By PwC Deutschland | 27. März 2013

No resurrection of statue-barred loss on tax amnesty

The Supreme Tax Court has held that a tax evader who came forward under an amnesty could not offset a previously unreported capital loss against his income declared in retrospect, as tax had not been evaded on the loss, now statute-barred under normal rules.

Tax assessments generally become statute-barred at the end of the fourth year following the end of the year in which the return was filed. If, however, tax is evaded, the statutory limitation period extends to 10 years. An evader who had consistently failed to declare his investment income took advantage of an amnesty in 2010 to come forward and to declare in retrospect his earnings in 1998-2008. The tax office accepted the amnesty return, but refused to allow a deduction for a previously unreported capital loss in 2003 from the sale of investments. No tax on the loss had been evaded and its recognition for relief was subject to the normal four-year limitation period expiring in 2009.

The Supreme Tax Court has confirmed this view taken by the tax office. At the time capital gains and losses on the sale of investments were not part of investment income. Only the tax on investment income had been evaded and only income of that category was subject to the longer limitation period. The court reached this conclusion from the letter of the law, but also pointed out that it would be unfair to allow an evader relief when an honest taxpayer would be de-barred from the same remedy.

Supreme Tax Court judgment IX R 30/12 of November 20, 2012 published on March 27, 2013

Schlagwörter

limitation, statute-bar, tax amnesty