within taxable commercial business operations) with respect to loss assessments according to the German Public Welfare Law.

6. In addition, the settlement of a loss of taxable commercial business operations by means of non-material funds shall be harmless with respect to tax-privileges, if

- the loss is due to miscalculation

- the corporation is adding funds to the non-material range of activities in the corresponding amount in which the loss has developed within 12 months after the end of the fiscal year and

- the funds added shall not be considered part of single purpose operations, the area of tax-privileged asset administration and fees or other subsidies allocated to the promotion of tax-privileged objectives of the corporation (German Federal Finance Court verdict of November 13, 1996, German Federal Fiscal Gazette II, 1998, p. 711).

Based on the above, additions to the non-material area may be part of the return of (uniform) taxable commercial business operations achieved during the year following the loss. In addition, for balancing the loss, it shall be possible to use allocations and subsidies intended here for.

However, these types of allowance shall not be considered tax-privileged donations.

7. With respect to tax-privileges, harmful use of funds for balancing the loss of taxable commercial business operations shall neither be present if the required funds are provided to the company by means of a commercial loan or if previously used non-material assets by means of a loan allocated to the operations have been returned to the non-material area of the corporation within 12 months following the end of the year when the loss developed. As a prerequisite for the innocuousness, amortization and interest payments for the loan shall be made exclusively from assets of the taxable commercial business operations.
In principle, debiting of assets of the non-material area with collaterals for a commercial loan (e.g. mortgage loans for a sports hall) shall not lead to a different assessment. The registration of a mortgage loan shall not signify the use of debited assets for the taxable commercial business operations.

8. Tax-privileged corporations maintain taxable commercial business operations on a regular basis only for the procurement of additional funds to realize tax-privileged objectives. Therefore, it shall be assumed that possible losses for companies that have been in existence for some time are based on miscalculation. For the establishment of new operations, the use of assets of the non-material area for balancing losses shall be considered harmless with respect to tax-privileges, even if initial losses were to be expected. In this case too, the corporation shall be obligated to return assets to the non-material area, which may be used in a way harmless to the public benefit usually within 3 years following the end of the year when the loss developed.

9. The regulations outlined in nos. 4 to 8 shall be applicable accordingly with respect to asset administration.

10. Members shall not be allowed to receive any allowances from corporate assets. This shall not include conveniences common within the scope of caring for members and considered appropriate according to general opinion.

11. It shall not be considered an allowance according to § 55, para. 1, no. 1, if services rendered by the corporation are rewarded by the recipient (e.g. for sales and service agreements as well as contracts for work and services) and the values of service and reward are equal according to commercial principles.

12. If assets provided to a corporation are encumbered with effective claims prior to the transfer (e.g. usufruct, mortgages or pension debts, legacies based on regulations in the testament of the benefactor), the fulfillment of which does not represent a reward for the transfer of assets according to commercial principles, the claims shall reduce the value of transferred assets at the time of transfer. From a commercial point of view, the corporation only receives the assets remaining after the fulfillment of the claims. Therefore, the fulfillment of claims from transferred assets shall not be considered an allowance according to § 55, para. 1, no. 1. This shall be equally applicable if the corporation fulfills claims from its other permissible assets including reserves according to § 58, no. 7, letter a.

13. As far as the liquid assets are not sufficient to fulfill the claims, the corporation shall use profits to do so, provided sufficient funds remain for the realization of its tax-privileged objectives. This condition shall be considered met, if no more than one third of the corporation’s revenue is used for the fulfillment of liabilities. In case of pension obligations, the one-third limit shall include not only the payments beyond the cash value, but also the complete payments. It shall be applicable to the assessment period.

14. § 58, no. 5 contains an exceptional regulation pertaining to § 55, para. 1, no. 1 regarding foundations. It shall be applicable only, if the foundation is providing services in violation of § 55, para. 1, no. 1 based on their merits, i.e. by providing voluntary allowances to the circle of persons mentioned in § 58, no. 5 or by using returns from the transfer of assets instead of the debited or otherwise permissible assets to fulfill claims asserted by this circle of persons. Contrary to other corporations, a foundation shall be allowed to use part of its income for the fulfillment of such claims based on the conditions in § 58, no. 5, even if a sufficient amount of liquid assets is available. However, the principle that the main part of the income shall remain

for the realization of tax-privileged objectives shall be applicable to foundations as well. Conclusion: foundations may use a maximum of one third of their revenue for services outlined in § 58, no. 5 and for the fulfillment of other claims based on the transfer of debited assets.

15. The provision of loans from funds intended for real-time use for tax-privileged purposes shall be considered harmless for the public benefit if the corporation uses them to realize its own tax-privileged purposes as stipulated in the Articles of Incorporation. This may be possible, for example if the corporation provides loans within the scope of its respective tax-privileged purposes associated with debtor counseling for the redemption of bank debts, loans to budding artists for the purchase of instruments or scholarships for a scientific education. The provision of loans shall be different from the commercial provision of loans in that it provides more favorable conditions compared to the common conditions of the capital market (e.g. interest-free, lower interest rates).

    The provision of loans from funds intended for real-time realization of tax-privileged purposes to other tax-privileged corporations shall be permissible within the scope of § 58, nos. 1 and 2 (indirect realization of objectives), provided the other corporation agrees to use the funds received as loans immediately within the period specified for real-time realization of tax-privileged purposes.

    Loans provided for the immediate realization of tax-privileged objectives shall be marked accordingly in the accounting system. It shall be ensured and traceable for the financial authorities that the return flow, i.e. amortization and interest payments are re-used in real-time for tax-privileged purposes.

16. The corporation shall be allowed to provide loans from assets not subject to real-time use of funds (assets including permissible allowances and reserves), according to the following conditions:

    Interest rates shall be within the range used in the capital market, unless forgoing of regular interest rates is considered a permissible allowance according to the regulations of the German Public Welfare Law and the corporation’s Articles of Incorporation (e.g. loan to another tax-

privileged membership organization or a person in need). In case of loans from assets to employees, the (partial) waiver of regular interest shall be considered part of the remuneration, provided the total amount (i.e. including interest rate advantage) is adequate and the waiver of interest is treated as part of the remuneration by the corporation as well (e.g. payments of income tax and social insurance contributions).

Measures for which reserves have been formed according to § 58, no. 6, shall not be delayed due to the provision of a loan.

17. The provision of a loan as such shall not be considered a tax-privileged purpose. Consequently, it may not be an objective listed in the Articles of Incorporation of a tax-privileged corporation. However, it shall be considered harmless to the tax privileges if the provision of interest-free loans or loans with lower interest rates is not listed as purpose but as means for the realization of the tax-privileged purpose in the corporation's Articles of Incorporation.

18. A corporation shall not be considered tax-privileged if its expenses for general administration including advertising for donations are exceeding an adequate amount (§ 55, para. 1, nos. 1 and 3). This amount shall be considered exceeded in any case a corporation which is subsidized primarily with financial donations is using them - following the construction phase - mainly to pay expenses for administration and advertising for donations instead of the realization of tax-privileged purposes stipulated in the Articles of Incorporation (German Federal Finance Court verdict of September 23, 1998, German Federal Fiscal Gazette II, 2000, p. 320). With respect to the determination of proportions, administrative expenses including advertising for donations shall be put in proportion to all collected assets (donations, membership fees, subsidies, returns from commercial business operations, etc.).

The appropriateness of administrative expenses shall be fully dependent on the circumstances of the respective case. Therefore, harmful use of assets with respect to tax privileges shall be present if the percentage of administrative expenses including advertising for donations is significantly less than 50 %.

19. During the establishment and construction phase of a corporation, the predominant use of funds for administration and advertisement for donations shall be considered harmless with respect to

the tax privileges. The duration of the establishment and construction phase during which this is possible, shall be dependent on the individual circumstances.

The time frame of 4 years for the construction phase provided in the German Federal Finance Court verdict of September 23, 1998 (German Federal Fiscal Gazette II, 2000, p. 320) in which higher pro-rated expenses for administration and advertising for donations shall be permissible, is based on the characteristics of the settled case (particularly the 2nd construction phase following denial of tax privileges). Therefore, it shall be considered the upper limit. It shall be assumed that construction phases are usually shorter.

20. Tax privileges shall be denied too, if the ratio of administrative expenses to expenses for tax-deductible purposes is indeed not objectionable, but one single administrative expense (e.g. the business manager's salary or advertising expenses for membership and donations) is inappropriate (§ 55, para. 1, no. 3).

21. In principle, expenses with respect to the business manager's activities shall be considered administrative expenses. Allocation of these expenses to tax-privileged activities shall only be possible as far as the business manager is involved in tax-deductible projects. The same shall be applicable accordingly with respect to travel expenses.

22. If a corporation is using assets to recruit new members, it shall usually not be objectionable, provided no more than 10 % of the total membership fees per year is spent. According to this regulation, members are considered persons with membership rights and obligations (members according to German Federal Law (BGB)). Expenses to recruit constant donors shall not be included in this limit.

