Downloaded from Blogs on 15.11.2026 11:01h

By PwC Deutschland | 01. Februar 2026

Tax deduction for donations to Swiss foundation

The free movement of capital under Article 63 of the Treaty on the Functioning of the European Union is not violated if the tax treatment of a donation to a foundation based in the Swiss Confederation is subject to national requirements that apply in the Member State of the donor. According to the Supreme Tax Court, the national legislature is not obliged to recognize the charitable status under foreign law.

Downloaded from Blogs on 15.11.2026 11:01h

Background

The tax office refused to recognize the donation to the Swiss foundation (S) as tax deductible in the plaintiff's 2017 income tax assessment. Although donations to organizations outside the European Union (EU) or the European Economic Area (EEA) are generally deductible, this does not apply in the case of Switzerland. According to written confirmation from the tax office of the competent Swiss Canton, the foundation is exempt from tax under Swiss law because its purpose is exclusively for the benefit of third parties and it pursues charitable activities.

The appeal was rejected. The Munich Tax Court stated that the freedom of capital movement (Article 63 of the Treaty on the Functioning of the European Union - TFEU) at issue here also extended to third countries and thus also to Switzerland. However, the deduction of the donation from taxable income had to be denied because Switzerland had not undertaken to provide mutual assistance and tax collection assistance to Germany in the year in dispute. The question if the plaintiff had sufficiently demonstrated the material requirements for a donation deduction by submitting documents relating to S could therefore be left unanswered.

Decision

The Supreme Tax Court agreed with the former court. The tax court of first instance correctly found that the plaintiff did not meet the requirements for the deduction as charitable donation. The plaintiff did not prove that S was a corporation, association of persons, or estate that would be tax-exempt if it generated income in Germany. It was therefore not necessary to decide whether the plaintiff had provided sufficient proof of having made the donation and to review the requirements which must be met in the case of a foreign donation in the year in dispute. Likewise, the question whether the further requirements specified in the Income Tax Act are compatible with the free movement of capital pursuant to Article 63 (1) TFEU is no longer relevant in the case in dispute. The Supreme Tax Court explains further some of the issues at hand as follows:

1. Even in the case of a donation to a foundation based in another EU/EEA country it must be examined whether the requirements for tax deduction of charitable contributions under the relevant national regulations are met. According to established case law of the European Court of Justice and the Supreme Tax Court, it does not violate the freedom of capital movement under Article 63 TFEU if the deduction of charitable donations is subject to the national requirements applicable in the donor's Member State. This applies even in the case of donations to an institution based in another EU/EEA country. Provided they comply with EU law, Member States are free to decide under what conditions they wish to promote certain public interests by either granting benefits to institutions that selflessly pursue objectives related to these interests or by allowing tax relief for donations to these institutions.

2. The deduction as charitable donation is excluded already because the plaintiff has not been able to prove that S is a corporation, association of persons, or estate that would be tax-exempt if it were to generate domestic income (keeping with the requirements in Section 5 1) No. 9, (2) No. 2, second half-sentence

Downloaded from Blogs on 15.11.2026 11:01h

Corporation Tax Act). In the case in dispute, the foundation deed of S submitted by the plaintiff in the appeal proceedings does not meet the requirements laid down in Section 51 of the General Tax Code.

3. It was neither necessary to further determine whether the plaintiff had provided sufficient proof of the donation nor what requirements such documentation should meet in the case of a foreign donation, the Supreme Tax Court said.

In brief, it can be summarized that donations to foreign countries, including Switzerland, are possible. However, they are subject to special requirements governed by the national law of the donor's member state. It is the donor's responsibility to provide evidence of this.

Source:

Supreme Tax Court, decision of 1 October 2025 (X R 20/22), published on 29 January 2026.

Schlagwörter

charitable status, donations, foreign foundation