



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.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

Articles 51-68 of the German Tax Code on Tax-privileged purposes (Regulation on Taxes)

AO 1977 § 51 General

If the law guarantees a tax reduction because a corporate body carries out exclusively and directly performs activities that are for the common welfare, charitable, or church-related (tax-advantaged activities), the following regulations apply: “Corporate bodies” are understood to include corporations, organizations of persons, and estates in the sense of the corporate tax law. Functional sub-groups (departments) of corporate bodies are not considered to be independently subject to taxation.

AO 1977 § 52 Goals for the Public Welfare

A corporate body pursues goals for the Public Welfare if its activity is directed to furthering public welfare in the material, intellectual, or moral spheres without personal profit. Furthering the public welfare does not occur if the circle of persons who benefit from the activity is a completely closed circle, as, for example, by belonging to a family or to the workforce of a company, or, as the result of its defined limitation according to geographical or occupational markers, it can permanently remain only small. Furthering the public welfare does not automatically result if a corporate body supplies its resources to a corporation under public law.

(2) In particular the following are to be recognized as furthering public welfare under the conditions of Paragraph 1:

1. the furthering of science and research; education and training; art and culture; religion; understanding among peoples; development aid; protection of the environment, landscape, and monuments; honoring of one's country;
2. the furthering of aid for youth, aid for the elderly, public health, general welfare, and sport. Chess qualifies as a sport.
3. the general furthering of democratic political life in the applicable area of this law. This does not include attempts to pursue only specific political interests of specific citizens or attempts relating to the local political arena only.
4. the furthering of animal husbandry, development of plant life, home gardening, traditional customs including Carnival, Fastnacht, and Fasching, the care of soldiers and reservists, amateur broadcasting, model airplane flying, and canine sports.

AO 1977 § 53 Charitable Purposes

A corporate body pursues the general good if its activity is directed toward aiding persons without personal profit, who

1. as a result of their physical, mental, or spiritual condition require the aid of others or
2. whose income does not exceed four times the standard rate for social welfare in the sense of § 22 of the national law on social welfare; in the case of those living alone or of heads of household the rate is five times the standard rate rather than four times. This does not apply to persons whose wealth suffices for sustained improvement of their maintenance and about whom it may be assumed that they will use that wealth for this purpose. The income or the wealth may exceed the limits

named here for persons whose economic situation for special reasons has become a case of need. Income in the sense of this regulation includes

- a) Income in the sense of § 2 Paragraph 1 of the income tax law and
- b) other income designated for or appropriate to the financing of one's maintenance that is possessed by those living alone or as heads of household and the other household members. Not to be counted as income are services from a Public Welfare Agency and, up to the amount of services from a Public Welfare Agency, maintenance services to persons, who without the maintenance services would be eligible for social welfare aid. Claims for maintenance are to be considered.

AO 1977 § 54 Church Purposes

(1) A corporate body pursues church purposes if its activity is directed to furthering without personal profit a religious group that is recognized as a corporation under public law.

(2) These goals include in particular the erection, beautification, and maintenance of houses of worship and church community buildings; the holding of religious services; the training of spiritual leaders; the providing of religious instruction; the burial of the dead and care of funerary monuments; the administration of church property; remuneration to spiritual leaders, church officials and church employees; and the care of elderly and handicapped among these people and the care of their widows and orphans.

AO 1977 § 55 Non-Profit Activity

(1) Furthering or support are defined as not for personal profit if personal economic goals are not the principal goal – for example, occupational goals or other income-producing goals - and if the following conditions are met:

1. The resources of the corporation may be used only for the goals set out in the bylaws of the group. Members or participants in the society (members in the sense of these regulations) may receive no profits and in their roles as members may receive no other sums from the resources of the corporation. The corporation may not use its resources either for direct or indirect aid to or furthering of political parties.
2. Upon resignation from the corporation or upon dissolution or abolition of the organization, members may not receive more than their paid-in capital shares and the market value of their contributions of objects.
3. The corporation may not reimburse any person for expenses not related to the goals of the corporation or with disproportionately high reimbursements.
4. Upon dissolution or abolition of the corporation or upon the discontinuation of its hitherto pertinent goals, the resources of the corporation, insofar as they exceed the paid-in capital shares of the members and the market value of their contributions of objects, may be used only for tax-advantaged goals (basic rule of the accumulation of resources). This condition is also met if the resources of another tax-advantaged corporation or a corporation under public law should be transferred for tax-advantaged purposes.
5. The corporation must use its resources in a timely manner for its tax-advantaged goals as defined

in its bylaws. “Use” in this sense includes the use of resources for the acquisition or creation of objects of wealth that serve the purposes defined in the bylaws.