In regards to § 55, para. 1, nos. 2 and 4:

23. The contributions in kind mentioned in § 55, para. 1, nos. 2 and 4 are contributions according to German Commercial Law for which the member was granted corporate rights. In this respect, this shall pertain to corporate entities only, but not to associations. Assets provided free of charge for which no corporate rights have been granted (items on loan, donations of goods) shall not be subject to § 55, para. 1, nos. 2 and 4. As far as capital shares and contributions in kind are excluded from the

asset formation, the shareholder shall not be entitled to donation-related preferential treatment according to § 10 b EStG (§ 9, para. 1, no. 2 KStG).

In regards to § 55, para. 1, no. 4:

24. The principle of asset formation for tax-privileged purposes shall represent a key prerequisite for the assumption of unselfishness in case of the termination of the existence of the corporation or in case the current objective ceases to exist (§ 55, para. 1, no. 4).

    This stipulation shall serve to prevent that profits that were created based on the tax privileges are subsequently used for non tax-privileged purposes. The requirements with respect to asset formation outlined in the Articles of Incorporation are regulated in § 61 and § 62.

25. A corporation shall be considered tax-privileged according to § 55, para. 1, no. 4, clause 2 only, if it is exempt of corporate income tax according to § 5, para. 1, no. 9 KStG. This can only be a corporation with unlimited liability for taxation (§ 5, para. 2, no. 2 KStG). Accordingly, the binding asset allocation to a foreign corporation with unlimited liabilities for taxation outlined in the Articles of Incorporation shall not satisfy the requirements (cp. no. 1 of § 61).

In regards to § 55, para. 1, no. 5:

26. In principle, the corporation shall use its assets in real-time for its tax-privileged purposes outlined in the Articles of Incorporation. According to this definition, use shall be defined as use of funds for the procurement or production of assets that serve the purposes detailed in the Articles of Incorporation (e.g. construction of a nursing home, purchase of sports equipment or medical appliances).

    The formation of reserves shall be permissible according to the conditions stipulated in § 58, nos. 6 and 7 only. Reserves in both the taxable commercial business operations and in the area of asset administration (cp. no. 3) shall remain unaffected. The use of funds intended for real-time tax-privileged purposes for the provision of assets to a corporation shall be considered an infringement of real-time use of funds, unless the funds will be used in real-time for purposes outlined in the Articles

of Incorporation by the receiving corporation, for example for the construction of a nursing home.

27. Real-time use of funds shall be present, if the funds are used for tax-privileged purposes outlined in the Articles of Incorporation no later than during the calendar or fiscal year following the accrual. Funds still available at the end of the calendar or fiscal year shall be allocated to the assets in the financial statement or to the corporation's asset summary or to a permissible reserve or be disclosed as funds accrued during the past year intended for use for tax-privileged purposes during the next year. As far as the funds have not been not used for tax-privileged purposes during the year of accrual, their real-time use shall be demonstrated, preferably by means of an auxiliary calculation (application of funds calculation).

28. The corporation's assets shall not be subject to real-time application of funds, even as far as it has been created by regrouping (e.g. sale of a piece of real estate that is part of the assets, including the part of the price exceeding the asset value). Moreover, a corporation may add the funds identified in § 58, nos. 11 and 12 to its assets without harmful consequences to the public benefit.

In regards to § 55, para. 2:

29. Valorizations shall remain bound for tax-privileged purposes. Upon return of the asset itself, the recipient shall balance the difference with money.

In regards to § 55, para. 3:

30. The regulation according to which asset formation shall not be extended to the member's deposited capital shares and the common value of contributions in kind provided by the members shall be applicable accordingly to foundations, i.e. the founders and their heirs (§ 55, para. 3, first half clause). It shall be permissible to exclude the founding capital and endowment contributions from the asset formation and to return them to the founder or his heirs in case the foundation ceases to exist. However, the founder shall not be entitled to donation privileges according to § 10 b EstG (§ 9,

para. 1, no. 2 KStG) for this type of donations and endowment contributions.

31. The regulation of § 55, para. 3, second half clause pertaining to foundations and corporations of the Public Law only, takes into consideration the regulations contained in the EStG stipulating that the withdrawal of an asset may be booked with the asset value, provided the asset has been supplied free of charge to corporations listed in § 6, para. 1, no. 4, clause 4 EStG. This ensures that in case of cancellation of the foundation the person providing the asset shall not be entitled to the common value of the allowance but shall only receive the amount of the original asset value. Accordingly, hidden reserves and valorizations shall remain bound to tax-privileged purposes. In case of return of the asset itself, the recipient shall balance the difference with money."

5. The **provision pertaining to § 56** shall be as follows:

"In regards to § 56 – Exclusivity:

The regulation stipulates that a corporation may pursue several tax-privileged purposes at the same time without violating the exclusivity. All realized tax-privileged purposes however shall represent objectives listed in the Articles of Incorporation. Consequently, if a corporation wants to promote tax-privileged purposes not listed in the Articles of Incorporation, an amendment to the Articles of Incorporation complying with the requirements of § 60 shall be required."

6. The **provision pertaining to § 57** shall be as follows:

"In regards to § 57 – Immediacy:

1. In paragraph 1, the regulation stipulates that the corporation shall be obligated to realize the tax-privileged purposes outlined in the Articles of Incorporation itself to ensure immediacy (for exceptions, please refer to § 58).

2. The request for immediacy shall also be considered fulfilled according to § 57, para. 1, clause 2, if the tax-privileged corporation is using an auxiliary person. It shall be imperative, that according to the circumstances, particularly the legal and actual relationships between corporation and auxiliary

person, the activities of the auxiliary person shall be considered own activities of the corporation, i.e. the auxiliary person shall be carrying out a certain order based on instructions provided by the corporation. Auxiliary persons shall be a sole proprietor, an association of individuals or a legal entity. The corporation shall be obligated to prove by means of corresponding documents that it is in fact determining the activities of the auxiliary person. The following forms of agreements shall be possible: labor agreement, contract of employment, contract for work and labor. With respect to the interior relationship, the auxiliary person shall be bound to the orders issued by the corporation, which shall in turn be obligated to prove that it is supervising the auxiliary person. The use of funds according to regulations shall be ensured.

Tax privileges of a corporation which fulfills the characteristic of immediacy via an auxiliary person only (§ 57, para. 1, clause 2), shall be granted irrespective of the fact whether the auxiliary person is treated according to Public Welfare Law. Acting as an auxiliary person according to § 57, para. 1, clause 2 shall not be considered grounds for own tax-privileged activities.

3. According to paragraph 2, a corporation consisting of a collection of tax-privileged corporations shall be considered equal to a corporation pursuing immediate tax-privileged purposes, provided that any one of the incorporated corporations fulfills all conditions required for the tax privileges. If a corporation itself is pursuing immediate tax-privileged purposes, the sole membership of a non-tax-privileged organization shall be harmless with respect to tax privileges. However, the corporation shall not be permitted to support the non-tax-privileged organization with advice and deeds (e.g. allocation of funds, legal advice)."

7. The **provision pertaining to § 58** shall be as follows:

"In regards to § 58 – Harmless activities with respect to taxation:

In regards to § 58, no. 1:

1. This exception allows so-called development and donation collecting associations to be recognized as tax-privileged corporations. The procurement of funds shall be stipulated in the Articles of Incorporation. A tax-privileged purpose for which the funds are intended shall be mentioned in the Articles of Incorporation. It shall not be necessary to list the corporations for which the funds are

collected in the Articles of Incorporation. The corporation for which the funds are procured shall be tax-privileged only, if it is a corporation with unlimited tax duties. This condition shall equally be applicable for the procurement of funds for commercial operations by a legal entity of the Public Law (§ 4 KStG). If funds are procured for corporations without unlimited tax duties, the use of funds for tax-privileged purposes shall be accounted for in an appropriate manner.

In regards to § 58, no. 2:

2. The partial (not predominant) transfer of own funds (including physical funds) shall be considered harmless. Profit distribution and other allocations of a tax-privileged corporation shall be considered harmless if the benefiting shareholders or members are exclusively tax-privileged corporations.

In regards to § 58, no. 3:

3. It shall be considered harmless with respect to taxation if work equipment (e.g. ambulance) is provided in addition to labor.

In regards to § 58, no. 4:

4. “Rooms” according to no. 4 shall include sports sites, sports facilities and outdoor swimming pools.

In regards to § 58, no. 5:

5. A foundation may use part of its income – up to a maximum of one third – to maintain the tomb of its founder and his/her closest relatives and to pay tribute to their achievements. Within this scope, it shall be permissible to provide support to the founder and his/her closest relatives.

   Income shall be defined as the sum of revenue from the various types of earnings according to § 2, para. 1, EStG, irrespective of the fact whether the income is taxable or not. Positive and negative income shall be balanced. The limits of loss settlement according to § 2, para. 3, EStG shall not be

taken into consideration. With respect to the determination of income, expenditures associated with the revenue including accruals shall be deducted from the earnings.

