

Fiscal Code of Germany – Part “Non-profit Associations”

Third Chapter Tax-privileged purposes

Section 51 General

(1) The following provisions shall apply where the Code grants tax privileges to a corporation on account of its serving directly and exclusively public-benefit, charitable or religious purposes (tax-privileged purposes). A corporation shall be understood to mean a corporation, an association or a pool of assets as defined in the Corporation Tax Act. Functional subdivisions (departments) of corporations shall not be treated as independent taxable entities.

(2) Where the tax-privileged purposes are achieved abroad, the tax privilege shall be conditional upon natural persons who have their residence or their habitual abode within the territory of the application of this Code being advanced or the activity of the corporation, alongside achieving the tax-privileged purposes, also being able to contribute to the reputation of the Federal Republic of Germany abroad.

(3) A tax privilege shall furthermore require that the corporation does not, pursuant to its statutes and in its actual management, advance efforts within the meaning of section 4 of the Federal Constitution Protection Act and does not contravene the concept of international understanding. In the case of corporations which are listed in the Federation's or a *Land's* report on the protection of the constitution as an extremist organisation, it shall be refutably assumed that the conditions of the first sentence above are not fulfilled. The revenue authority shall inform the authority responsible for the protection of the constitution of facts substantiating the suspicion of efforts within the meaning of section 4 of the Federal Constitution Protection Act or contraventions of the concept of international understanding.

Section 52 Public-benefit purposes

(1) A corporation shall serve public-benefit purposes if its activity is dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. It shall not be deemed an advancement of the general public if the group of persons benefiting from such advancement is circumscribed, for instance by membership of a family or the workforce of an enterprise, or can never be other than small as a result of its definition, especially in terms of geographical or professional attributes. Advancement of the general public may not be contended merely because a corporation allocates its funds to a public-law entity.

(2) Subject to the provisions of subsection (1) above, the following shall be recognised as advancement of the general public:

1. the advancement of science and research;
2. the advancement of religion;
3. the advancement of public health and of public hygiene, in particular the prevention and control of communicable diseases, also by hospitals within the meaning of section 67, and of epizootic diseases;
4. the advancement of assistance to young and old people;
5. the advancement of art and culture;
6. the advancement of the protection and preservation of historical monuments;
7. the advancement of upbringing, adult education and vocational training including assistance for students;
8. the advancement of nature conservation and of *Landscape* management within the meaning of the Federal Nature Conservation Act and the nature conservation acts of the *Länder*, of environmental protection, of coastal defence and of flood defence;

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9. the advancement of public welfare, in particular of the purposes of the officially recognised voluntary welfare associations (section 23 of the VAT Implementing Ordinance), their subsidiary associations and their affiliated organisations and institutions;
10. the advancement of relief for people persecuted on political, racial or religious grounds, for refugees, expellees, ethnic German repatriates who migrated to the Germany between 1950 and 1 January 1993, ethnic German repatriates migrating to Germany after 1 January 1993, war victims, dependents of deceased war victims, war disabled and prisoners of war, civilian war disabled and people with disabilities as well as relief for victims of crime; the advancement of the commemoration of persecutees, war and disaster victims; the advancement of the tracing service for missing persons;
11. the advancement of life saving;
12. the advancement of fire prevention, occupational health and safety, disaster control and civil defence as well as of accident prevention;
13. the advancement of internationalism, of tolerance in all areas of culture and of the concept of international understanding;
14. the advancement of the protection of animals;
15. the advancement of development cooperation;
16. the advancement of consumer counselling and consumer protection;
17. the advancement of welfare for prisoners and former prisoners;
18. the advancement of equal rights for women and men;
19. the advancement of the protection of marriage and the family;
20. the advancement of crime prevention;
21. the advancement of sport (chess shall be considered to be a sport);
22. the advancement of local heritage and traditions;
23. the advancement of animal husbandry, of plant cultivation, of allotment gardening, of traditional customs including regional carnival, of the welfare of servicemen and reservists, of amateur radio, of aeromodelling and of dog sports;
24. the general advancement of democratic government in the territory of application of this Code; this shall not include endeavours which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level;
25. the advancement of active citizenship in support of public-benefit, charitable or religious purposes.

