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Country: **Germany**

INTRODUCTION

1. Types of organizations (NGOs) existing in Germany:
 - a. recognized by civil law: (i) corporate bodies – associations (Verein)
 - corporations (Korperschaft)
 - cooperatives (Konsumverein);(ii) foundations and trusts.
 - b. recognized by public law: (i) public law corporations incl. cooperatives
 - (ii) institutions (Anstalt)
 - (iii) foundations (Stiftung).¹
2. Legal sources of NGO tax law regulation:
 - a. The General Tax Code (Abgabenordnung) [1976];
 - b. specific tax laws (specific tax benefits are included);
 - c. tax laws of the ‘Länder’.²

A. INCOME TAX

1a. What types of organizations or entities are partially or wholly exempt from the income tax?

“Tax exemption is generally granted to those nonprofit organizations that pursue public benefit activities (Gemeinnützigkeit), regardless of the type of the organization or its legal status.”³ *Public benefit purpose*, on the other hand presupposes that such purposes “promote the well-being of the public at large, as opposed to small and exclusive groups such as a family, company employees, or the members of a social club.”⁴ Tax exemption exist *vis’a’vis* those NGOs that, *first*, pursue one of the tax privileged purposes, i.e.,

- a. **Charitable or public benefit purposes** (gemeinnützige Zwecke). Such activities would be - the support of science and research, education, arts and culture, religion, international understanding, development aid, preservation of the environment, support of youth activities of the aged, public health, welfare and amateur sports; support of civic activities etc.
- b. **Benevolent purposes** (mildtätige Zwecke) “involves supporting individuals who are unable to care for themselves due to handicaps, mental illness, or poverty. In contrast to public benefit purposes, the

¹ Salamon, M. Lester, “The International Guide to Nonprofit Law”, Chapter nine on Germany, pp. 118 – 120., Publ. John Wiley & Sons, Inc., New York, [1997].

² This overview contains information primarily related to the pertaining federal laws of Germany.

³ See footnote #1 above, pp. 122.

⁴ Section 52 of the General Tax Code (Abgabeordnung).

criterion of the well-being of the public at large need not be applied under this category.”⁵

- c. **Church-related purposes** (kirchliche Zwecke) encompass “the construction and maintenance of churches, the support and promotion of religious services, and the upkeep of church property and personnel.”⁶ Only the major traditional Christian churches have such a status.

Among these three, the first two groups of purposes is not exclusive. *Id est*, only the most important purposes eligible for a preferential tax status are enumerated. The list can be enlarged, contrary to the church-related purposes.

Besides the organizations tax-exempted based on these general terms, the law specifically exempts from corporate income tax the following forms of NGOs:⁷

- “- religious, benevolent, or charitable companies and associations;
- non-public and non-commercial professional organizations (e.g., trade unions and employers’ organizations);
- social welfare funds with legal status established by businesses (subject to certain limitations).”⁸

The second precondition is that the qualifying purpose(s) must be fulfilled in a disinterested manner, exclusively, and directly by the charity itself (selbstlos, ausschliesslich und unmittelbar).⁹

Not exempt are : 1. **Partnerships**, because NGOs must be set up as corporate entities. “Thus, a partnership does not qualify as an NGO even if it pursues a qualifying purpose. Each type of corporate entity listed in Sec. 1(1) of the Corporate Income Tax Law qualifies (e.g. foundation, club, society, registered association, limited liability company).”¹⁰

2. **Corporations with seat or managed from abroad**,¹¹ unless double taxation bilateral treaties provide for something else, are not income tax exempt. Presently Germany has such treaties with four countries, i.e., USA, France, Sweden and Israel. For example, Article 27 of the treaty with US provides that “the revenues of an American corporation or organization which pursues exclusively religious, charitable, scientific, educative or public purposes; is tax exempt in the Federal Republic of Germany, when and if that organization is tax exempt in the United States and if such an organization would be tax exempt in the Federal Republic of Germany, if it would be a German corporation or association.”¹²

1b. Special conditions or limitations for income tax exemption.

⁵ See footnote #1 above, pp. 123.

⁶ See footnote #1 above, pp. 123.