Please refer to no. 12 to 14 of § 55 with respect to Taxation Law-dependent expenditures for the fulfillment of liabilities caused by the transfer of debited assets.

6. According to § 15, the term close relative shall be considered more restrictive compared to the term relative. It includes:
   - spouses,
   - parents, grandparents, children, nieces and nephews (including the ones connected through adoption)
   - siblings
   - foster parents, foster children.

7. Maintenance, care of tomb and payment of tribute shall be kept within a reasonable scope. In addition to the relative limit of one third of the income, a certain absolute limit shall be established. The reasonableness of the maintenance measures shall be based on the recipient's life standard.

8. § 58, no. 5 merely contains an exception of § 55, para. 1, no. 1 with respect to foundations (cp. no. 14 of § 56), without establishing an independent tax-privileged purpose. Therefore, it shall not be possible to refer to § 58, no. 5 with respect to the tax-privileged treatment of a corporation for which the Articles of Incorporation include the purpose to support the founder's relatives in need of help.

In regards to § 58, no. 6:

9. When establishing reserves according to 58, no. 6, the provenience of the funds shall be irrelevant. Reserves may therefore include funds intended for real-time use such as donations.

10. The condition for the creation of reserves according to § 58, no. 6 shall always be that the tax-privileged purposes outlined in the Articles of Incorporation cannot be fulfilled without it. According to this regulation, the aspiration to maintain the general efficiency of the corporation shall not be sufficient grounds for building reserves harmless with respect to taxation (only free reserves according to § 58, no. 7 may be accrued, cp. nos. 13 to 17). In fact, the funds shall be collected for

certain projects – i.e. the realization of tax-privileged purposes outlined in the Articles of Incorporation – for the implementation of which a specific time frame exists. If no specific time frame exists yet, the formation of reserves shall be permissible if the implementation of the project is feasible and possible in an appropriate time frame considering the financial conditions of the tax-privileged corporation. The formation of reserves for periodically recurring expenses (e.g. wages, salaries, rent) in the amount of the required funds for an appropriate time frame shall be permissible (so-called operating cash reserves). The precautionary formation of reserves for payment of taxes outside the taxable commercial business operations shall be considered harmless as long as it remains unclear whether the corporation will be claimed against.

The formation of reserves may not be based on the fact that the deliberations on the use of funds have not yet been concluded.

11. The afore mentioned principles according to § 58, no. 6 shall be equally applicable to so-called development and donation collecting associations according to § 58, no. 1 (German Federal Finance Court verdict of September 13, 1989, German Federal Fiscal Gazette II, 1990, p. 28) provided however, that the accrual of reserves corresponds to the procurement of funds for the tax-privileged purposes of another corporation. This condition shall be considered met for example, if the corporation procuring the funds is forced to retain them for the time being because the tax-privileged measures it is intended to fund are being delayed.

12. If a tax-privileged corporation maintains taxable commercial business operations, its revenue shall be added to the reserves after taxation only.

In regards to § 58, no. 7:

13. A maximum of one third of the surplus of earnings beyond the overhead expenses resulting from asset administration shall be added to the free reserves (§ 58, no. 7, letter a) per year. Overhead expenses shall be considered advertising expenses based on their merits.

14. Moreover, a corporation shall be allowed to add a maximum of 10 % of its other funds intended for real-time use according to § 55, para. 1, no. 5 to the free reserve. According to this regulation, funds shall be defined as surplus or revenue from taxable commercial business operations and single purpose operations as well as gross income from the non-material area. When applying the regulations contained in § 64, para. 5 and 6, the actual revenue shall be included in the assessment basis for the determination of the reserves instead of the estimated or globally determined revenue.

    Losses arising from single purpose operations shall be balanced with corresponding surpluses; losses exceeding this amount shall not reduce the assessment basis. This shall be applicable correspondingly to losses arising from uniform commercial business operations. Irrespective of how it has been placed in the reserves, a surplus arising from the asset administration shall not be included in the assessment basis for the allocation of other funds intended for real-time use. A loss arising from asset administration shall not reduce the assessment basis.

15. If the maximum limit according to nos. 13 and 14 has not been reached completely, it shall not be permitted to make it up in subsequent years. The tax-privileged company shall not be obligated to dissolve the free reserves during its existence. Funds added to the reserves may be allocated to the assets as well.

16. The collection and use of funds to procure corporate rights for the maintenance of the percentage share in corporate entities shall not exclude the tax privileges (§ 58, no. 7, letter b). The provenience of the funds shall not be relevant. § 58, no. 7 letter b shall not be applicable to the initial procurement of shares in corporate entities. Free reserves according to § 58, no. 7, letter a, shall be used for this purpose among other things.

17. The maximum limit for allocation to the free reserves shall be reduced by the amount the corporation pays or provides for the procurement of corporate rights to maintain the percentage share in corporate entities. Should the amount used or provided for maintaining the amount of holdings exceed the maximum limit, an allocation to free reserves in subsequent years shall only be possible, if the total funds used for free reserves are exceeding the funds used or provided for the maintenance of the

amount of holdings. The allocation of funds to reserves according to § 58, no. 6 however, shall not affect the maximum limit for the formation of free reserves.

Example:

		Free reserves (§ 58, no. 7, letter a)	Use of funds for the maintenance of the amount of holdings (§ 58, no. 7, letter b)
	€	€	€
Year 01			
Allocation to the free reserves		25000	
Year 02			
Maximum amount for the allocation of free reserves:			
1/3 of € 15000 =	5000		
10 % of € 50000 =	5000		
Result	10000		
Use of funds for the maintenance of the share quota	25000		25000
Amount exceeding	./. 15000		
Allocation to free reserves	==========	0	
Year 03			
Maximum amount for the allocation of free reserves:			
1/3 of € 30000 =	10000		
10 % of € 100000 =	10000		
Result	20000		
Amount exceeding from year 02	./. 15000		
Remaining amount	5000		
Allocation to free reserves	=======	5000	

In regards to § 58, nos. 6 and 7:

18. The tax-privileged corporation shall be obligated to demonstrate to the German Financial Authorities whether the conditions for the formation of reserves are met. Moreover, it shall be obligated to list the reserves separately in its accounting system according to § 58, nos. 6 and 7 - if necessary by means of an auxiliary calculation - to allow verification at any time without special expenses (German Federal Finance Court verdict of December 20, 1978, German Federal Fiscal Gazette II, 1979, p. 496).

In regards to § 58, no. 8:

19. Social gatherings that are not of subordinate significance compared to the tax-privileged activities shall exclude tax privileges.

In regards to § 58, no. 10:

20. This exception allows foundations exclusively established by one or more regional corporations to realize their tax-privileged objectives indirectly through subsidies provided to commercial companies. The indirect realization of objectives shall be stipulated in the Articles of Incorporation. The use of the subsidies for tax-privileged purposes according to the Articles of Incorporation shall be proven.

In regards to § 58, no. 11:

21. With respect to the allocations mentioned in the regulation, it shall be permissible in exceptional cases to add funds intended for real-time use to the permissible assets. The list shall be considered conclusive. Non-cash benefits that are part of the assets based on their nature, shall be defined as assets, which the corporation may use in the non-material area, within the scope of asset administration or in the commercial business operations based on their nature.

    Should funds be added to the assets based on this regulation, they shall be deducted from the assessment basis concerning the allocation of other funds intended for real-time use according to § 58, no. 7, letter a.

In regards to § 58, no. 12:

22. During the year of foundation as well as during the two subsequent calendar years, foundations shall be permitted to add surplus and revenue from asset administration, single purpose operations and taxable commercial business operations completely or partially to their assets. This regulation shall not be applicable with respect to other funds, such as allocations and subsidies.

    Should both positive and negative results from asset administration, single purpose operations and uniform taxable commercial business operations exist in one calendar year; the addition to the assets shall be limited to the positive amount remaining after balancing the results.

In regards to § 58, nos. 2 to 12:

23. The exceptions mentioned in § 58, no. 2 to 9, 11 and 12 may be realized without corresponding regulations contained in the Articles of Incorporation as well. Nongratuitous activities according to § 58, nos. 3, 4 or 8 shall constitute taxable commercial business operations or asset administration (e.g. building lease). With respect to the regulations according to § 58, nos. 5, 10 and 12, the designation of the corporation as foundation shall not represent the determining factor, but its actual legal form shall. It shall be irrelevant whether the foundation has a legal capacity or not."

8. The **provision pertaining to § 59** shall be as follows:

"In regards to § 59 – Conditions with respect to tax privileges:

1. The regulation establishes among other things, that tax privileges shall be granted only if a tax-privileged purpose (§ 52 to § 54), unselfishness (§ 55) and exclusive and immediate pursuit of objectives (§ 56, § 57) by the corporation are directly stipulated in the Articles of Incorporation. An additional condition outlined in the Articles of Incorporation shall be the binding allocation of funds stipulated in § 61. Commercial business operations (§ 14, clauses 1 and 2 and § 64) which are not single purpose operations (§ 65 to § 68) as well as asset administration (§ 14, clause 3) shall not be considered a purpose outlined in the Articles of Incorporation.