A timely use of resources occurs if the resources are used at the latest in the calendar or fiscal year following their receipt and if they are used for the tax-advantaged purposes as defined in the bylaws.

(2) Establishing market value (Section 1 no. 2 and 4) refers to conditions at the time in which the contributed objects are delivered.

(3) Regulations that relate to the members of the corporation (Section 1 no. 1, 2, and 4) are valid for foundations and refer to the founders and their heirs, and in professional bodies of corporations under public law according to the type of professional body, but with the stipulation that in relation to economic goods from the resources of a company accepted under § 6 Section 1 no. 4 items 4 and 5 of the income tax law at book value, upon removal from the corporation book value is to be used in place of market value.

AO 1977 § 56 Exclusivity

Exclusivity occurs if a corporation follows solely its tax-advantaged goals as defined in its bylaws.

AO 1977 § 57 Direct Activity

(1) A corporation directly pursues its tax-advantaged goals as defined in its bylaws when it realizes these goals on its own. This can also occur through additional persons, if, depending on the individual circumstances, especially regarding the legal and actual relationships that exist between the corporation and the additional persons, the work of the additional persons can be viewed as the work of the corporation itself.

(2) A corporation which encompasses tax-advantaged corporations is equivalent to a corporation that directly pursues tax-advantaged goals.

AO 1977 § 58 Activities That Do Not Affect Tax Status

The condition of being tax-advantaged is not lost if

1. a corporation obtains resources for the realization of its tax-advantaged goals through another corporation or through a corporation under public law; the obtaining of resources for an fully taxable corporation assumes that the latter is itself tax-advantaged;
2. a corporation turns over its resources partly to another corporation, also tax-advantaged, or to a corporation under public law for tax-exempt purposes;
3. a corporation makes available its workforce to other persons, firms or organizations for tax-advantaged purposes;
4. a corporation turns over physical space that it owns to another tax-advantaged corporation for use for tax-advantaged purposes;
5. a foundation uses a portion, not to exceed one-third, of its income to maintain moderately the founder and his close relatives, to care for their graves and to honor their memory;
6. a corporation uses all or part of its resources to establish a reserve, insofar as this is desirable, to be able to fulfill on a permanent basis its tax-advantaged purposes as defined in its bylaws.
7. a) a corporation turns over at most one third of the excess of income over expenses for a reserve fund; the excess turned over may not exceed 10% of its currently remaining available resources as

defined in § 55 Section 1 no. 5;

b) a corporation accumulates or uses in the year of acquisition resources to acquire corporate rights for the maintenance of a percentage ownership of business corporations; these amounts are to be recognized according to Letter a in the same year or as permissible future reserves

8. a corporation arranges social gatherings, which are of secondary importance to its socially advantaged activity;

9. a sports organization sponsors remunerated sport as well as unremunerated sport;

10. a foundation set up by a particular corporation in fulfilling its tax-advantaged goals makes contributions to a profit-making business;

11. A corporation adds to its resources by the following means:

a) Donation after death, if the person leaving the estate has not allocated any donation for the ongoing expenses of the corporation;

b) Donations for which the donor expressly declares that they are intended for supplying the corporation with wealth for increasing its wealth ;

c) Expenditures for an appeal for donations by the corporation if it is apparent from the appeal for donations that contributions are being requested for building up the wealth of the corporation;

d) Expenditures for items, which by their nature belong to the wealth of the corporation;

12. A foundation in the year of its founding and in the two following calendar years may wholly or in part add to its wealth with surpluses from administration of its wealth and from profits from for-profit economic enterprises (§ 14).

AO 1977 § 59 Conditions for Tax-Advantaged Status

The tax-advantaged situation is assured if there follows from the bylaws, the organization of the foundation, or other founding document (bylaws in the sense of these regulations) what goal the corporation pursues, if this goal fits under the requirements of §§ 52 to 55, and if the actual running of the corporation exclusively and directly is in accord with these stipulations of the bylaws.