⁷ Section 5 of the Corporate Income Tax Law (*Körperschaftgesetz – KStG*).

⁸ International Bureau of Fiscal Documentation, Amsterdam, CBD, Suppl. No. 4, September 1998, Chapter on Germany, pp. 2.

⁹ Schauhoff, dr. Stephan, ‘Wirtschaftliche Bedeutung der Non-Profit Organizations’ [The Economic Meaning of Not-for-Profit Organizations]. In. Cahiers de droit fiscal international, volume LXXXIVa [1999] pp. 421, Publ. Kluwer Law International, The Hague.

¹⁰ See footnote #8 above, pp. 2.

¹¹ See footnote #9 above, pp. 434.

¹² See footnote #9 above, pp. 434.

To be income tax exempt the following conditions must be fulfilled:

- (1) The NGO must pursue one of the qualifying **purposes** (purposes for the public benefit, charitable purposes and support of the recognized churches).¹³ Purposes like influencing the political views of the citizenry, furtherance of the economy or employment opportunities, were not recognized as public benefit purposes by the Federal Tax Court.¹⁴
- (2) **Residency** of the NGO is also a requirement (in principle the exemptions apply only to domestic entities, unless bilateral treaties provide the contrary);¹⁵
- (3) **Substantiality**, i.e., if a NGO pursues for-profit activities as well, those activities must be of a substantially smaller volume and they must be means of creating income for the non-profit activities. Here we must make a distinction: income from the profit-making activity is not income tax exempt, even though it serves the activity of the NGO. However, all the other income forms of the NGO will be income tax exempted (memberships due, state subsidies, investment income etc.) if substantiality is adhered to.¹⁶

Besides the above conditions, special limitations exist as to income stemming from economic activity. NGO law provides for a tax heaven for small scale economic activities. "Provided that the incomes from all economic activities including the turnover tax does not exceed 60,000 DEM per year, the profit remains tax free."¹⁷ However, NGOs may not subsidize economic activities and may not cover losses stemming from such activities out of membership fees, contributions or other tax free incomes for a longer period of time (dauerhaft).¹⁸

2a. What types of income are wholly or partially exempt?

From the point of view of income tax exemptions, German law categorizes all incomes into four groups:

The first group encompasses income which is a direct proceeds from the main activity of a NGO and for which no concrete consideration is given by a NGO. For example, membership dues, state subsidies, gifts from private sponsors. These income forms are income tax exempt.¹⁹

To the **second group** belongs income from investments, or "proceeds from the property owned by the non-profit organization".²⁰ E.g., bank deposits, or lease of NGO property. Important is that such use must be undertaken for a longer period of time (auf Dauer) and that it cannot become a profit-making activity through constant manipulation and changes in the use. In principle, such income is tax exempt. For example, according to the decision of the Federal Tax Court (Bundesfinanzhof)²¹, if a NGO continually rents

¹³ The purpose(s) a NGO pursues must be defined in the Articles of Association, because its status and tax treatment will be determined based on that at the outset of the activities of a NGO; as German tax law does not know for a special procedure for the determination a tax status. Simply, in the beginning the NGO has to rely on what is in the founding documents of the NGO.

¹⁴ See footnote #9 above, pp. 421.

¹⁵ See point No. 1a above.

¹⁶ See point No. 2a.

¹⁷ See footnote # 9 above, pp. 430.

¹⁸ See footnote # 9 above, pp. 430.

¹⁹ See footnote # 2 above, pp. 426.

²⁰ In German: "die Erträge aus dem von der gemeinnützige Körperschaft gehaltenen Vermögen".

²¹ BFH decision of 17 December, 1957, BStBl. 1958 III 96.

its offices to third persons in order to economically use the capacities in its possession, that would not make income stemming from such activity taxable.