2. In case of several commercial operations of a legal entity of the Public Law, every commercial operation shall require its own Articles of Incorporation.

3. No special acceptance procedures shall be provided in the taxation-related German Public Welfare Law. The Financial Authorities shall decide through an assessment procedure by means of a tax assessment notice (notice of exemption if necessary) whether a corporation is tax-privileged. For this purpose, it shall officially determine the actual and legal conditions significant in terms of liability for taxation and tax assessment. A corporation for which the legal conditions for the tax-related treatment as tax-privileged corporation are met shall therefore be treated as such, irrespective of whether a corresponding request has been submitted or not. The waiver for being treated as a tax-privileged corporation shall not affect the Taxation Law.

4. Upon request of a newly established corporation for which the conditions for tax privileges have not been established by means of a tax assessment notice, the German Finance Authorities shall temporarily declare for example based on the receipt of tax-privileged donations or a waiver of fees, that the corporation has been registered in the taxation system and that the Articles of Incorporation submitted comply with all conditions stipulated in § 59, clause 1, § 60 and § 61, which are required with respect to tax privileges according to § 5, para. 1, no 9 KStG among other things. A temporary confirmation of public benefit may be issued only upon presentation of a set of Articles of Incorporation, which comply with the regulations outlined in the German Public Welfare Law.

5. The temporary confirmation on the public benefit shall not represent an administrative act, but merely be considered information regarding the identified partial area of the conditions required for tax privileges. For example, it does not mention anything on the agreement between Articles of Incorporation and actual business management. It shall be issued for a limited time and shall be revocable at any time (German Federal Finance Court verdict of May 7, 1986, German Federal Fiscal Gazette II, p. 677). It shall not be valid for more than 18 months.

6. The provision of a temporary confirmation on the public benefit may also be considered if a corporation has been in existence for some time and its public benefit had been denied in the taxation assessment process (German Federal Finance Court verdict of September 23, 1998, German Federal Fiscal Gazette II 2000, p. 320).

6.1 A temporary confirmation on the public benefit shall be issued upon request in cases where the corporation is likely to fulfill the conditions with respect to public benefit during the complete assessment period that follows the time frame of the non-provision. Its validity should not exceed 18 months.

6.2 Moreover, the provision of a temporary confirmation on the public benefit shall be applicable as well if the corporation is not considered non-commercial according to the German Finance Authorities. In these cases, the confirmation shall be granted only if the following conditions are met:

6.2.1 The corporation shall have requested legal protection from the German Finance Authorities in charge against a decision by the German Finance Authorities in which the temporary confirmation on the public benefit was denied.

6.2.2 Sincere doubt shall exist whether the claims proceedings will confirm the denial of public benefit. This requires that the corporation conclusively demonstrates and accredits that it fulfills the conditions for the public benefit according to its Articles of Incorporation as well as with its actual business management.

6.2.3 The commercial existence of the corporation shall be endangered due to the non-provision of the temporary confirmation. The assessment shall be dependent on the circumstances of the respective case. Danger to the existence may not merely be assumed because the corporation has financed itself to a major degree from donations or tax-deductible membership fees and because a significant reduction of this revenue is expected based on the non-provision of tax privileges. For example, it shall not be considered present if the corporation disposes of sufficient utilizable assets or if it is able to raise sufficient credits. As a reason for the application, the corporation shall conclusively demonstrate and accredit the danger to its existence.

Temporary confirmation on the public benefit according to no. 6.2 shall be granted form-less if necessary. It shall put the corporation in a position to be able to campaign for donations using the indication of tax privileges. Its validity shall be limited to the time of the conclusion of the legal proceedings. It shall be

dependent on the circumstances of the respective case whether conditions such as the ones outlined in the case decided by the German Federal Finance Court (quarterly submission of compilations of income and expenditures among other things) are reasonable and necessary.

7. The temporary confirmation shall be replaced by the tax assessment notice (tax exemption notice if applicable). The tax exemption shall be reviewed at least every three years."

9. Number 5 of the **provision pertaining to § 60** shall be as follows:

"The actual business administration (cp. § 63) shall comply with the Articles of Incorporation."

10. **Appendix 2 pertaining to § 60** shall be amended as follows:

a) The remarks in brackets in letter a, 2nd dash, shall be as follows:

"(cp. no. 31, clauses 2 and 3 pertaining to § 55)"

b) In letter b, 4th dash, the words "in case of liquidation of the corporation" shall be followed by the words "or in case of discontinuation of the tax-privileged purposes".

c) The remarks in brackets in letter b, last clause shall be as follows:

"(cp. no. 23, clause 4 pertaining to § 55)."

11. Number 1 of the **provision pertaining to § 61** shall be as follows:

"1. The regulation establishes that the binding allocation of assets for tax-privileged purposes as a condition for the public benefit particularly in case of liquidation of the corporation shall clearly be determined in the Articles of Incorporation (model Articles of Incorporation, § 5). The binding allocation of funds to a not unlimited taxable foreign corporation stipulated in the Articles of Incorporation shall not satisfy the requirements (cp. no. 25 pertaining to § 55)."

12. Number 2 of the **provision pertaining to § 62** shall be as follows:

"2. The state-approved recognition of a foundation shall not justify an exemption; in fact, the foundation shall be subject to national supervision according to the Law on Foundation of the states."

13. The **provision pertaining to § 63** shall be as follows:

"In regards to § 63 – Requirements of the actual business management:

1. The corporation shall be obligated to prove by means of proper records pertaining to revenue and expenses that its actual business management complies with the required conditions. Other evidence providing information on the corporation's actual business management (e.g. protocols, activity reports) shall be submitted to the German Financial Authorities. The regulations of the German Fiscal Code on the administration of accounts and records (§§ 140 et sqq.) shall be observed. The regulations contained in the German Business Law including corresponding regulations on the administration of accounts shall be applicable only as far as they are not defined by the legal form of the corporation or by its commercial activities. An increased obligation of proof shall be applicable in case of the realization of tax-privileged purposes abroad (§ 90, para. 2).

2. The actual business management shall also include issuing tax receipts for donations. In case of violation of this obligation, e.g. for issuing receipts as favors, the tax privileges shall be denied.

3. The actual business management shall remain within the scope of the constitutional organization, because the legal system takes for granted the law-abiding behavior of all parties subject to law (cp. no. 16 pertaining to § 52). Tax evasion shall be considered a violation of the legal system resulting in the denial of tax privileges (German Federal Finance Court verdict of September 27, 2001, German Federal Fiscal Gazette II, 2002, p. 169)."

14. The **provision pertaining to § 64** shall be as follows:

“In regards to § 64 – Taxable commercial business operations:

In regards to § 64, para. 1:

1. The corresponding tax law, i.e. § 5, para. 1, no. 9 KStG, § 3, no. 6, German Law on Tax Profits (GewStG), § 12, para. 2, no. 8, clause 2 German Sales Tax Law (UStG), § 3, para. 1, no. 3b German Property Tax Law (GrStG) in conjunction with A 12, para. 4 of the German Property Tax Guidelines (GrStR) shall be applicable as law for the partial exclusion of the tax privilege, namely with respect to commercial business operations (§ 14, clauses 1 and 2).

2. Please refer to § 14 with respect to the term “commercial business operations” and to the German Federal Finance Court verdict of August 21, 1985 (German Federal Fiscal Gazette II, 1986, p. 88) with respect to “sustainability” in terms of commercial business operations according to which an activity shall be considered sustained, if it is based on repetition. The general intention to repeat an identical or similar action at corresponding occasions shall be sufficient in this respect. Repeated activities shall also be assumed if the reason to become active is based on a nonrecurring decision, while the execution requires several (individual) activities.

3. The standardized, separate notice of revenue assessment of business partnerships (German Federal Finance Court verdict of July 27, 1988, German Federal Fiscal Gazette II 1989, p. 134) shall bindingly establish whether a tax-privileged corporation involved in a business partnership or community is drawing commercial revenue, thereby operating a commercial business (§ 14, clauses 1 and 2). Whether the commercial business operations are taxable or whether they shall be considered single purpose operations (§ 65 to § 68) shall be decided based on the tax assessment of the tax-privileged corporation. The involvement of a tax-privileged corporation in a corporate entity shall be considered asset administration (§ 14, clause 3). However, it shall represent commercial business operations if it is used to exert an actual influence on the current business management of a corporate entity or if it represents a case of division of operations (cp. German Federal Finance Court verdict of June 30, 1971, German Federal Fiscal Gazette II, p. 753; H 137, para. 4 to 6 EStH). Should the corporation be involved in a corporate entity which primarily serves the asset administration, it shall not be considered commercial business operations, even if it is exerting an influence on the business management (see section 8, para. 5 German Corporate Tax Guidelines (KStR). This shall equally be

applicable for the involvement in a tax-privileged corporate entity. The principles of the division of operations shall not be applicable if both the operating as well as the owning company are tax-privileged.