To the extent that the purpose pursued by the corporation does not fall under the first sentence above, but the general public is correspondingly advanced altruistically in material, spiritual or moral aspects, this purpose may be declared as being for the public benefit. The highest revenue authority of each *Land* shall designate a revenue authority within the meaning of the Fiscal Administration Act which is responsible for decisions pursuant to the second sentence above.

Section 53 Charitable purposes

A corporation shall be deemed to serve charitable purposes if its activity is dedicated to altruistic support for persons

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1. who on account of their physical, mental or emotional state are dependent upon the assistance of others, or
2. whose means are not greater than four times the standard rate of social assistance as defined in section 28 of the Social Code, Book XII; in the case of a single person or single parent, five times the standard rate shall apply instead of four times. This shall not apply to persons whose assets are sufficient to effect a lasting improvement in their upkeep and who may reasonably be expected to use those assets for such purpose. In the case of persons whose financial circumstances have been transformed by special reasons into a state of need, the means or assets may exceed the stated limits. Means for the purposes of this provision shall be
 - a) income as defined in section 2(1) of the Income Tax Act, and
 - b) other means intended or suitable for the provision of subsistence

accruing to all household members. Maintenance payments, both paid and received, shall also be taken into account. As defined here, the need for economic assistance shall be deemed proven for persons who receive benefits pursuant to the Social Code, Book II or XII; the Housing Benefits Act; section 27a of the Federal War Victims' Relief Act; or section 6a of the Federal Child Benefits Act. The corporation may provide proof on the basis of the respective benefits notice applicable for the period of support or on the basis of a confirmation from the benefits provider. The requirement to provide proof of the need for economic assistance may be waived upon application by the corporation if, based on the particular type of support provided, it can be assured that support is provided only to persons in need of economic assistance as defined here; section 60a(3) to (5) shall apply accordingly with regard to notifications waiving the requirement to provide proof.

Section 54 Religious purposes

- (1) A corporation shall serve religious purposes if its activity is dedicated to the altruistic advancement of a religious community which is a public-law entity.
- (2) These purposes shall include, in particular, building, decorating and maintaining houses of worship and religious community centres, conducting religious services, training priests, providing religious teaching, conducting burials and safeguarding the remembrance of the dead, also administering church assets, remunerating members of the clergy, church officials and servants of the church, and providing old-age and disability pensions for these persons and their dependants.

Section 55 Altruistic activity

- (1) Advancement or support shall be provided altruistically if it does not primarily serve the corporation's own economic purposes, for instance commercial or other gainful purposes, and the following requirements are met:
 1. The funds of the corporation may be used only for the purposes set out in the statutes. Members or partners (members for the purposes of these provisions) may receive neither profit shares nor in their capacity as members any other allocations from the funds of the corporation. The corporation may use its funds neither for the direct nor for the indirect advancement or support of political parties.
 2. On termination of their membership or on dissolution or liquidation of the corporation, members may not receive more than their paid-up capital shares and the fair market value of their contributions in kind.
 3. The corporation may not provide a benefit for any person by means of expenditure unrelated to the purpose of the corporation or disproportionately high remuneration.
 4. Where the corporation is dissolved or liquidated or where its former purpose ceases to apply, the assets of the corporation in excess of the members' paid-up capital shares and the fair market value of their contributions in kind may be used only for tax-privileged purposes (dedication of assets). This requirement shall also be met if the assets are to be assigned to another tax-privileged corporation or to a legal person under public law for tax-privileged purposes.

