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By PwC Deutschland | 26. März 2026

Use of assets as restricted by the terms of the charity's governing documents

The mandatory restriction of the use of assets (dedication of assets) of a charitable institution is fulfilled if the statutes either specify the tax-privileged purpose in detail or sufficiently designate another tax-privileged corporation or legal entity under public law to which the assets are to be transferred for tax-privileged purposes after the dissolution or termination of the corporation or if its previous purpose has ceased to exist. This was decided by the Supreme Tax Court in a recently published judgment.

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Administrative procedure for charitable status

Compliance with statute-related preconditions shall be determined in a separate process -Section 60a (1) Sentence 1 of the General Tax Code (GTC). The subject matter of the separate determination procedure is limited to a specific statute if this is expressly mentioned in the notice of determination.

According to Section 60a (5) Sentence 1 GTC, material errors in the **notice of determination** of statute-related compliance may be remedied with effect from the calendar year following the announcement of the revocation of the determination.

Also, in an earlier decision of 26 August 2021 (V R 11/20) the Supreme Tax Court held that protection of legitimate expectations is not possible because – as in the present case in dispute - the relevant provisions do not apply to the initial issuance of a negative determination notice.

Articles of association satisfy the principle of statutory asset restriction only if they also contain an explicit provision regarding the cessation of the entity's previous purpose.

In the case of dispute, the articles of association merely stated that, in the event of the dissolution or termination of the corporation or the cessation of its existing purpose, the assets would pass to a legal entity under public law or to another tax-exempt corporation, which must use them directly and exclusively for charitable and non-profit purposes, **without further specifying the recipient or the purposes**.

According to the Supreme Tax Court, the plaintiff's articles of association do not meet the legal requirements in Section 61 (1) in connection with Section 55 (1) No. 4 GTC. The statutory commitment provided therein is met if the articles of association either precisely specify the tax-privileged purpose of use or sufficiently designate another tax-privileged corporation or legal entity under public law to which the assets are to be transferred for tax-privileged purposes upon the dissolution or termination of the corporation or upon the cessation of its previous purpose.

In Brief: The articles of incorporation must - already at the time the tax-privileged corporation is established - contain a binding and specific provision regarding the intended use of its assets or the designation of another tax-privileged corporation or legal entity under public law in the event of the tax-privileged corporation's dissolution, termination, or cessation of its purpose.

The Supreme Tax Court went on to note that while Section 61 (1) GTC sets forth the formal requirements, Section 55 (1) No. 4 GTC specifies the substantive and material requirements for the use of the assets which need to be part of the articles of association:

Section 61 (1) GTC provides *that 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*

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apply is 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.

Section 55 (1) GTC: *Funding or support is considered to be selfless (altruistic) if it is not primarily intended to serve commercial or other profit-making purposes and if the following conditions are met:*

No. 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.*

The Supreme Tax Court further elaborates that the mere reference to the legal terms "nonprofit" and "charitable"- as stipulated in the articles of association of the plaintiff - is not sufficient to identify the purpose since it does not allow for a statutory review of the permanent tax-privileged use and the specific purpose of the assets. The general use of such vague legal terms like "and" ("nonprofit" **and** "charitable") is not enough.

In addition, the Supreme Tax Court notes that the above also corresponds with Section 5 of the model articles of association in Appendix 1 to Section 60 (1) GTC which requires the designation of a "specific" charitable, non-profit or ecclesiastical purpose or the identification of a legal entity under public law or another tax-privileged entity.

Source:

Supreme Tax Court, judgment of 20 November 2025 (V R 10/24) published on 12 March 2026.

Schlagwörter

charitable status, non-profit associations