4. With respect to the determination of revenue from the commercial business operations, business expenses caused by the operation shall be taken into consideration. They shall include expenses immediately allocated to the operation because without it they would not have developed or at least not to this extent.

5. With respect to costs of so-called mixed origin arising both from tax-privileged and taxable activities, the consideration of operating expenses of the taxable commercial business operations shall be eliminated if they primarily originate from the tax-privileged area. For example, if advertising measures are carried out during sports or cultural events, the events expenses shall not be considered operating expenses of the taxable commercial "marketing" business operations as far as they would have arisen without advertising (German Federal Finance Court verdict of March 27, 1991, German Federal Fiscal Gazette II, 1992, p. 103; please refer to nos. 28 et sqq. for global revenue determination with respect to marketing associated with tax-privileged activities including single purpose operations).

6. Irrespective of their primary origin, a pro-rated consideration of expenditures of mixed origin (including depreciation for wear and tear) shall be permissible as operating expenses of the taxable commercial business operations, provided objective measures are available for the division of expenditures (e.g. according to temporal points of view) with respect to the non-material area including single purpose operations and taxable commercial business operations.

   Accordingly, the pro-rated operating expense deduction of expenditures (e.g. for golf course and staff expenses) shall be applicable for the revenue determination of taxable commercial "green fee" business operations of tax-privileged golf associations – differing from the principles of the German Federal Finance Court verdict of March 27, 1991 (German Federal Fiscal Gazette II 1992, p. 103) – due to the capability of delimitation according to objective standards (e.g. ratio of golf course utilization by players not belonging to the association to golf-playing members per calendar year). In case of non-commercial music associations, a pro-rated amount of expenditures partially associated with performances by their music groups at own taxable festivals shall be deducted from the taxable

commercial business operations as business expenses. Among these expenditures are for example costs for sheet music, uniforms and amplifiers used both for free performances and single-purpose operations, i.e. performances within the scope of own taxable operations. The number of hours including rehearsals allocated to the respective areas shall serve as criterion for the division.

As far as general administrative personnel and materials costs are partially allocated to the commercial business operations according to objective criteria, it shall be permissible to deduct them from there. Normally, no objective division criteria exist with respect to costs for the construction and maintenance of club houses.

7. Sponsoring shall be considered the provision of money or monetary advantages by companies for the promotion of persons, groups and / or organizations in the areas of sports, culture, religion, science, sociology, ecology or similar significant social policies which regularly serve the pursuit of own company-related advertising purposes or the promotion of public relations. Services provided by a sponsor are usually based on an agreement between sponsor and recipient of services (sponsoring agreement) which regulates the type and extent of services between sponsor and recipient.

8. In a tax-privileged corporation, services received in association with sponsoring shall represent tax-free revenue in the non-material area, tax-free revenue from asset administration or revenue from taxable commercial business operations. Fiscal treatment of the services on the recipient’s side shall generally be independent of how the corresponding expenses are treated on the side of the sponsoring company. The general guidelines shall be applicable with respect to the delimitation.

9. Accordingly, it shall not be considered commercial business operations if the tax-privileged corporation only allows the sponsor to use his name for advertising purposes in such a way, that the sponsor himself points out the services he provides to the corporation for advertising purposes or for the cultivation of his image.

Moreover, it shall not be considered commercial business operations if the recipient of the services merely refers to the support by a sponsor for example by means of billboards, events notices, and exhibition catalogs etc. This indication can take place either using the sponsor's name, emblem or logo or without particular emphasis. Correspondingly, sponsoring revenue shall not be considered revenue arising from asset administration. Therefore, an addition to the free reserves according to § 58, no. 7, letter a shall only be possible in the amount of 10 % of the revenue, but not in the amount of a third of the resulting surplus.

10. In contrast, it shall be considered commercial business operations if the corporation is involved in the marketing activities. The commercial business operations may not be single purpose operations (§ 65 to § 68). As far as sponsoring revenue is immediately associated with commercial business operations taxable for other reasons, it shall be added to these.

In regards to § 64, para. 2:

11. The regulation that several taxable commercial business operations shall be treated as one operation with respect to tax-privileged corporations shall be equally applicable for the determination of the corporation's taxable revenue and for the assessment of the obligation to administrate the accounts according to § 141, para. 1. It shall be dependent on the values (revenue, surplus) of the overall operations to determine whether the limit for the obligation to administrate the accounts has been exceeded.

12. § 55, para. 1, no. 1, clause 2 and no. 3 shall be applicable with respect to taxable commercial business operations as well. This requires, among other things, that losses and reductions of profit within the individual taxable commercial business operations may not have developed due to donations to members or due to disproportionately high allowances.

13. In a corporation consisting of several taxable commercial business operations, the question of whether losses harmful to the public benefit are present, shall not be answered by means of the result of the individual taxable commercial business operations, but by means of the summarized result of all taxable commercial business operations. Based on this stipulation, the public benefit of a

corporation shall be considered endangered if the total taxable commercial business operations are generating losses (cp. nos. 4 et sqq. pertaining to § 55).

With respect to the cases outlined in § 64, para. 5 and 6, not the estimated or globally determined revenues, but the resulting profit according to the general regulations shall be considered (cp. nos. 4 to 6).

In regards to § 64, para. 3:

14. The amount of revenue from taxable commercial business operations shall be established according to the principles of fiscal revenue assessment. With respect to tax-privileged corporations where the revenue shall be determined according to § 4, para. 1 or § 5 EStG, the accrual of funds according to § 11 EStG shall be irrelevant, i.e. receivables payments shall be recorded as revenue as well. With respect to other tax-privileged corporations, revenue accrued during the calendar year (§ 11 EStG) shall be applicable. It shall be reviewed every year separately whether the revenue is exceeding the taxation limits. With respect to the taxation limits (cp. no. 16), non service-related revenue shall not be added to the relevant revenue.

15. Revenue according to § 64, para. 3 shall include service-related revenue including sales taxes from current operations such as revenue from selling food and drinks as well as received payments of deposits.

16. The following examples shall not be included in the service-related revenue according to no. 15:

a) revenue from sales of fixed assets resources of the taxable commercial business operations;
b) allowances for both operating expenses and for the procurement or production of assets of the taxable commercial business operations;
c) investment allowances;
d) accrual of loans;
e) withdrawals according to § 4, para. 1 EStG;
f) liquidation of reserves;
g) reimbursed operating expenditures, e.g. business or sales taxes;
h) insurance services with the exception of the compensation for service-related revenue.

17. If a tax-privileged corporation is participating in a business partnership or community, the pro-rated (gross) revenue from the participation, but not the share of the revenue, shall be relevant with respect to the assessment whether the taxation limit has been exceeded. If a tax-privileged corporation is participating in a corporate entity, payments according to § 8 b, para. 1 KStG as well as revenue from sales of shares according to § 8 b, para. 2 KStG shall be recorded as revenue according to § 64, para. 3, provided the participation represents taxable commercial business operations (cp. no. 3) or is sustained by taxable commercial business operations.

18. For the assessment of whether the taxation limits according to § 64, para. 3 have been exceeded, the actual revenue shall be considered in the cases of § 64, para. 5 and 6.

19. Revenue from sports events not considered single purpose operations according to § 67 a, para. 1, clause 1 or – in case of an option – para. 3, shall be considered part of the revenue according to § 64, para. 3.

Example:

A sports club that waived the application of § 67a, para. 1, clause 1 (limit of single-purpose operations), realized the following revenue from commercial business operations during year 01:

Sports events without participation of paid athletes:	€ 35000
Sports events with the participation of athletes from the club:	€ 20000
Sales of food and drinks:	€ 5000

Revenue from commercial business operations not considered single purpose operations amounts to € 25000 (€ 20000 + € 5000). The taxation limit of € 30678 has not been exceeded.

20. Commercial activities shall not lose its character of taxable commercial business operations due to the shortfall of the taxation limit. This means that no start of a partial tax exemption according to § 13, para. 5 KStG shall be considered present and therefore no final taxation shall be carried out

if corporate and business taxes are no longer imposed based on § 64, para. 3.

21. With respect to corporations for which the calendar year differs from the fiscal year, the revenue realized during the fiscal year shall be relevant for the determination of whether the taxation limit has been exceeded.

22. The general principle of the German Public Welfare Law stating that funds bindingly allocated to tax-privileged purposes shall not be used for balancing losses from taxable commercial business operations, shall not be cancelled by § 64, para. 3. In view of this, it shall not be necessary to review the question of application of funds in case of shortfall of the taxation limit, if an estimated review of the records indicates that no losses have developed within the taxable commercial business operations (§ 64, para. 2).

23. Losses and profits from years in which the relevant revenue did not exceed the taxation limit shall not be included in the loss deduction (§ 10 d EStG). Accordingly, loss carry backs and carry forwards can only be accrued in those years in which the revenue is exceeding the taxation limit. The loss shall not be used for years in which the revenue is not exceeding the taxation limit of € 30678.

