

Donations to non-profit institutions in European Union Member States and EFTA Member States are tax deductible in Luxembourg

Circular issued by the Luxembourg tax authorities on July 20, 2009 (L.I.R. – no.112/2)

In the future, the tax deduction of donations to non-resident non-profit institutions will be allowed and governed by a new circular issued by the Luxembourg direct tax authorities.

Legal framework for the tax deduction of donations in Luxembourg

Article 109 paragraph 1 No. 3 of the Luxembourg income tax act, in connection with article 112 of the Luxembourg income tax act, specifies the requirements which must be satisfied for donations to domestic beneficiaries to qualify as special expenses.

Implementation of the judgement of the European Court of Justice in Luxembourg

In accordance with the judgement of the European Court of Justice on the German legal matter of Hein Persche versus the local tax office of Lüdenscheid (ECJ / C-318/07 / January 27, 2009), the Luxembourg tax offices are instructed to treat donations to non-profit institutions from European Union Member States and European Free Trade Association Member States (EFTA Member States), i.e. Iceland, Liechtenstein, Norway and Switzerland as special expenses, as per a circular by the direct tax authorities dated July 20, 2009 (L.I.R. – no.112/2).

Requirements for the tax recognition of donations

The Luxembourg tax authorities are not compelled by the abovementioned ECJ judgement to recognise the status of foreign donation beneficiaries unconditionally and without prior examination and to put them into the same category as donation beneficiaries classified as non-profit institutions in accordance with domestic legislation.

The tax deductibility as special expenses is examined by the tax authorities in the context of the information provided in the tax return or annual adjustment. In principle, proof of donation must be attached to those documents and must specify the donation beneficiary's exact name and the amount and date of the donation. If the tax authorities have doubts about the truthfulness of the data supplied by the taxpayer, they may require additional proof that a donation has been made (e.g. remittance slip) and/or a certificate which must be filled out by the donation beneficiary.

The certificate can be found in the appendix of the circular on the tax authorities' website and it must be filled out by the donation beneficiary in French, English or German (www.impotsdirects.public.lu/archive/newsletter/2009/nl_200709/index.html).

In addition, the tax authorities reserve the right to review the data with the assistance of the tax or fiscal authorities of the state where the beneficiary is located in accordance with the provisions of directive 77/799 EEC concerning mutual assistance in the field of direct taxation.

Donations to non-resident non-profit institutions claimed as special expenses in Luxembourg are subject to the requirements of Article 109 paragraph 1 No. 3 of the Luxembourg income tax act and may not exceed either 20% of the total income or EUR 1,000,000. Donations in kind are subject to further requirements.

According to the information available to us, the circular will apply to tax returns starting from the fiscal year 2009. Retroactive application has been ruled out by the tax authorities.

Consequently, cross-border donations will enjoy the same tax treatment as domestic donations in the future and should therefore be deductible as special expenses.

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