German law knows also for special purpose oriented tax exemptions. These cases would form **the third group** in our analysis. The legislator has foreseen numerous such tax exemptions. Thus, the whole areas of social welfare, hospitals, nursing homes, theaters, museums and other cultural establishments, sport establishments – if no professional sportsmen are involved -, and finally educational establishments are granted income tax exemption status based on their main activity. Such income would remain tax exempt only if the non-profit organization's activity really serves the public interest and if its activity is directly addressed to the pursuance of such aims and goals.²²

Opposed to the above three tax exempt forms of NGO incomes, **the fourth type** of NGO income is not tax exempt, in principle. Incomes from economic activity performed by a NGO, which only serves to create funds for the NGO's main activity, but which is not the direct pursuance of the aims and goals defined in the internal acts of the NGO; is usually not income tax exempt. In other words, every income-making activity (except for the above mentioned three income groups) which will not be adjudged as directly serving the NGO's purpose(s) [Zweckbetrieb], will be taxed.²³ It is irrelevant here, that the income from such profit-making activities must be used for the qualifying purposes. The underlying criteria in this respect is that NGOs should not be allowed to present unfair competition to for-profit organizations being active in the same economic field. Hence, an advertisement in the program for a cultural event will be taxable, because it will be rated as a self-standing activity, nevertheless of its connections with the cultural activity as something of public interest.²⁴

2b. Special conditions for income tax exemption:

The following special conditions apply:

1. In principle the acquired asset in year one must be applied to non-profit activities until the end of the second year.²⁵
2. Exceptions:
 - gifts for the creation of capital stocks;
 - targeted savings for a larger investment in the non-profit area;
 - accumulation of income from the management of property to stabilize capital stocks.²⁶
3. Incomes of foreign NGOs from German tax sources are subject to tax.²⁷

3a. Must an organization receive an advance ruling from an agency of the government in order to enjoy tax benefits?

²² See footnote #2 above, pp. 426 – 427. [In German: “Wesentlich ist, dass die Angebote der gemeinnützigen Körperschaft sich in diesem Bereich tatsächlich and die Allgemeinheit richten und die Leistung unmittelbar der Verfolgung des Zwecks dient.”]

²³ See footnote #2 above, pp. 427.

²⁴ Decision of the Federal Tax Court (Bundesfinanzhof), BFH of March 4, 1976 IV R 189/71, BStBl. 1976 II, 472.

²⁵ See footnote #1 above, pp. 428 – 429.

²⁶ See footnote #9 above, Summary pp. 436.

²⁷ See footnote #9 above, pp. 434.

The organizations does not have to obtain an advance ruling from a governmental agency to enjoy tax benefits. The authorities will rule on this issue first during the regular taxation procedures, actually after the NGO has filed a tax declaration for the last three years of activity *ex post*. Whether an organization was or was not entitled to tax benefits is determined, therefore, subsequently.²⁸ “Generally speaking, to be eligible for tax exemptions, an organization, whether juridical person or not, must undergo an exemption process only for corporate income tax. Public-law organizations, however, are automatically tax-exempt.”²⁹

b. The system: [*Post hoc* every 3 years]

First, the tax Status of the NGO will be determined based on the purpose enshrined into the Articles of Association. This will entitle the NGO to accept tax-free contributions and to issue certificates on the receipt of contributions (... “[S]penden steuerfrei entgegennehmen kann und Spendenquittungen ausstellen darf.”³⁰).

Subsequently the NGO will be checked based on the tax declaration, which the NGO has to submit to the tax authorities for 3 years.

4. Investment income

a. Is investment income subject to taxation?

Not, if used for recognized public benefit or charitable purposes and within the prescribed period of time. (See point 2a above related to the second group of incomes.)

b. How is investment income defined?

Investment income encompasses incomes from the property owned by the non-profit organization (“Einträge aus dem von der gemeinnützigen Körperschaft gehaltenen Vermögen.”).³¹ In other words, such kind of income is created through the use of NGO property.

c. Limits on the kinds of investments that may be made.