AO 1977 § 60 Requirements for the Bylaws

(1) The goals of the bylaws and the manner of their realization must be so exactly defined that one may test on the basis of the bylaws if the regulations for tax-advantaged status are present in the bylaws.

(2) The bylaws must be in accordance with the prescribed requirements of corporate and business taxes during the entire period of assessment or time of assessment and in accordance with other taxes at the time of the institution of such taxes.

AO 1977 § 61 Restrictions on Wealth According to Bylaws

(1) A sufficient restriction on wealth (§ 55 Section 1 no. 4) is present when the goal for which the wealth is to be used upon dissolution or abolition of the corporation or upon discontinuation of its previous goal is so exactly defined in the bylaws that on the basis of the bylaws it can be tested if the goal for use is tax-advantaged purposes.

(2) If for compelling reasons the future goal for use of the wealth upon drawing up of the bylaws under Section 1 cannot yet be exactly given, it is sufficient if it is set out in the bylaws that upon dissolution or abolition of the corporation or upon discontinuation of its previous goal the wealth is to be used for its tax-advantaged goals and that any future decision of the corporation about its use

may be carried out only with permission of the Treasury Department. The Finance Office has the power to determine if the intended goal for use is a tax-advantaged goal.

(3) If the determination regarding restrictions on wealth is subsequently so altered that it no longer fits under the requirements of § 55 Section 1 no. 4, then it does not meet tax requirements from its inception. § 175 Section 1 Part 1 no. 2 is to be applied with the proviso that tax regulations can be applicable, can be repealed, or can be changed in regard to taxes in so far as these have been implemented in the ten calendar years prior to the change in the determination on restrictions on wealth.

AO 1977 § 62 Exceptions to the Restrictions on Wealth in the Bylaws

Restrictions on wealth do not have to be set out in the bylaws of economic enterprises or of corporations under public law, of state supervised foundations, of independent foundations administered by a corporation under public law, and of religious communities (orders, congregations).

AO 1977 § 63 Requirements for Actual Business Activity

(1) The actual running of a business must be intended for the exclusive and direct fulfilling of the tax-advantaged goals and must fit in with the conditions laid out by the bylaws regarding the conditions for tax advantages.

(2) § 60 Section 2 is valid for the actual running of a business; § 61 Section 3 pertains to the breaking of a rule regarding restrictions on wealth.

(3) The corporation is required to maintain proof through orderly recording of its income and expenditures that its actual business activities conform to the requirements of Section 1.

(4) If the corporation accumulates resources without following the regulations of § 58 no. 6 and 7, the Finance Office may impose a time limit for the use of the resources. The actual running of the business will be considered to be in accordance with the sense of Section 1 if the corporation uses the funds for tax-advantaged purposes within the time limit.

AO § 64 Taxable Economic Enterprises

(1) If the law repeals the tax-advantaged status while an economic enterprise (§ 14) is being maintained, then the corporation loses the tax-advantaged status for the taxable bases (income, sales, wealth) attributable to the economic enterprise, insofar as the economic enterprise is not an enterprise following the goals of the corporation (§§ 65 to 68).

(2) If the corporation maintains several economic enterprises that are not enterprises following its goals (§§ 65 to 68), then these are to be treated as a for-profit economic enterprise.

(3) If the income, including sales tax, from the economic enterprises that do not follow its goals does not exceed 30,678 Euro per year, then the taxable bases attributable to these business enterprises are not subject to the corporate tax or the business tax.

(4) Breaking up a corporation into several independent corporations with multiple claims to being tax-advantaged under Section 3 is to be considered a misuse of the legal formation possibilities in the sense of § 42.

(5) Surpluses resulting from the use of material acquired in an ineligible manner outside a permanently maintained sales location intended for that purpose and that are subject to the corporate tax and the business tax may be appraised at the level of the net profit prevailing in that economic sector.

(6) A profit of 15% can be assumed as a basis for taxation on the following taxable business enterprises:

1. Advertising for firms that occurs in conjunction with the tax-advantaged activity that includes the goals of the company,
2. Totalizator companies,
3. Second level of fractionation of the blood donation service.