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5. Subject to section 62, the corporation shall in principle use its funds promptly for the tax-privileged purposes set out in its statutes. The use of funds for the acquisition or creation of assets serving the purposes set out in the statutes shall also constitute an appropriate use. Funds shall be deemed to have been used promptly where they are used for the tax-privileged purposes set out in the statutes by no later than two calendar or financial years following their accrual.

(2) In calculating the fair market value (subsection (1) numbers 2 and 4 above) the circumstances prevailing at the time at which the contributions in kind were made shall apply.

(3) The provisions relating to the members of the corporation (subsection (1) numbers 1, 2 and 4 above) shall apply in the case of foundations to the donors and their heirs, and, in the case of undertakings of a commercial nature of legal persons under public law, shall apply *mutatis mutandis* to the corporation with the proviso that for assets withdrawn at book value from business capital pursuant to section 6(1) number 4, fourth sentence, of the Income Tax Act the book value of the withdrawal replaces the fair market value.

Section 56 Exclusivity

Exclusivity shall be deemed to exist if the sole pursuit of a corporation is the tax-privileged purposes set out in the statutes.

Section 57 Directness

(1) A corporation shall pursue the tax-privileged purposes set out in the statutes directly if the corporation itself achieves these purposes. This may also be achieved by aides if, in terms of the circumstances of the case, in particular in terms of the legal and actual relationship between the corporation and the aide, the activity of the aide is to be regarded as activity by the corporation itself.

(2) A corporation in which tax-privileged corporations are combined shall be deemed equivalent to a corporation directly pursuing tax-privileged purposes.

Section 58 Activities having no detrimental effect on tax privilege

Tax-privileged status shall not be precluded in the event that

1. a corporation procures funds for the achievement of the tax-privileged purposes of another corporation or for the achievement of tax-privileged purposes by a legal person under public law; the procurement of funds for a private corporation subject to unlimited tax liability shall be conditional upon that corporation itself having tax-privileged status,
2. a corporation assigns part of its funds to another tax-privileged corporation or to a legal person under public law to be used for tax-privileged purposes,
3. a corporation assigns its surpluses (income over expenses) from asset management, all or part of its gains from economic activities, and a maximum of 15 percent of its other funds destined for prompt use under section 55(1) number 5 to another tax-privileged corporation or to a legal person under public law for the purpose of asset endowment. The tax-privileged purposes to be achieved with the asset yields must be in line with the tax-privileged purposes of the assigning corporation as set out in its statutes. The funds assigned under this number and their yields may not be used for the further forwarding of funds within the meaning of the first sentence above,
4. a corporation makes available its workforce to other persons, enterprises, organisations or a legal person under public law for tax-privileged purposes,
5. a corporation makes available premises belonging to it to another tax-privileged corporation or to a legal person under public law to be used for tax-privileged purposes,

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6. a foundation uses a part not exceeding one third of its income for the appropriate upkeep of the donor and his or her near relatives, to maintain their graves and to honour their memory,
7. a corporation holds social events which are of secondary significance in comparison with its tax-privileged activities,
8. a sports association promotes paid in addition to unpaid sporting activities,
9. a foundation set up by a political subdivision makes grants to commercial undertakings to achieve its tax-privileged purposes,
10. a corporation uses, in the year of accrual, funds to acquire shareholder rights to maintain the percentage share of holdings in incorporated companies. Such acquisition shall reduce the amount of reserves pursuant to section 62(1) number 3.

Section 59 Preconditions for tax privileges

Tax privileges shall be granted if it is stated in the statutes, the act of foundation or other articles of association (statutes for the purposes of these provisions) the purpose the corporation pursues, that this purpose fulfils the requirements of sections 52 to 55 and that it is pursued exclusively and directly; actual management activity must conform to these statute provisions.