Limitations are not imposed based on the kinds of investments that can be made, but through the method the investment is effectuated and through the restrictions on the end-use of income generated that way. It is essential the investment to be undertaken on long-term basis (auf Dauer) so that [...] ”it will not become a profit making activity due to constant property regrouping.”³² The other general requirement is that the proceeds from such investments must be used for the public benefit or charitable purpose, enshrined into the founding documents of the NGO. There is a temporary limit in this respect, because the NGO has the obligation to apply all the assets that an NGO receives in year one, to non-profit activities until the end of the 2nd year.³³

²⁸ See footnote #9 above, pp. 425. [“Erst im Rahmen des normalen Besteuerungsverfahrens für die einzelnen Steuerarten, insbesondere die Körperschaft- und Gewerbesteuer, wird dann nachtraglich geprüft, ob die Voraussetzungen für eine Steuerbefreiung aufgrund der Gemeinnützigkeit vorgelegen haben.”]

²⁹ See footnote #1 above, pp. 123 – 124.

³⁰ See footnote #9 above, pp. 425.

³¹ See footnote #2 above, pp. 426.

³² See footnote #9 above, pp. 426. [“Wesentlich ist, dass das vorhandene Vermögen auf Dauer angelegt werden soll und nicht durch bestandige Vermögensumschichtungen eine erwerbswirtschaftliche Betätigung aufgenommen wird.”]

³³ See footnote #9 above, pp. 428.

Exceptions: (i) Foundations that have to finance their activity only from what they have initially received, may put 25% of the difference between income and expenditure each year into a separate fund, to balance the loss due to inflation.³⁴

(ii) An NGO may the income of more years put aside for a bigger investment with concrete public benefit or charitable aim (e.g., building of a hospital).³⁵

d. Prohibitions: *First*, there is a general prohibition according to which NGOs cannot be established for, and therefore also, monies cannot be spent on such activities that are not in line with law in general or are in contradiction with good morals. This is a rule applicable to all kinds of legal entities.³⁶ *Then*, investments cannot be made the way that the activity of the NGO would eventually become unfair competition to the for-profit sector entities. It is also important that proceeds from investments must be used for the public serving activity of the NGO and not, for example, for covering the losses of a economic activity (see also point 2a).

5. Business activities

a. May a NGO engage in economic or business activities?

The short answer to that is: yes. Though, this declaration needs some further clarification. "According to the civil law, registered associations are not supposed to engage in commercial activity. However, commercial activities are tolerated so long as they serve the nonprofit purposes of the organization (*Nebenzweckprivileg*)."³⁷

b. Related vs. unrelated income in practice:

The line between related and unrelated income is determined based on does the income directly support the achievement of non-profit objective(s) or it solely generates money which then can be spent for those activities. However, taxation does not depend on this categorization, thus [...] "the fact that the proceed generating activity is in inseparable connection with the pursuance of the non-profit purposes, does not prevent taxation."³⁸

It must be, however, noted that [...] "there is a certain uneasiness with related and especially unrelated activities of basically nonprofit entities on the part of the lawmakers. This is especially true with regard to those borderline cases where nonprofits engage in business activities to finance their nonprofit aims, thereby competing with local small businesses, which are also a somewhat protected species in the tax laws."

c. At what point does income from business activities become taxable?

The basic rule proclaims that every income from business activities is taxable, unless it does not serve directly for the realization of the non-profit purposes of the NGO, as the main activity of the NGO. It does not matter that subsequently such proceeds will be used for the realization of the NGOs purposes.

³⁴ See footnote #9 above, pp. 429.

³⁵ See footnote #9 above, pp. 429.

³⁶ See footnote #1 above, pp. 120.

³⁷ See footnote #1 above, pp. 125 – 126.

³⁸ See footnote #9 above, pp. 427. ["Auch der Umstand, dass die Mittelbeschaffungsaktivität in untrennbarem Zusammenhang mit der gemeinnützigen Zweckverfolgung steht, hindert die Besteuerung nicht."]

There is, however, an exception to this rule. Namely, if the overall income of a NGO from all economic activities, including turnover tax, remains below 60,000 German Marks per year, the profit is tax exempt.³⁹

d. Does the presence of economic activity income make other income taxable?

The presence of economic activity does not *per se* make other income taxable. Income from unrelated business activities forms a separate group of NGO income distinct from other income forms as far as tax laws are concerned. Note must be taken that certain types of economic activity are as such explicitly tax exempt. Hence, if a given type of business activity is not explicitly income tax exempt and/or it does not serve directly to the realization of the non-profit purposes of the NGO, then it is in principle income tax subject, if the overall generated income is above 60,000 German Marks *per annum*.⁴⁰

6. Minimum distribution rules

a. Are there minimum distribution rules?