In regards to § 64, para. 4:

24. § 64, para. 4 shall not be applicable to regional divisions (country, district and community associations) of tax-privileged corporations.

In regards to § 64, para. 5:

25. § 64, para. 5 shall be applicable to the collection of recycled goods (collection and use of rags, paper, scrap metal). The regulation shall not be applicable for the retail sale of used goods (trade of second-hand goods). Consequently, bazaars and similar establishments shall not be privileged.

26. § 64, para. 5 shall be applicable only upon request of the corporation (electoral law).

27. With respect to the utilization of recycled paper, the industry-standard net profit shall be determined at 5 % and at 20 % of the revenue with respect to the utilization of other recycled goods.

In regards to § 64, para. 6:

28. With respect to the above mentioned taxable commercial business operations, a profit of 15 % of the revenue shall be assumed for the taxation upon request of the corporation. The request shall be applicable to all similar activities within the respective assessment period. It shall not unfold a binding effect with respect to subsequent assessment periods.

29. According to § 64, para. 6, no. 1, the profit arising from advertising activities shall be determined globally, provided these activities are taking place in association with tax-privileged activities including single purpose operations. The following are examples of such advertising activities: advertisements on jerseys or along the sideboards during sports events which are considered single purpose operations, or active advertising in programs or billboards on the occasion of cultural events. The same shall be applicable to sponsoring activities according to no. 10.

    The previous regulation according to which it was possible to charge global operating expenses of 25 % of the advertising revenue with respect to advertising activities during sports or cultural events shall no longer be applicable as of January 1, 2000.

30. As far as advertising revenue is not accrued in connection with non-material tax-privileged activities or single purpose operations, such as advertising activities during a club festival or during sports events which are considered taxable commercial business operations due to the exceedance of the limit of the single purpose operations according to § 67a, para. 1 or due to the utilization of paid athletes, § 64, para. 6 shall not be applicable.

31. According to § 64, para. 6, no. 2 it shall be possible as well to establish the profit arising from the totalisator operation by horse racing associations at 15 % of the revenue. The relevant revenue shall be determined as follows:

    Revenue from betting
    minus race betting tax (totalisator tax)
    minus payments to the wageres.

On § 64, para. 5 and 6:

32. If no request for estimation of the surplus or global determination of profit is made in the cases of § 64, para. 5 or 6, the profit shall be determined according to the general rules by means of comparison of operating revenue and operating expenses (cp. nos. 4 to 6).

33. If the surplus is estimated according to § 64, para. 5 or globally determined according to § 64, para. 6, the corporation's actual expenditures associated with it shall be considered compensated; it shall not be possible to compensate them additionally.

34. If the surplus is estimated according to § 64, para. 5 or globally determined according to § 64, para. 6, the corporation shall be obligated to separately record revenue and expenses associated with this revenue. The exact amount of revenue shall be required for the determination of profits according to § 64, para. 5 or 6. Expenses associated with these taxable commercial business operations shall not reduce the result of the other taxable commercial business operations.

35. Sales tax contained in the gross revenue if applicable shall not be considered part of the relevant revenue according to § 64, para. 5 and 6."

15. The **provision pertaining to § 65** shall be as follows:

"In regards to § 65 – Single purpose operations:

1. Single purpose operations shall be considered commercial business operations according to § 14. However, from a fiscal point of view, commercial business operations shall be assigned to the corporation's tax-privileged area under certain circumstances.

2. Single purpose operations shall serve the actual and immediate realization of objectives stipulated by the Articles of Incorporation of the corporation operating the single purpose operations. The pursuit of objectives not stipulated in the Articles of Incorporation of the corporation supporting the single purpose operations shall not be sufficient. Accordingly, it shall not suffice if it serves the indirect realization of privileged purposes only, e.g. through payments of proceeds (German Federal Finance Court verdict of August 21, 1985, German Federal Fiscal Gazette II, 1986, p. 88). Consequently, single purpose operations shall serve the tax- privileged purposes in their overall direction by means

of activities they have been based on and not merely based on achieved revenue (German Federal Finance Court verdict of April 26, 1995, German Federal Fiscal Gazette II, p. 767).

3. An additional condition of single purpose operations is that they shall serve to achieve the corporation's objectives. The corporation shall require the single purpose operations necessarily and directly for the realization of objectives outlined in the Articles of Incorporation.

4. Competition between single purpose operations and non-privileged operations of identical or similar kind shall be limited to the extent necessary for the fulfillment of the tax-privileged purposes. Actual, tangible competition with taxable operations of identical or similar kind shall not be required (German Federal Finance Court verdict of October 27, 1993, German Federal Fiscal Gazette II, 1994, p. 573). Therefore – contrary to the German Federal Finance Court verdict of March 30, 2000 (German Federal Fiscal Gazette II, p. 705) – single purpose operations shall not be considered existing if the competition with a taxable company would merely be possible, irrespective of the actual local competition situation. In contrast, unlimited competition between single purpose operations serving the same tax-privileged purpose and realizing it in identical or similar form shall be considered harmless."

16. The **provision pertaining to § 66** shall be as follows:

"In regards to § 66 – Welfare work:

1. The provision contains a special regulation with respect to commercial business operations involved in welfare work.

2. Welfare work shall not be carried out for the sake of income. Accordingly, no limitation compared to the conditions with respect to selflessness shall be provided as it is established in § 55.

3. The activities shall be geared towards the care of persons in need and at risk. Persons in need or at risk are defined as persons who fulfill one or both conditions mentioned in § 53, nos. 1 and 2. It shall not be required that all activities are geared towards the support of persons in need or at risk. It shall suffice, if two thirds of services are provided to an establishment serving persons in need or at risk.

The ratio between persons in need and at risk and other supported persons shall not be relevant.

4. Domestic care services provided by a tax-privileged corporation within the scope of the seventh or eleventh book of the German Social Code, the German Federal Welfare Law or the German Federal Benefits Act shall regularly constitute an establishment of welfare work.

5. The provision of food and drinks to students in cafeterias of student homes shall be considered a single purpose operation. However, sales of alcoholic beverages, tobacco and other commodities shall not amount to more than 5 % of the total turnover. Similar conditions shall be applicable for the basic supply with food and drinks of students in schools.

6. The transport of sick persons who require or may require professional care or the utilization of the special equipment available in patient transport ambulances or ambulances shall be considered a single purpose operation. In contrast, the pure transport of persons for who the physician has prescribed a patient transport (transport in car, taxi or rental car) shall not fulfill the criteria according to § 66, para. 2.

7. Social events shall be treated as taxable commercial business operations. Events where sociability plays a role, but which are carried out primarily based on the objective to care for handicapped persons shall be considered a single purpose operation based on the conditions outlined in § 65, § 66.

8. § 68 provides a list of examples relating to welfare work.”

17. The **provision pertaining to § 67a** shall be as follows:

“In regards to § 67a – Sport events:

General

1. Sports events organized by a sports club shall generally be considered single purpose operations, provided the revenue including sales taxes from all sports events organized by the club is not exceeding the single purpose operations limit of € 30678 per year (§ 67a, para. 1, clause 1). If the revenue is exceeding the single purpose operations limit of € 30678, it shall generally be considered taxable commercial business operations.

   The club can opt to wave the application of the single purpose operations limit (§ 67a, para. 2). The fiscal treatment of its athletic events shall then be carried out according to § 67a, para. 3.

2. All non-commercial corporations for which the promotion of sports is stipulated in the Articles of Incorporation (§ 52, para. 2, no. 2) shall be considered sports clubs according to the regulations; the actual business management shall comply with the purpose outlined in the Articles of Incorporation (§ 59). Consequently, § 67a shall be applicable to sports associations as well. It shall equally be applicable for sports associations which organize their soccer events with the utilization of licensed players according to the ‘player’s license system’ of “the Soccer League Association e.V. – League Association”.

3. Athletic events shall be considered organizational measures organized by a sports club providing active athletes (not necessarily members of the club) with the opportunity, to participate in athletic activities (German Federal Finance Court verdict of July 25, 1996, German Federal Fiscal Gazette II 1997, p. 154). If the sports club provides an athletic presentation to another person or corporation in compliance with the purposes outlined in the Articles of Incorporation within the scope of an event, it shall be considered an athletic event as well. The event, during which the athletic presentation is taking place, shall not necessarily be a tax-privileged event (German Federal Finance Court verdict of May 4, 1994, German Federal Fiscal Gazette II, p. 886).

4. Sports trips shall be considered athletic events if the athletic activity represents a significant and necessary part of the trip (e.g. travel to the site of competition). Trips with the main purpose of

recreation (tourist travel) however, shall not be considered athletic events, even if athletic activities constitute a part of the trip.