Section 60 Requirements to be met by the statutes

- (1) The purposes set out in the statutes and the means by which they are to be achieved shall be so precisely defined as to ensure that it can be ascertained on the basis of the statutes whether the preconditions for tax privileges have been fulfilled. The statutes shall contain the criteria referred to in Annex 1.
- (2) The statutes shall conform to the prescribed requirements, in respect of corporation tax and trade tax, during the entire assessment period, and, in respect of other taxes, at the time the tax liability arises.

Section 60a Determination of compliance with statute-related preconditions

- (1) Compliance with statute-related preconditions pursuant to sections 51, 59, 60 and 61 shall be determined in a separate process. The determination of statute-related compliance shall be binding with regard to the taxation of the corporation and of taxpayers who give donations to the corporation in the form of gifts and membership contributions.
- (2) Determination of statute-related compliance shall be carried out
 1. upon application by the corporation or
 2. as standard procedure during assessment of corporation tax if no such determination has yet been carried out.
- (3) The binding effect of the determination shall cease from the date the legal provisions upon which the determination is based are rescinded or amended.
- (4) In the event that circumstances relevant to the determination change, the determination shall be rescinded with effect from the date on which such circumstances change.
- (5) Material errors in the notice of determination of statute-related compliance may be remedied with effect from the calendar year following the notification that the determination is to be rescinded. Section 176 shall apply accordingly, unless changes are to be made for calendar years that commence after the promulgation of an authoritative ruling by a highest federal court.

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Section 61 Dedication of assets in the statutes

(1) A sufficient dedication of assets for tax purposes (section 55(1) number 4) shall be deemed to exist if the purpose for which the assets are to be used if the corporation is dissolved or liquidated or if its former purpose ceases to apply is so precisely defined in the statutes as to ensure that it can be ascertained on the basis of the statutes whether such purpose is tax-privileged.

(2) (rescinded)

(3) If the provision on the dedication of assets is subsequently amended so that it no longer conforms to the requirements of section 55(1) number 4 it shall be deemed from the outset to have been insufficient for tax purposes. Section 175(1), first sentence, number 2 shall apply with the proviso that tax assessment notices may be issued, cancelled or amended insofar as they relate to taxes which have arisen within the ten calendar years preceding the amendment of the provision on the dedication of assets.

Section 62 Reserves and asset accumulation

(1) A corporation may allocate all or part of its funds

1. to a reserve, insofar as this is necessary to sustainably fulfil the tax-privileged purposes set out in its statutes;
2. to a reserve for the intended replacement of fixed assets that are necessary for achieving the tax-privileged purposes set out in its statutes (replacement reserves). The amount of the allocation shall be calculated in accordance with the regular depreciation allowances for the fixed asset to be replaced. Evidence shall be provided for conditions justifying higher allocations;
3. to a general reserve, but this allocation may include no more than one third of its surpluses from asset management plus no more than 10 percent of its other funds destined for prompt use under section 55(1) number 5. If the maximum allocable amount is not allocated to the general reserve in a given year, the difference between the amount allocated and the maximum allocable amount may be made up over the following two years;
4. to a reserve for the purpose of acquiring shareholder rights to maintain the percentage share of holdings in incorporated companies, although the amount of this reserve shall reduce the amount of the reserve under number 3 above.

(2) The accumulation of reserves pursuant to subsection (1) above shall take place within the time limit stipulated in section 55(1) number 5, third sentence. Reserves under subsection 1 numbers 1, 2 and 4 above shall be dissolved without delay as soon as the reason for accumulating the reserve no longer applies. The decommitted funds shall be used within the time limit stipulated in section 55(1) number 5, third sentence.

(3) The following allocations of funds are not subject to the provisions on prompt use under section 55(1) number 5:

1. donations by reason of death if the decedent did not stipulate use for the current expenditure of the corporation;
2. donations which the donor expressly states are to be used to endow the corporation with assets or to increase the assets;
3. donations received in response to an appeal by the corporation if it is evident from the appeal that donations are solicited to increase the assets;
4. donations in kind which by their nature form part of the assets.

