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By PwC Deutschland | 03 May 2026

Non-profit status of a corporate foundation

The principle of altruism (selflessness) in the context of a non-profit organization does not only preclude economic benefits for members in their professional sphere. Economic benefits in the private sphere are also detrimental to a charitable status, the Supreme Tax Court said in a most recently published decision.

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Background

A corporate foundation is a foundation whose assets include a company or shares in one.

Advancement or support shall be provided altruistically if it does not primarily serve own economic purposes, for instance commercial or other commercial purposes, and the further requirements in Section 55 (1) Numbers 1 through 5 General Tax Code (GTC) are met.

In the case in question, it was sought to determine whether a foundation was exempt from corporate income tax by virtue of its charitable purpose. The foundation's primary asset consisted of shares in a stock corporation (AG). This corporation served as a source of financing for a corporate group.

Specifically, it had to be clarified whether the conditions for the exemption- in particular, the principle of altruism (selflessness) and the principle of preserving the foundation's assets - had been met. Two questions were at issue: First, whether the conclusion of a voting agreement through which a third party obtains the majority of voting rights in a company belonging to the foundation's assets constitutes a violation of the principle of selflessness if the foundation's board of directors is merely implementing the provisions of the foundation's bylaws by concluding the voting agreement.

On this issue, the tax court of first instance had ruled in favor of the plaintiff. Furthermore, it needed to be clarified whether the requirement that a foundation's assets must consist of assets that can either be used directly to fulfill the foundation's purpose or generate income is satisfied when payments are made to the equity capital of a corporation in which the foundation holds a stake.

Decision

The Supreme Tax Court referred the matter back to the lower tax court for further hearing and decision. Based on the findings made by the lower court so far, it is not possible to conclusively determine whether the plaintiff (the foundation) primarily pursued own economic purposes within the meaning of Section 55 (1) GTC rather than charitable purposes.

The founder had contributed shares in a public limited company (AG) to the foundation's endowment assets thereby removing them from its direct

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control. However, merely endowing a foundation with assets whose proceeds are intended to be used for charitable purposes is not sufficient to qualify for tax-exempt status. Rather, the (additional) purposes pursued through the transfer of assets must be considered as well.

According to the Supreme Tax Court, it cannot be ruled out that, by establishing the foundation, the founder intended to shift from the direct financing of the corporation that was previously provided to indirect financing through the plaintiff and thereby enabling a (future) tax deduction for donations. Nor could it be excluded that the foundation was established to effectively preclude future claims to a statutory share of the estate.

A corporation pursues “primarily” self-financing purposes if it promotes its own economic interests - or (indirectly) those of its members - as a matter of priority and thus not merely as a secondary activity. The absence of selflessness is not limited to cases where the self-interest of the members comes to the fore. Selflessness within the meaning of Section 55 (1) GTC is generally also to be denied if the generation of economic benefits for all parties involved, or at least for a significant portion of them, was a decisive factor.

Source:

Supreme Tax Court, judgment of 4 December 2025 (V R 11/24) published on 30 April 2026.

Keywords

charitable status, non-profit associations