Yes. All assets received in year one, must be applied to non-profit activities until the end of the second year.⁴¹

Exceptions: - creation of capital stock

- targeted savings for a larger investment
- management of property to stabilize capital stock.⁴²

b. Do such rules apply to all organizations or just specific types?

In principle, it applies to all types of NGOs. The only exceptions are foundations, gifts and legacies, which finance their non-profit activities solely from the property donated to them.⁴³

c. May a tax exempt organization make unlimited accumulations?

In principle an organization can make accumulations only for one year. According to special rules, for more years and for a bigger investment (e.g., building of a hospital), though accumulation above 10 years would not be accepted.⁴⁴

7. Tax benefits for charitable contributions

a. Are tax benefits for charitable contributions allowed?

Yes, though not all contributions grant benefits (depending on what degree of public benefit it serves). If not exempt “NGOs and donations or bequests for a special purpose are in Class III, where the tax rate starts at 17% (on DEM 100,000) and goes up to 50% (on DEM 50 million).”⁴⁵

³⁹ See footnote #9 above, pp. 430.

⁴⁰ See footnote #9 above, points: 3.2.1.; 3.2.2.; and 3.2.3.

⁴¹ See footnote #9 above, pp. 428.

⁴² See footnote #9 above, pp. 435 – 436 (Summary).

⁴³ See footnote #9 above, pp. 429. [“Ausnahmen gelten für Zuwendungen wie Stiftungen, Schenkungen oder Erbschaften, die dazu bestimmt sind, dass allein aus den Erträgen des zugewandten Vermögens die gemeinnützige Tätigkeit finanziert werden soll.”]

⁴⁴ See footnote #9 above, pp. 429. [“[...] [E]inergemeinnützige Körperschaft [ist] erlaubt, für konkret beeichnete Zwecke die Erträge mehrerer Jahre anzusparen, um das angesparte Vermögen dann für eine grossere Investition, wie beispielsweise den Bau eines Krankenhauses, zu verwenden.”]

⁴⁵ See footnote #8 above, Chapter on Germany, pp. 3.

Tax law knows for tax benefits from both, inheritance and income tax point of view. For inheritance tax purposes exemptions are granted either based on the quality of the donees (qualifying entities) or on the cause (qualifying purposes) for which the donation is made. From the income tax point of view, “[c]ertain donations (gifts) made by a German-resident individual or corporation are deductible, within certain limits, from the donor’s taxable income. The conditions for deductibility are that the donation be made to qualifying entities for the furtherance of qualifying purposes (Sec.48(2) and (3) Income Tax Ordinance).”⁴⁶

b. Type of benefits.

Inheritance law grants full exemption from inheritance tax or gift duty if made to qualifying entities, which are:

“(1) domestic religious communities set up as public law entities ([..] only a few major Christian churches with long-standing traditions have such a status) or domestic Jewish religious communities;

(2) domestic corporate bodies which according to either their statutes or actual management pursue directly, exclusively and altruistically one of the three qualifying purposes specified above in Taxation of NGOs; or

(3) foreign religious communities and corporate bodies of the same kind as mentioned under (1) and (2), but only on the basis of reciprocity.”⁴⁷

Income tax law, on the other hand, gives right to the donor to deduct the donation or gift from the donor’s taxable income. “The conditions for deductibility are that the donations be made to qualifying entities for the furtherance of qualifying purposes.”⁴⁸

c. To what types of organizations can tax benefited contributions be made?