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(4) A foundation may transfer to its assets, in whole or in part in the year of its establishment and in the three following calendar years, surpluses from the management of assets and gains from economic activities pursuant to section 14.

Section 63 Requirements to be met by actual management activity

(1) The actual management of the corporation shall be directed towards the exclusive and direct achievement of the tax-privileged purposes and shall conform to the provisions on the requirements for tax privileges contained in the statutes.

(2) Section 60(2) shall apply *mutatis mutandis* in respect of the actual management activity and section 61(3) in respect of a breach of the stipulated dedication of assets.

(3) The corporation shall show by way of orderly records of its revenue and expenditure that the actual management activity conforms to the provisions of subsection (1) above.

(4) If the corporation has accumulated funds without meeting the requirements, the tax office may set the corporation a time limit for the use of the funds. The actual management activity shall be deemed to conform with the provisions of subsection (1) above if the corporation uses the funds for tax-privileged purposes within such time limit.

(5) Corporations within the meaning of section 10b(1), second sentence, number 2 of the Income Tax Act may issue donation receipts within the meaning of section 50(1) of the Income Tax Implementing Ordinance only if

1. no more than five years have elapsed since the date on the annex to the corporation tax assessment notice or exemption notice or
2. no more than three years have elapsed since the determination of statute-related compliance pursuant to section 60a(1) and no exemption notice or annex to the corporation tax assessment notice has yet been issued.

The time limit shall be calculated to the exact date.

Section 64 Taxable economic activities

(1) If the law precludes tax privileges to the extent that an economic activity (section 14) is carried on, the corporation shall forfeit the tax privilege for the tax bases (income, turnover, assets) attributable to such economic activity insofar as the economic activity is not a dedicated activity (sections 65 to 68).

(2) If the corporation carries on several economic activities which are not dedicated activities (sections 65 to 68), these shall be treated as a single economic activity.

(3) Tax bases attributable to economic activities which are not dedicated activities shall not be subject to corporation tax and trade tax if the total annual income including VAT from these economic activities does not exceed 35,000 euros.

(4) The subdivision of a corporation into several independent corporations for the purpose of benefiting more than once from the tax privilege pursuant to subsection (3) above shall constitute an abuse of legal options for tax planning schemes within the meaning of section 42.

(5) Surpluses subject to corporation tax and trade tax realised from the liquidation of used materials obtained free of charge, unless realised by a selling agency permanently maintained for that purpose, may be estimated up to the level of the conventional net profit in the respective branch of business.

(6) In the case of the following taxable economic activities, taxation may be based on a profit of 15 percent of income:

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1. publicity for enterprises undertaken in connection with tax-privileged activity including dedicated activities,
2. totalisator operations,
3. second fractionation stage of the blood donor services.

Section 65 Dedicated activity

A dedicated activity shall be deemed to exist where

1. the overall design of the economic activity is directed towards achieving the tax-privileged purposes of the corporation as set out in the statutes,
2. such purposes can be achieved only by way of such activities, and
3. the economic activity does not enter into competition with non-privileged activities of the same or similar type to a greater extent than necessary for achieving the tax-privileged purposes.

Section 66 Welfare

(1) A welfare institution shall carry on a dedicated activity if it is especially directed towards serving the persons designated in section 53.

(2) Welfare shall be the organised care of distressed or endangered fellow humans undertaken not for gain but for the public benefit. Such care may extend to ensuring health, moral, educational or economic welfare and may serve preventive or remedial purposes.

(3) A welfare institution shall be especially directed towards serving the persons designated in section 53 if such persons benefit from at least two thirds of its disbursements and other services. Section 67 shall apply in the case of hospitals.

Section 67 Hospitals

(1) A hospital covered by the Hospital Fees Act or the Federal Ordinance on Hospital and Nursing Charges shall carry on dedicated activity if not less than 40 percent of hospital days or calculation days each year is attributable to patients for whom only rates for general hospital services are charged (section 7 of the Hospital Fees Act, section 10 of the Federal Ordinance on Hospital and Nursing Charges).

