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No relief for loss of foreign subsidiary until final

The Supreme Tax Court has held that even if a company is entitled to offset the loss of its foreign subsidiary at all, it cannot do so before the loss becomes irrecoverable.

A company repeatedly injected fresh capital into its Italian subsidiary in order to cover losses. Initially, it capitalised these subventions as an investment cost, but then wrote the investment down to its actual market value. This write-down was disallowed by a specific provision in the Corporation Tax Act. The company then claimed direct relief of the Italian loss against its own German income. The tax office refused and the Supreme Tax Court has now declined to try the main issue – whether a German parent can claim relief in Germany for the losses incurred by its foreign subsidiary – on the grounds that even if a German offset of the Italian loss were feasible at all, it would necessarily be delayed until the loss became „final“. A „final“ loss in court language is one which is no longer recoverable because the subsidiary has ceased its business operation. Conversely, there can be no relief in Germany whilst the operation continues and there is still some hope of loss recovery locally.

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Schlagwörter

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