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# Charitable donations in other EU/EEA countries only deductible if all German formalities are observed

**The Supreme Tax Court has held that a donation to a charity registered in another EU/EEA member state is only deductible if its statutes and actual management conform to all the German requirements.**

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A German taxpayer made a donation to the Russian Orthodox Church in Rome. The actual recipient was an Italian registered charity in the legal form of an association. The taxpayer sought a deduction in Germany on the grounds that the association served a charitable purpose recognised as such in Germany and that it would have qualified in Germany for the tax privileges of a charity had it been German resident. It thus met the formal requirements for tax relief on donations to EU/EEA charitable associations. The tax office refused this request, stating that it was unclear that the association and its management had restricted themselves solely to the activities privileged under German law.

The Supreme Tax Court held that the objections of the tax office were irrelevant as the deduction was, in case, to be disallowed by reason of a deficiency in the association's charter. German law requires all charities to include provisions in their charters to ensure that any assets remaining on dissolution can only be used for charitable purposes. This fact must be apparent from the charter itself without reference to other documents. Typically, the requirement is met by naming the purpose for which the funds are to be used or the association to which they are to be transferred. The Italian charter in the case at issue provided that any remaining assets be transferred to a "non-business organisation, preferably one linked to the patriarchate in Moscow or belonging to the Russian Orthodox Church". The Supreme Tax Court saw this wording as too vague as it did not, on its own, preclude the use of the funds for purposes not privileged under German law. The court emphasised the importance of adherence to the German formality.

Supreme Tax Court judgment I R 16/12 of September 17, 2013 published on March 12, 2014

**Keywords**

charities, donations