(2) A hospital not covered by the Hospital Fees Act or the Federal Ordinance on Hospital and Nursing Charges shall carry on dedicated activity if not less than 40 percent of hospital days or calculation days each year is attributable to patients for whom no higher charge for hospital services is made than that referred to in subsection (1) above.

Section 67a Sporting events

(1) Sporting events conducted by a sports association shall constitute dedicated activity if the total annual income including VAT does not exceed 45,000 euros. The sale of food and drinks and the publicity measures shall not form part of the sporting events.

(2) Up to the time at which the corporation tax assessment notice becomes unappealable, the sports association may declare to the tax office that it waives the application of the first sentence of subsection (1) above. This declaration shall be binding upon the sports association for not less than five assessment periods.

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(3) Where the application of the first sentence of subsection (1) above is waived, sporting events conducted by a sports association shall constitute dedicated activity if

1. no members of the association taking part receive from the association or from a third party remuneration or other benefits for their sporting activity or for the use of their persons, their names, their pictures or their sporting activity for publicity purposes apart from an expense allowance, and
2. no other sportspersons taking part receive from the association or from a third party in collaboration with the association remuneration or other benefits for taking part in the event apart from an expense allowance.

Other sporting events shall constitute a taxable economic activity. This shall not preclude tax privileges if the remuneration or other benefits are paid exclusively from economic activities which are not dedicated activities, or by third parties.

Section 68 Specific dedicated activities

The following shall also constitute dedicated activities:

1.
 - a) old people's homes, old people's residential and nursing homes, convalescent homes and services for the provision of meals if especially directed towards serving the persons designated in section 53 (section 66(3)),
 - b) kindergartens, residential homes for children, young persons and students, temporary hostels for schoolchildren in rural areas and youth hostels,
2.
 - a) agricultural and horticultural undertakings serving to ensure the self-sufficiency of corporations and hence the proper nutrition of and adequate provision for institutional residents,
 - b) other organisations necessary for the self-sufficiency of corporations such as joinery and metalworking shops,

if the supplies and other services provided by such organisations to third parties do not exceed 20 percent of the total of supplies and other services provided by the undertaking, including those provided to the corporation itself,

3.
 - a) workshops for the disabled which are eligible for aid in accordance with the provisions of the Social Code, Book III, and which provide employment for persons who on account of their disabilities are unable to obtain work in the general labour market;
 - b) organisations providing employment and work therapy where disabled persons undergo treatment on account of a doctor's indication and without having an employment relationship with the supporting institution of the therapeutic facility in order to rebuild basic physical or psychological functions with the aim of reintegrating such persons into everyday life or of developing, advancing and training the specific skills and abilities necessary for participating in working life, and
 - c) integrative projects within the meaning of section 132(1) of the Social Code, Book IX, if not less than 40 percent of the employees are particularly affected, severely disabled persons within the meaning of section 132(1) of the Social Code, Book IX,
4. organisations maintained to provide welfare for blind people and for physically disabled people,

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5. Day and night facilities (residential care for children and young people) or other forms of assisted living,
6. lotteries and raffles approved by the authorities responsible if the net return is directly and exclusively used to advance public-benefit, charitable or religious purposes,
7. cultural institutions such as museums and theatres and cultural events such as concerts and art exhibitions; this shall not include the sale of food and drink,
8. adult education centres and other institutions insofar as they themselves conduct lectures, courses and other events of an academic or instructional nature; this shall also apply to the extent that the institutions themselves provide board and accommodation for persons attending such events,
9. scientific and research institutions whose supporting institution is funded predominantly by allocations from the public sector or from third parties or from asset management. Contract research shall also serve science and research purposes. Activities restricted to the application of established scientific knowledge, the assumption of project sponsoring and economic activities not linked to research shall not constitute dedicated activity.