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By PwC Deutschland | 11. Mai 2025

Charitable promotion of democratic political system via online platform

In a recently published decision, the Supreme Tax Court held that the operation of an online platform for the publication of socio-political issues can only be recognized as a charitable non-profit promotion of the democratic state if the matters of concern are related to the exercise of state authority and are dealt with in a neutral und unbiased manner.

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Background

In a most recent decision, the Supreme Tax Court had to deal with the tax privileges of a so-called petition platform as a charitable non-profit corporation. A promotion of the democratic state within the meaning of **Section 52 (2) sentence 1 no. 24 Fiscal Code** as a *public-benefit purpose* (here: „*the **general advancement of the democratic state system** in the territory of application of this Code, which shall not include endeavors which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level*“) may exist if the free, open and unregulated formation of political will with regard to the exercise of state power is promoted. This, according to the Supreme Tax Court, may - under certain conditions - also be accomplished by providing an online platform set up for this purpose.

According to its statues, the plaintiff (a registered association) exclusively pursued the “promotion of democratic government” as a charitable purpose. For this purpose, the plaintiff operated an online platform where users could publish their own campaigns of any kind free of charge and submit them for electronic voting (online petition). The plaintiff's management board and employees supported the users in designing the campaigns. It was a matter of dispute before the tax courts whether the term “*general promotion of democratic government*” in Section 52 (2) no. 24 Fiscal Code also covers online petitions to non-governmental bodies.

The tax office had not accepted the non-profit status, the tax court of first instance upheld the claim. The plaintiff's actual business activities were aimed at the general promotion of the democratic state. Its promotion required active advocacy of its principles but also allowed to develop focal points or set priorities.

Decision

TheSupreme Tax Court granted the appeal brought by the tax office and referred the matter back to the tax court for further hearings and a final decision.

It is required that the issues put up for vote are promoted in a neutral manner - also in terms of party politics - and without any evaluation of their content. The Supreme Tax Court was unable to conclusively decide whether this restriction was fulfilled in the case of dispute due to lack of information gathered by the tax court of first instance regarding the discussion of certain issues on the part of the platform operator who may have adopted certain opinions as his own.

In its decision, the Supreme Tax Court points out that Section 52 (2) sentence 1 no. 24 Fiscal Code does not define the term “democratic state“. Therefore, and considering the structural principles of the federal constitution, reference must be made to Art. 20 para. 2 of the German Basic Law.

Article 20 Basic Law deals with the constitutional principles and contains fundamental

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provisions on the organization of the state of the Federal Republic of Germany: The people are understood as the sovereign, which is represented by “special legislative bodies”, i.e. the Bundestag and Bundesrat, “executive power” i. e. governments and administration, and “jurisdiction”, i.e. the courts.

The operator of an online platform acts outside the scope of the promotion of democratic governance if other issues are put to the vote, such as, e. g., in cases of termination of a rental agreement for a particular newsstand between two private law subjects or a call for a boycott of a private law subject as a domestic bearer of fundamental rights.

Although the latter may be regarded as a free expression of opinion, it is not sufficient to assume a „furtherance of the general public“ within the meaning of Section 52 (2) sentence 1 no. 24 Fiscal Code. Accordingly, the judgment of the lower tax court had to be set aside and the matter referred back to examine in a second instance whether the plaintiff's activities could be regarded as promoting the democratic state, taking into account the restriction arising from Article 20 (2) Basic Law which provides that „all state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies”.

Source:

Supreme Tax Court decision of 12 December 2024 V R 28/23- published on 8 May 2025.

Schlagwörter

charitable organization, non-profit associations