Contributions are exempt or deductible if made to organizations that perform activities beneficial to the public. The activities are listed by the law and graded according to how beneficial they are. The tax benefits differ depending on to which category an activity belongs to. E.g., charitable contributions to scientific, cultural and charitable activities enjoy higher benefits than some other to the public also beneficial activities. There is a difference in this respect depending on which tax form is analyzed. Thus, for inheritance tax law purposes a donation would be tax/duty exempt if given to domestic religious communities set up as public law entities, domestic corporate bodies and foreign religious communities and corporate bodies (see for details point b above).⁴⁹ The list of organizations, a donation to which would entitle the donor to deduct the donation from his/her income, is somewhat different from the previous one. “Entities qualifying in this respect are:

(a) public law entities or public law government departments; or

(b) corporations, associations with a corporate structure (e.g. clubs) or special purpose funds (e.g. trusts) which, according to their statutes, acts of foundation or actual management, pursue directly, exclusively and altruistically public law benefit purposes (Sec. 52(2) Fiscal Code), charitable purposes (Sec. 53 Fiscal

⁴⁶ See footnote #8 above, Chapter on Germany, pp. 3.

⁴⁷ See footnote #8 above, Chapter on Germany, pp. 3.

⁴⁸ Section 48(2) and (3) Income Tax Ordinance.

⁴⁹ See footnote #8 above, Chapter on Germany, pp. 3.

Code) or support churches having the status of public law entities (Sec. 54 Fiscal Code).⁵⁰

d. How is qualification for these benefits determined?

In respect of inheritance tax (or gift duty) exemption, tax exemption exist either due to the quality of the donees (see point c above) or to the nature of the cause. As far as the qualifying cause is concerned, [...] “bequests or donations to a charitable cause, for the public benefit or to the churches mentioned above are also exempt from inheritance tax/gift duty, provided that application of the monies to such purposes is guaranteed.”⁵¹

As far as income tax law is concerned, deductions can be claimed if donation is made to qualifying entities (see point c above) and for the furtherance of qualifying purposes. Again, the classification of qualifying purposes is somewhat different from its counterpart in inheritance law. Here the donations must be made for the furtherance of charitable, religious, church, scientific or “other purposes worthy of sponsorship, e.g. cultural events, youth welfare, development aid, etc.”⁵²

e. Limits on the amount of benefit allowed.

If the conditions are fulfilled, inheritance tax law entitles to full tax or duty exemption.

As opposed to this, income tax law sets certain limits on deduction entitlements, i.e.:

- (i) Deductions are limited to 5% of taxable income before deduction of such donations or to 0.2% of the sum of turnover and salaries;
- (ii) Deduction rate is increased to 10% regarding donations for the furtherance of science, culture and charity.

“The deductions apply equally to income tax (Sec. 10b Income Tax Law) and to corporate income tax (Sec. 9(1) No. 2 Corporate Income Tax Law).”⁵³

f. Are carryforwards of unused charitable deductions allowed?

Yes. Donations by individuals over DEM 50,000 for scientific, charitable or cultural purposes can be deducted from income for 2 tax years before, or 5 tax years after, the date of the donation.⁵⁴

B. VAT (or GST, or other similar tax).

No general exemption from value-added tax (Umsatzsteuergesetz)⁵⁵.

C. GIFT AND ESTATE TAXES.

1. Are there exemptions from the gift, estate, or inheritance taxes for gifts to or inheritances by certain kinds of organizations

The tax treatment of gifts is regulated by the same act and equally as inheritance taxes. Thus, the same rules apply as described above related to inheritance taxes under A 7.

⁵⁰ See footnote #8 above, Chapter on Germany, pp. 3.

⁵¹ See footnote #8 above, Chapter on Germany, pp. 3.

⁵² See footnote #8 above, Chapter on Germany, pp. 3.

⁵³ See footnote #8 above, Chapter on Germany, pp. 4.

⁵⁴ See footnote #8 above, Chapter on Germany, pp. 4.

⁵⁵ See footnote #1 above, Chapter nine, pp. 123.

D. Taxes on Real Estate

See *lex specialis*. [No data available]

E. Miscellaneous

1. Trade tax: NGOs are generally exempt from trade tax based on the Local Business Tax Act (Gewerbesteuer-gesetz).⁵⁶
2. Net Wealth Tax: NGOs are exempt from net wealth tax (Vermögensteuergesetz).⁵⁷

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⁵⁶ See footnote #1 above, pp. 123.

⁵⁷ See footnote #1 above, pp. 123.