AO 1977 § 65 Company with a Goal

A “Company with a Goal” is recognized when

1. the economic enterprise in its general direction serves to realize the tax-advantaged goals of the corporation as set out in its bylaws;
2. the goals may be achieved only with such a business; and
3. the business does not compete with non-tax-advantaged enterprises of the same or similar type to an extent greater than is unavoidable for the fulfillment of its tax-advantaged purposes.

AO 1977 § 66 Social Welfare Care

(1) A social welfare organization is a company with a goal if it primarily serves the people enumerated in § 53.

(2) Social welfare care is the regularly provided care for suffering or endangered people for the benefit of the general public and not for gain. The care may extend to health, moral, educational, or economic well-being and may have as its goal prevention or remedies.

(3) An organization for welfare care primarily serves persons enumerated in § 53 if they benefit from at least two thirds of the proffered services. § 67 deals with hospitals.

AO 1977 § 67 Hospitals

(1) A hospital falling under the aegis of the National Welfare Regulations is a Company with a Goal if at least 40 percent of the annual days of care are given to patients for whom only payments for general hospital services (§§ 11, 13, and 26 of the National Welfare Regulations) may be calculated.

(2) A hospital falling under the aegis of the National Welfare Regulations is a Company with a Goal if at least 40 percent of the annual days of care are given to patients for whom payments for hospital services may be calculated at no level higher than under Section 1.

AO 1977 § 67a Sporting Events

(1) Sporting events of a sports organization are a Company with a Goal if the revenues including sales tax do not exceed 30,678 Euro in a year. The sale of food and drink and advertising are not part of sporting events.

(2) The sports organization may explain to the Finance Office up until the non-appealable decision on corporate taxation that it dispenses with the application of Section 1 Part 1. The explanation binds the sports organization for at least five assessment periods.

(3) If the application of Section 1 Part 1 is dispensed with, sporting events of a sports organization are a Company with a Goal if

1. no participating athlete of the organization participates in a way that he receives for his participation in the sport or for the use of his person, his name, his picture, or his sporting activity for advertising purposes from the organization or from a third party any compensation beyond reimbursement for expenses or other benefits and
2. no other participating athlete receives for participation in the event from the organization or from a third party in cooperation with the organization any compensation beyond reimbursement for expenses or other benefits.

Other sporting events are a taxable economic enterprise. This does not exclude their being tax-advantaged if the compensation or other benefits are given exclusively by businesses that are not Companies with a Goal or by a third party.

AO 1977 § 68 Individual Companies with a Goal

The following are also Companies with a Goal:

1. a) Old age homes, old age and nursing homes, convalescent homes, meal services if they primarily serve persons enumerated in § 53 (§ 66 Section 3),
b) Kindergartens, homes for children, youth, and students, school vacation homes and youth hostels,
2. a) Agricultural enterprises and nurseries, which serve the internal needs of corporations and assure the appropriate food and sufficient care for residents of the institutions,
b) Other institutions necessary for self-maintenance of corporations, such as carpentry shops and lock shops, if the products delivered and other services of these institutions to outsiders do not exceed 20 percent of the total products and other services of the enterprise, including that provided

to the corporations themselves;

3. Workshops for the handicapped which are not eligible under the Third Book of the Social Law Book and which provide work places for persons who on account of their handicaps cannot be active on the general labor market, and institutions for recreation and work therapy, which serve to bring the handicapped into society,
4. Institutions which are maintained for taking care of the blind and for taking care of the physically handicapped;
5. Institutions for training for care and for voluntary help for training;
6. Lotteries and games of chance approved by the responsible authorities if the profit is directly and exclusively used for the furthering of charitable, church, or public welfare purposes;
7. Cultural institutions like museums and theaters, and cultural events like concerts and art shows; this does not include the sale of food and drink;
8. Adult evening schools and other institutions insofar as they themselves provide course and other events of a scientific or pedagogical nature; this also applies if the institutions assure the participants in these events room and board;
9. Scientific and research institutions whose providers are primarily financed by public or third-party grants or by administrative funds of the institutions. Searching for commissioned projects also qualifies as science and research. Activities that do not qualify as Company with a Goal include those that are limited to the application of well-established scientific knowledge, taking over the support of provider sponsorship, and economic activities with no research relevance.