5. Athletic training and further education shall be considered typical activities of a sports club. Accordingly, sports courses and studies for both members and non-members of sports clubs (sports education) shall be considered “athletic events”. It shall be harmless with respect to the single purpose operations that the club is competing with commercial physical education instructors (e.g. horseback riding, ski, tennis and swimming instructors) by offering athletic training, because § 67a shall override § 65 as the more specific regulation. The assessment of the sports instruction shall not be dependent on whether it is financed by means of contributions, special contributions or special remuneration.

6. Sales of food and drinks – including sales to competitors, umpires, referees, first aid workers etc. – as well as advertising shall not be considered part of the athletic events. These activities shall be considered separate taxable commercial business operations. According to § 64, para. 2 however, it shall be possible to balance surpluses from these operations with losses from athletic events which are considered taxable commercial business operations.

7. If a uniform admission price that includes service is charged for an athletic event, which is considered a single purpose operation, it shall be divided into one part revenue for the admission to the athletic event and one part revenue for services – if necessary by means of an estimate.

8. Please refer to nos. 28 to 35 of § 64 concerning the admissibility of a global profit assessment with respect to the taxable “advertising” commercial business operation.

9. Nongratuitous transfer of the right to use of advertising space within sports facilities owned by the club or leased (e.g. on the sideboards) as well as loudspeaker systems provided to advertising companies shall be considered tax-free asset administration (§ 14, clause 3), provided that the leaseholder (advertising company) is left with an adequate profit. It shall be irrelevant whether the athletic events during which the advertising company is utilizing its rights is considered single purpose or commercial business operations.

Nongratuitous transfer of the right to use of advertising space on sports clothing (e.g. jerseys, running shoes, helmets) as well as sports equipment shall always be treated as taxable commercial business operations.

10. Maintenance of club houses, cafeterias or club-run restaurants shall not be considered an “athletic event”, even if these establishments are providing their services to members only.

11. With respect to rental of sports facilities including operating equipment for athletic purposes, it shall be differentiated between long-term and short-term rental (e.g. hourly rental, even if the hours are determined in advance for a prolonged period of time).

12. Long-term rental shall be allocated to the area of tax-free asset administration; consequently it shall not be treated as an “athletic event” according to § 67a.

    Short-term rental of sports facilities and operating equipment merely creates the conditions for carrying out athletic events. As such, it shall not be considered an “athletic event”, but commercial business operations of its own kind. These shall be considered single purpose operations according to § 65, provided the lessees are members of the club. With respect to short-term lease to non-members however, the club is competing to a larger extent with privileged lessors than is avoidable based on the tax-privileged objectives (§ 65, no.3). Accordingly, this type of lease shall be considered taxable commercial business operations.

13. If movable objects such as tennis rackets and golf clubs are provided in association with the lease of sports facilities and operating equipment as well, the nongratuitous provision of these objects shall represent auxiliary business operations which share the fiscal fate of the main service (German Federal Finance Court verdict of March 30, 200, German Federal Fiscal Gazette II, p. 705). In case of the sole provision of sports equipment, e.g. an airplane, the single purpose operations characteristics shall be determined according to whether the sports equipment is provided to members or non-members of the club.

14. § 3, no. 26 EStG shall not be applicable for income provided to part-time training mangers etc. for their activities within the taxable “athletic events” commercial operation.

15. If athletic events which were considered single purpose operations during the previous assessment period become taxable commercial operations or vice versa, § 13, para. 5 KStG shall be applicable.

In regards to § 67a, para. 1

16. With respect to the single purpose operations limit of € 30678, all revenue of events taking place during the respective year which are considered athletic events according to nos. 1 to 15, shall be added. This revenue particularly includes admission and participation fees, payments for the transmission of athletic events via radio and television as well as training and transfer fees. Please refer to nos. 15 and 16 of § 64 with respect to the definition of revenue.

17. Payment of athletes within a single purpose operation according to § 67a, para. 1, clause 1 shall be permitted (§ 58, no. 9). The provenience of the funds for payment of the athletes shall be irrelevant.

18. Payment of transfer fees within a single purpose operation according to § 67a, para. 1, clause 1 shall be permitted without limitation.

19. With respect to players associations of sports clubs, it shall be decided at the time of the corporate tax assessment of the sports clubs involved whether they are considered single purpose operations or taxable commercial business operations – irrespective of the qualification of the revenue in the association's assessment notice -. With respect to the assessment of whether the single purpose operations limit according to § 67a, para. 1, clause 1 has been exceeded, the amount of the pro-rated revenue (as opposed to the pro-rated profit) shall be relevant.

In regards to § 67a, para. 2

20. It shall be possible to waive the application of § 67a, para. 1, clause 1, even if the revenue from athletic events is not exceeding the single purpose operations limit of € 30678.

21. The option according to § 67a, para. 2 shall be revocable up to the incontestability of the corporate tax assessment notice. The regulations contained in section 247, para. 2 and 6 of the German Sales Tax Guidelines (UStR) 2000 shall be applicable accordingly. Revocation shall be possible effective

the beginning of a calendar or fiscal year only – even after the termination of the period of commitment.

In regards to § 67a, para. 3

22. If a sports club is waiving the application of the single operations limit (§ 67a, para. 1, clause 1) according to § 67a, para. 2, athletic events shall be considered single purpose operations, provided none of the club's paid athletes is participating and the club is not paying athletes outside the club by itself or in association with a third party. The amount of revenue or surplus of these athletic events shall not be relevant with respect to the application of § 67a, para. 3. Athletic events in which one or more paid athletes according to § 67a, para. 3, clause 1, no. 1 or 2 are participating shall be considered taxable commercial business operations. According to the law, it shall be irrelevant whether a club has considered an event as taxable commercial business operations or whether - for whatever reasons - single purpose operations were initially assumed by mistake.

23. Events according to § 67a, para. 3 shall be considered individual competitions for all types of sports which are carried out in close chronological and local interrelation. Consequently, in case of team sports, every individual championship game shall be considered an athletic event as opposed to the complete championship round. With respect to tournaments, it shall be dependent on the individual case whether the complete tournament or individual games shall be considered an athletic event. It shall be of particular significance in this respect whether separate admission is charged for every game and whether revenue and expenditures are determined separately for every game.

24. Based on the application of § 67a, para. 3, sports courses and instruction for both members and non-members of sports clubs shall be treated as single purpose operations, provided no athlete considered a paid athlete according to § 67a, para. 3 based on his activities is participating as a trainee. The payment of trainers shall not affect the single purpose operations characteristics.

25. If an athlete is considered a paid athlete during a calendar year, all athletic events in which the athlete participates held during this calendar year shall be considered taxable commercial business operations. If the fiscal year differs from the calendar year, the fiscal year shall be applicable.

It shall be irrelevant whether the athlete fulfills the characteristics of a paid athlete only after the athletic event has been held. Participation of unpaid athletes in an event in which paid athletes are participating as well shall not have an influence on the treatment of the event as taxable commercial business operations.

26. The full extent of compensations or other advantages shall be provided from taxable commercial business operations or third parties (§ 67a, para. 3, clause 3). Division of the compensation shall not be permitted. Consequently, it shall not be permitted from a fiscal point of view, to treat compensations to paid athletes up to € 358 per month as expenses of the tax-privileged area, while only the compensation exceeding € 358 is treated as a taxable “athletic events” commercial business operation.

27. In addition, any other expenses shall be paid either from the taxable “athletic events” business operation, other taxable commercial business operations or by third parties. This shall be equally applicable if both paid and unpaid athletes are participating in the event. Consequently, expenses of the taxable “athletic events” commercial business operation shall not be divided based on whether they are used for paid or non-paid athletes. Possible lump-sum compensation to unpaid athletes for the participation in an event with paid athletes shall be treated as an expense of this event. For simplification reasons however, it shall not be objectionable if the lump-sum compensation (cp. no. 31) to unpaid athletes is not treated as operating expense of the taxable commercial business operations, but is paid from funds of the non-material area.

28. Training expenses (e.g. compensation to trainers) concerning both unpaid and paid athletes shall be divided according to the possibilities for division in the individual case. Some examples are: the respective time involved or – in case of simultaneous training of unpaid and paid athletes, the number of trained athletes or teams. As far as the division is not possible otherwise, the costs applicable to the training of both unpaid and paid athletes shall be determined by means of an estimate.

29. If both paid and unpaid athletes of a team are training simultaneously for an event considered a taxable commercial business operation, the total training costs shall be considered expenses of the taxable commercial business operation. The simplification regulation contained in no. 27 shall be applicable accordingly.

30. Not only (active) members of the club, but all athletes performing for the club shall be considered athletes of the club according to § 67a, para. 3, clause 1, no. 1, i.e. any athlete participating in one of the club's teams. No. 37 shall be applicable with respect to associations.

31. Monthly payments to an athlete of up to € 358 based on an annual average shall be considered compensation without requiring individual proof with respect to the assessment of the single purpose operations characteristics of the athletic events – but not with respect to the taxation of the athlete –. If the expenditures are higher, the total expenses shall be accounted for individually. They shall include expenditures of personal or factual kind, which shall be considered advertising costs or operations expenses, based on their merits.

