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By PwC Deutschland | 14. Dezember 2025

No gift tax exemption for contributions to state foundation

Donations to a foundation with legal capacity established by a federal state are not exempt from gift tax if, according to the purposes specified in the statutes of the foundation, the donations do not exclusively serve the purposes of the federal state and are not exclusively used for tax-privileged purposes. This is the conclusion reached by the Supreme Tax Court in a recently published decision.

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Background

The plaintiff is a non-profit foundation under civil law with legal capacity which was established in 2021 by the state of Mecklenburg-Western Pomerania. Shortly after its formation it signed a cooperation agreement with a public limited company (AG) which specifically covered the completion of a construction project with the participation of the plaintiff and its ensuing remuneration for the work. Irrespective of the agreed payment, the AG made two payments to the plaintiff in the course of 2021. The tax office assessed gift tax based on the contributions. The tax court of first instance dismissed the action of the plaintiff as unfounded.

Decision

The Supreme Tax Court confirmed the opinion of the Mecklenburg-Western Pomerania Tax Court. The payments constitute a gratuitous transfer by way of gift pursuant to Section 1 (1) No. 2 in conjunction with Section 7 (1) No. 1 of the Inheritance and Gift Tax Act (IGTA) because they were not tied to any service in return on the part of the plaintiff such as the completion of the construction project.

The payments are not exempt from gift tax. An exemption under Section 13 (1) No.15 and No. 17 IGTA cannot be granted because, according to the wording of the foundation statutes, the gratuitous donations served the purposes of the state of Mecklenburg-Western Pomerania but not exclusively and without exception. Furthermore, a tax exemption also fails because the purposes laid down in the plaintiff's statutes are not, “absolutely and without exception“, tax-privileged purposes.

According to the second alternative of Section 13 (1) No. 15 IGTA, which is the only one relevant to this case, transfers that serve exclusively the purposes of the federal government, a state, or a domestic municipality (association of municipalities) are tax-exempt. Section 13 (1) No. 17 IGTA further exempts contributions that are exclusively dedicated to ecclesiastical, charitable, or charitable purposes, provided that the use for the specified purpose is guaranteed.

Source:

Supreme Tax Court, decision of 30 July 2025 (II R 12/24), published on 11 December 2025.

Schlagwörter

donations, foundation, gift tax