By PwC Deutschland | 11 August 2026

Carryforward of donations made to permanent endowment capital of a foundation

In most recent decision, the Supreme Tax Court held that there are no special circumstances that would allow for a retroactive determination of a carryover of donations in the year the donation was made if the correct application was not filed. However, without a separate determination, it is no longer possible to utilize the carryover in the following nine tax assessment years.

Background

Donations to a permanent endowment capital (capital reserve – „Vermögensstock“) of a foundation may be claimed at the taxpayer’s request not only during the assessment period in which the donation was made but also during the following nine assessment periods, up to a total amount of €1 million (€2 million in the case of joint assessment) and in addition to the otherwise applicable maximum amounts under Section 10b (1) Sentence 1 of the Income Tax Act (ITA). However, this special benefit set forth in Section 10b (1a) ITA is contingent upon the correct application being filed in due time in order for an effective carryover of the donation because, pursuant to Section 10b (1a) Sentence 4 ITA, a separate determination of the remaining donation carryforward is required.

In the case of dispute, the appellant donated to a foundation’s endowment capital of altogether €3,000,000 but only €552 could be utilized due to a subsequent change of taxable income from business operations in the year of the donation. The appellant failed to file the application pursuant to Section 10b (1a) Sentence 1 ITA in the year the donation was made. She was required to file this application in the year of the donation even if she intended to claim the deduction for the donation - in whatever amount - only in the following nine years.

This is how the events unfolded: The appellant (E), who passed away during the appeal proceedings, contributed the amount of €3,000,000 to the endowment fund of a foundation as her sole heir (the appellant) in 2016, the year in dispute. In her income tax return for 2016, E did not claim the deduction of her donation. The tax office assessed E’s tax liability based on her return and issued an income tax assessment for 2016 on 20 August 2018 with the proviso for re-examination. A carryover of donations to the endowment fund was not separately determined. The proviso for further review was withdrawn in November 2018 and the assessment became final. On 19 June 2019, the tax office issued an income tax assessment for the year 2017.

The plaintiff applied for the separate determination of a carryover of donations from the endowment pool as of 31 December 2016 and for the deduction of additional donations for the year in dispute 2016. In July 2019 the tax office rejected these requests. **In summary, the Supreme Tax Court**

stated that a remaining carryforward of donations from the endowment fund as of 31 December 2016 could not be determined because in this case the 2016 income tax assessment was legally binding. Furthermore, the donation could also not be taken into account in 2017 because this would have required a separate determination of the remaining donation carryover from the endowment capital as of 31 December 2016.

Source:

Supreme Tax Court, judgment of 3 June 2026 - X R 2/24 (X R 10/23) - published on 6 August 2026.

Keywords

capital reserve, donations, foundation