By PwC Deutschland | 01. September 2025

Loss utilization after termination of a two-tier limited partnership through accrual of assets to limited liability company

In a recently published judgment, the Supreme Tax Court decided in a case involving the transfer of a limited partnership to the sole remaining limited partner in the legal form of a limited liability company (GmbH) by way of universal succession through accrual, among other things, that the limited partner's allowable loss determined at the time of termination within the meaning of Section 15a (4) of the Income Tax Act can be offset by the limited limited company against its future profits.

Background

The case of dispute **addressed the question** whether losses within the meaning of Section 15a Income Tax Act (ITA) and Section 10a of the Trade Tax Act (TTA) incurred by the plaintiff, a limited liability company (GmbH), as a limited partner of a partnership (GmbH & Co. KG) can be offset against GmbH's own profits in the event of accrual of all assets and liabilities to the GmbH. Until 30 December 2011 the plaintiff held a 100% interest in the capital of the GmbH & Co. KG as a limited partner. On that date, the general partner GmbH, which did not own any shares in the capital, withdrew from the KG which led to the accrual of the operating assets of the KG to the plaintiff.

The tax office refused the utilization of the loss determined for the plaintiff as of 31 December 2011 for corporate income tax and trade income tax purposes for the 2012 tax assessment period. The tax court of first instance had **answered the question raised in the affirmative** and granted the appeal brought by the plaintiff.

Decision

The Supreme Tax Court confirmed the former decision and rejected the appeal brought by the tax office as unfounded.

The losses of the KG which were determined separately and uniformly for the plaintiff in accordance with Section 15a (4) ITA were transferred to the plaintiff effective 31 December 2011. They reduce the plaintiff's overall profits (and not only those from the acquired business) for corporate income tax purposes for the 2012 tax year because – in the case of corporations with unrestricted tax liability – the entire income is to be treated as trading income according to Section 8 (2) Corporation Tax Act.

According to the Supreme Tax Court, the tax court of first instance also correctly found that the plaintiff could use the trading loss carryforward determined for the KG as of 31 December 2011 in accordance with Section 10a TTA when determining the trade tax assessment amount for 2012. In the case at hand, there is no legal ground for making the use of losses dependent on the continuation and business identity of the loss-making partnership, specifically where a corporation has taken over a trade loss determined for a partnership by way of accrual.

According to the Supreme Tax Court, it could be left open whether an exception should be made from the principle of the negligibility of corporate identity in the case of a corporation if the business activities of the partnership had already been completely ceased prior to the accrual. This is because, here, the commercial enterprise from which the loss originated had to a large extent, **but not completely**, been discontinued at that point in time.

Source:

Supreme Tax Court decision of 19 March 2025 XI R 2/23 - published on 28 August 2025.

Schlagwörter

limited partnership, loss carryforward transfer