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By PwC Deutschland | 15. April 2015

Minimum taxation not a reason for provisional assessment

The Supreme Tax Court has held that a tax office cannot be required to issue a provisional assessment restricting the immediate deduction of the loss brought forward, merely because of the possibility that the remaining loss to be carried forward might be invalidated by a share transaction abroad at some future point in time.

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A GmbH subsidiary of a French group brought forward losses from prior periods. Its loss offset in the year under review was restricted by the “minimum taxation” provisions to the first €1 m of the annual profit plus 60% of the remainder. The amount of the restriction (the “minimum” taxable income) increased the amount of the loss carry forward and thus potentially lengthened the carry forward period. However, some four years later the group was considering a reorganisation that might have the effect of invalidating any remaining loss carry forward rights. Accordingly, the GmbH requested the tax office to allow it to keep its options open by issuing tax audit assessments provisionally. The tax office refused as the tax audit had been closed out and there was no reason not to issue final assessments.

The Supreme Tax Court has now confirmed the tax office in its stance. A taxpayer may request provisional assessment where there is doubt as to the facts, or where court cases are pending that could lead to a different interpretation of the law. However, there was no doubt here as to the facts or as to the law; the doubt was on the nature of a future transaction. This was not a ground for issuing a provisional assessment.

Supreme Tax Court judgment IR 32/13 of December 17, 2014 published on April 15, 2015

Schlagwörter

loss offset, minimum tax, provisional assessment