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By PwC Deutschland | 06 May 2015

EEA donations must be supported

The Supreme Tax Court has held that donations to charities in other EEA countries must be supported by receipts and other documents. These documents need not necessarily be completely in conformity with the German forms, though they should demonstrate the substance.

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A German couple made a donation to an otherwise unnamed Spanish “foundation” apparently operating from a villa in Majorca. The foundation’s purpose was charitable in support for “learning, education, the arts and culture, as well as all forms of support for youth and for the aged” and medical assistance for the needy. It confirmed receipt of the donation from a GmbH but did not disclose the use to which the funds had been put or offer any details as to its actual activity. The tax office refused a donation deduction for lack of evidence of entitlement. The foundation later issued a second confirmation of receipt of the donation, this time naming the taxpaying couple as donors, but again without confirming the use to which the funds had been put. It did, though, emphasise that it had been recognised as a charity under Spanish law and, as such, submitted a yearly activity report to the Spanish authorities. Tax office requests for a copy of this report went unanswered.

The Supreme Tax Court has now confirmed that the tax office was right not to grant a deduction for the donation as claimed. Donations to bodies in other EEA countries were deductible if the recipient supplied the same evidence of charitable intent and purpose as would be expected of a German counterpart. A foreign foundation could not be expected to meet the German forms, although any deficiencies in substance had to be met by the German taxpayers claiming the deduction. This they could do with all the documentation at their disposal or which they could obtain from the foundation itself. In particular it included documentation, such as an official activity report, which was in any case known to exist. The documentation submitted, including a balance sheet showing assets of €25,000 (which presumably did not include the villa) and an income and expense statement showing running costs of €18,000 (the donation at issue was €15,000) offered no indication of the actual charitable activity. Accordingly, the taxpayers’ claim was rejected as unvouchered.

Supreme Tax court judgment X R 7/13 of January 21, 2015 published on May 6

Keywords

European Economic Area (EEA), donations