



efc briefing

legal and fiscal

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Germany about to introduce tax deductibility of cross-border donations

Outline

Mid December, the German Government issued a law proposal, which would introduce the tax deductibility of cross-border donations. The draft law now needs to pass Parliament (Bundestag) and second chamber (Bundesrat), which will most likely happen in the coming weeks. The law proposal can be downloaded at

http://www.bundesfinanzministerium.de/nn_82/DE/BMF_Startseite/Aktuelles/Aktuelle_Gesetze/Gesetzentwuerfe_Arbeitsfassungen/EU_Vorgaben_Steuerrecht_Gesetzentwurf_anl,templated=raw_property=publicationFile.pdf

This German initiative follows law revisions in other EU Member States such as France, Luxembourg, Bulgaria, Slovenia, Poland, Finland, Denmark, The Netherlands, which have recently introduced the tax deductibility of cross-border donations if they are given to “comparable” organisations.

However the suggested German solution may deserve a second thought: Individual and corporate donors will be able to deduct their charitable donations to EU or EEA based public benefit foundations if those organisations would also qualify for corporate income tax exemption in Germany (they must not have income in Germany but if they had income the income would need to qualify for exemption). As a consequence: in cases where the beneficiary foundation solely pursues public benefit activities outside of Germany, the activities “either have to support individuals which have their permanent residence in Germany or the activities could benefit Germany’s reputation”.

The EFC already in 2008 criticised the rather non-international approach to bringing German foundation law in line with the EC Treaty when it comes to the tax treatment of public benefit organisations themselves, which were revised in 2009. In order to qualify for tax exemption, German as well as foreign based organisations must support the “public at large” by either supporting German residents in Germany or by pursuing activities which could benefit Germany’s reputation. As a consequence, German and foreign based foundations have to prove that their international activities (activities outside Germany) could benefit Germany’s reputation and: German and foreign-based foundations with no activities in Germany (and no positive impact on the image of Germany) will not receive tax exemption for their taxable income in Germany. German practitioners and legal scholars doubt that this requirement for tax exemption is viable, because in practice it cannot be clearly decided if foundations work possibly improves Germany’s reputation.

The EFC clearly opposes the requirement of the possibility of benefiting Germany’s reputation as it sends counterproductive signals and could hamper German foundations’ international work and limit foreign foundations interest to invest in Germany. Foundations’ and funders’ public benefit work does not stop at borders and the legislator should take this into account. More and more global challenges await international and European solutions. The restrictive interpretation of German tax law runs contrary to the whole European idea and all recent efforts of many Member States to provide for a better climate for foundations’ and funders’ cross-border work. Europe needs an enabling legislation and must not go backwards by defining public benefit through a very national perspective. Such restrictive definitions of the public benefit concept that lead to tax exemptions are fortunately rarely found throughout Europe and we hope that the German legislator will review the matter and find a more appropriate definition of public benefit, which enables and strengthens international philanthropy.

The EFC wishes to recall the responsibility of national legislators to provide for an enabling environment for foundations taking into account the European reality.

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EU Member States should establish the same tax incentives for donors of resident and foreign EU based public benefit foundations. They should also ensure equal tax treatment for both foreign EU based and resident public benefit foundations as long as they fulfil all other tax law requirements. Public benefit activities, which lead to tax breaks should also include activities outside the country.

The EFC has already in 2003 developed “Fundamental Legal and Fiscal Principles for Public Benefit Foundations”, which were translated into a “Model Law for Public Benefit Foundations in Europe”, which aims to positively influence the development of new foundation laws as well as the revision of existing foundation laws at national level.

[>download Fundamental Principles \(pdf 40kb\)](#)

[>download Model Law \(pdf 65kb\)](#)

Action Point

The EFC will continue to keep its members informed about future foundation law developments. For more information, please contact: eu@efc.be. Useful contacts regarding the German situation are: Bundesverband Deutscher Stiftungen - www.stiftungen.org and Stifterverband für die Deutsche Wissenschaft - www.stifterverband.de.