

By PwC Deutschland | 02 November 2025

# No substitute inheritance tax liability for foreign family foundation without legal capacity in Germany

**In a recent judgment the Supreme Tax Court decided that a family foundation established in the Swiss Confederation and with its administrative headquarters in Germany is not subject to substitute inheritance tax in Germany as it is a foundation without legal capacity.**

## Legal background

**Substitute inheritance tax** (inheritance replacement tax) targets scenarios where the assets of a family foundation or family association are tied to the foundation or association and are therefore not subject to any change of legal entity in the family succession of generations in accordance with civil law principles. According to Section 1 (1) No. 4 of the Inheritance and Gift Tax Act (IGTA) gift tax is levied on the assets of a foundation if it is established primarily in the interests of a family or specific families, and of an association whose purpose is primarily to bind assets in the interests of a family or specific families. Substitute inheritance tax is payable at intervals of 30 years from the transfer of assets to the foundation pursuant to Section 9 (1) No. 4 IGTA.

## Case of dispute

The plaintiff, a family foundation under Swiss law, was established in 1959 with the purpose to support the financial needs of the founder's descendants. Since its formation, the foundation's administrative headquarters are located in Germany where the members of the foundation board reside and where the foundation's affairs are administered.

The tax office had originally assessed substitute inheritance tax because it was of the opinion that the foundation was taxable under German law. The tax court of first instance confirmed this view as the IGTA does not specifically distinguish between foundations with and without legal capacity. For the substitute inheritance tax liability it is - from a point of view of any state - sufficient that a foundation with legal capacity exists.

## Decision

The Supreme Tax Court was unequivocal in its interpretation and opinion and upheld the appeal of the plaintiff: As a foundation without legal capacity, the plaintiff is not a family foundation within the meaning of Section 1 (1) No. 4 IGTA and therefore not subject to substitute inheritance tax.

The tax court of first instance wrongly held that the plaintiff's legal capacity is determined according to Swiss law and that it is subject to substitute inheritance tax. According to the general rules of private international law the legal capacity of a foundation established in Switzerland is generally to be assessed based on the law of the place where it has its administrative headquarters. In the case of dispute, the plaintiff's administrative headquarter was in Germany as the members of the foundation's board of trustees, as the foundation's management bodies, were resident in Germany from the outset and managed the plaintiff's affairs from Germany.

Only foundations with legal personality (capacity) are subject to substitute inheritance tax since only they have own assets at their disposal. Hence, because the plaintiff is treated as a foundation without legal capacity in Germany it does not fall under the provisions of the IGTA.

The principle of corporate domicile and formation according to which the plaintiff would be treated as having legal capacity under Swiss law regardless of its actual administrative headquarters being in Germany does not apply. Unlike regarding the member states of the EU or the EEA, there are no international treaties where a foundation under Swiss law with its administrative headquarters in Germany would be treated under the law of its country of incorporation.

**Source:**

Supreme Tax Court judgment of 4 June 2025 II R 30/22 published on 30 October 2025.

**Keywords**

foreign foundation, substitute