    The regulation shall be applicable to any type of sports.

32. The regulation on the harmlessness of lump-sum compensations of up to € 358 per month based on an annual average shall be applicable to the club's athletes only, but not to payments to other athletes. Accordingly, it shall not be possible to pay an amount of up to € 4296 as lump-sum compensation to an athlete who participates in one of the club's annual events only. In fact, every payment to an athlete according to § 67a, para. 3, clause 1, no. 2 exceeding the compensation of an actual expense shall result in the loss of the event's single purpose operations characteristics.

33. Allocations provided by the German Sports Aid Foundation, Frankfurt and comparable establishments providing sports aid to top athletes shall normally be considered a substitution of special expenses related to the activities of the top athlete. Therefore, they shall not be included in the permissible lump-sum compensation of € 358 per month based on an annual average. If athletes provide actual proof of expenditures, it shall include any expenses offset by allocations provided by the German Sports Aid Foundation and comparable establishments as well.

34. With respect to the assessment of single purpose operations characteristics of a sports event according to § 67a, para. 3, it shall not be necessary to distinguish whether compensations or other advantages to an athlete are provided for the participation as such or for the successful participation. It shall be relevant only that the athlete gains advantages, which he would not have received without his participation. Accordingly, payment of a reward exceeding the compensation shall constitute a taxable commercial business operation.

35. With respect to a so-called game trainer, it shall be distinguished whether he receives compensation for the training activities or for performing the sport. If he is paid for the training activities only without receiving more than the substitution of expenses for the activities as a player (cp. no. 31), his participation in athletic events shall be considered harmless with respect to the single purpose operations characteristics.

36. Unpaid athletes shall not become paid athletes due to their participation in events alongside paid athletes. The training of these athletes shall still be considered a tax-privileged activity of a sports club, unless they are being trained together with paid athletes for an event that is considered a taxable commercial business operation (cp. no. 29).

37. Athletes who belong to a certain sports club and who are not direct members of a sports association, shall be considered other athletes according to § 67a, para. 3, clause 1, no. 2 with respect to the assessment of the single purpose operations characteristics of events organized by the club. In these cases, the club's payments to athletes in connection with athletic events organized by the associations (e.g. competitions between countries) shall be treated as "payments by third parties in connection with the club" (i.e. association).

38. Transfer payments paid to a tax-privileged sports club for the release of athletes shall not affect its public benefit. The payments received shall count as revenue from the taxable "athletic events" commercial business operation, provided the athlete changing the club has been a paid athlete according to § 67a, para. 3, clause 1, no. 1 during the past 12 months prior to his transfer. Otherwise they shall be considered part of the revenue from the "athletic events" single purpose operation.

39. Payments from one tax-privileged sports club to another (releasing) club for the transfer of an athlete shall be considered harmless for the public benefit of the paying club, provided they are paid from

taxable commercial business operations for the transfer of an athlete who shall be considered a paid athlete by the receiving club according to § 67a, para. 3, clause 1, no.1 during the first twelve months following the change of clubs. Payments for an athlete who shall not be considered a paid athlete by the receiving club, shall be considered harmless to the public benefit of the paying club according to § 67a, para. 3 only, if the athlete changing the club is compensated solely for the training costs. This type of reimbursement of up to € 2557 per athlete shall be possible without any problems. All training expenses shall be accounted for separately with respect to higher reimbursement expenses. The payments shall not reduce the surplus of the taxable "athletic events" commercial business operations.

Please refer to nos. 16 and 18 with respect to the fiscal treatment of transfer payments based on the application of the single purpose operations limit according to § 67a, para. 1, clause 1.

18. The **provision pertaining to § 68** shall be as follows:

"In regards to § 68 – Individual single purpose operations:

General

1. § 68 contains a legal catalog of individual single purpose operations and shall be overriding the regulation of § 65 as a special standard. The examples of operations which shall be considered single purpose operations according to type provides important indications for the interpretation of the terms single purpose operation (§ 65) in general and establishments of welfare work (§ 66) in particular.

In regards to § 68, no. 1:

2. Please refer to § 1 of the German Nursing Home Law for a definition of the terms "retirement homes, retirement residences and nursing homes". A cafeteria accessible to the public shall be considered a taxable commercial business operation. As far as a tax-privileged corporation provides services within the scope of domestic care, it shall usually be considered a single purpose operation according to § 66 (see no. 4 of § 66).

3. With respect to kindergarten, children's, youth and student homes as well as school cottages and youth hostels, the persons supported shall not be required to fulfill the conditions according to § 53. Youth hostels shall not lose their single purpose operations characteristics, if the number of adults traveling alone is not exceeding 10 % of all accommodations outside its purpose stipulated in the Articles of Incorporation (German Federal Finance Court verdict of January 18, 1995, German Federal Fiscal Gazette II, p. 446).

In regards to § 68, no. 2:

4. Particularly so-called self-supply establishments which are part of a tax-privileged corporation shall be supported. With respect to deliveries and services to outsiders, the corporation is entering a performance relationship with third parties. As long as the extent of business with third parties including service recipients which are themselves considered a tax-privileged corporation according to § 68, no. 2 (German Federal Finance Court verdict of October 18, 1990, German Federal Fiscal Gazette II, 1991, p. 157) is not exceeding 20 % of the total deliveries and services of the privileged corporation, the single purpose operations characteristics shall remain intact.

In regards to § 68, no. 3:

5. Please refer to § 136 of the German Social Code – book nine – (SGB IX) for a definition of the term "sheltered workshop". It is an establishment intended for the rehabilitation of handicapped persons. Shops or outlets run by sheltered workshops shall be treated as single purpose operations, provided the products sold have been produced by the members of the sheltered workshop. If other goods bought by them are sold which have not been manufactured by other sheltered workshops, it shall be considered a separate commercial business operation.

6. The cafeterias operated by the sponsors of the sheltered workshops shall be considered single purpose operations as well, because the particular situation of handicapped persons makes care necessary even during meals.

7. Occupational and work therapy establishments which serve the rehabilitation of handicapped persons are special facilities where handicapped persons are treated based on a physician's recommendations.

While the objective of occupational therapy is the re-establishment of the basic physical or psychological functions for rehabilitation, work therapy is intended to train and promote the special skills required for participating in the working world. Both occupational and work therapy are characterized by the medical treatment purpose and shall be carried out regularly outside an occupational relationship to the sponsor of the therapeutic facility. Whether a corresponding facility is available shall be determined based on negotiations regarding type and extent of treatment and rehabilitation between the facility's sponsor and the funding agency.

In regards to § 68, no. 4:

8. Privileged facilities shall primarily be considered workshops for the care of blind and physically handicapped persons.

In regards to § 68, no. 6:

9. Lotteries and draws shall be considered single purpose operations, provided they are approved by the corresponding authorities or they are considered globally approved based on the administrative order contained in the country's legal provisions due to the minor incidence of raffle or lottery events. Both factual conditions and responsibility for approval shall be based on the lottery-related laws of the respective country. The wording of the law does not clarify to which extent such lotteries may take place. Because the particular limitation is missing, extensive activities shall remain harmless as long as the general limitations according to the law are not exceeded and the corporation is not losing its characteristics as privileged facility due to the extent of the lotteries.

10. With respect to the determination of the net revenue from lotteries or draws, only those expenses directly associated with them may be offset. If a tax-privileged corporation is organizing a lottery, which cannot be approved according to the racing, betting and lottery law, such as for example a tombola on the occasion of a social event, it shall not be considered a single purpose operation according to § 68, no. 6.

In regards to § 68, no. 7:

11. Due to the extent of the scope encompassing the promotion of the arts and culture, the list of cultural facilities contained in the law shall not be considered conclusive.

12. Cultural facilities and events according to § 68, no. 7 shall be present if the promotion of culture is included in the objectives of the Articles of Incorporation. They shall always be treated as single purpose operations. The German Federal Finance Court verdict of May 4, 1994 (German Federal Fiscal Gazette II, p. 886) on athletic performances of a sports club (cp. no. 3 of § 67a) shall be applicable accordingly for cultural performances. Consequently, it shall be considered a cultural event of the corporation even if the corporation presents a cultural show within the scope of an event not organized by the corporation itself and not considered a cultural event according to § 68, no. 7. For example, if a tax-privileged music club, which serves the promotion of folkloristic music, is performing a nongratuitous folkloristic concert in the tent of a brewery, the performance by the music club shall be considered a cultural event, which is part of the single purpose operation.

13. The sale of food and drinks as well as marketing activities during cultural events shall not be considered part of the single purpose operation. These activities shall be considered separate commercial business operations. If a uniform admission fee is paid for visiting a cultural event including service, it shall be divided into a part of revenue each for the visit of the event (single purpose operation) and for the services (commercial business operation), if necessary by means of an estimate.

In regards to § 68, no. 9:

14. Please refer to the letter from the German Federal Ministry of Finance (BMF) dated September 22, 1999 (German Federal Fiscal Gazette I, p. 944).”