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Loss offsetting rules of Section 15a (1) Income Tax Act constitutional

In a recently published judgment, the Supreme Tax Court decided that the restrictions to offset losses for limited partners are not in breach of constitutional law. The temporal restrictions of Section 15a (1) Income Tax Act are not significant in such a way that they would make the application of the new regulation appear unreasonable, especially since the taxpayer is free to decide for himself whether, when, and to what extent he makes a contribution.

Background

Section 15a Income Tax Act (ITA) regulates the tax effects and the restrictions of the losses allocated to limited partners. Put briefly, the losses allocated may only be set against other taxable income up to the level of the partnership capital. Remaining amounts are carried forward but can only be set against future profits from the same partnership. The objective of this provision is to limit the loss relief available to a partner to the level of risk he bears.

Section 15a (1a) Sentence 1 ITA states that the portion of the limited partnership's loss attributable to a limited partner may not be offset against other business income or income from other sources to the extent that this results in or increases a limited partner's negative capital account nor may it be deducted or offset under the general loss carryback and carryforward rules of Section 10d ITA.

Case of dispute

The sole limited partner (K) of the plaintiff (a partnership GmbH & Co. KG) made an additional contribution of €130,000 in 2016 in addition to his initial limited partnership contribution of €200,000. In its assessment notice of the allowable losses for 2016, the tax office treated K's share of the loss (€75,466) as a loss eligible for offset or deduction under § 15a (1) Sentence 1 ITA due to the contribution made in the same year. In its tax return for 2017 (the year of dispute), the plaintiff reported, among other things, a current loss of €73,146, which was attributed solely to K. In 2019, the plaintiff requested that a portion of K's loss of €54,534 be recognized as an allowable offset or deduction for the year in dispute because K made a contribution of €130,000 in 2016, which had resulted in a loss eligible for offset or deduction of only €75,466 in 2016.

The tax office refused. Section 15a (1a) ITA, which applies to contributions made after 24 December 2008, ensures that, in the case of a negative capital account, contributions only lead to a loss offset to the extent that the loss relates to the fiscal year in which the contribution was made. The lower tax court and the Supreme Tax Court held in favor of the tax office.

Decision

In the case at hand, the Supreme Tax Court found that in light of the introduction of Section 15a (1a) ITA for contributions made after 24 December 2008 the previous case law was no longer valid. Therefore, in the case at hand, the Supreme Tax Court addressed the question of the constitutionality of the provision which had been called into question in professional literature.

While there is indeed unequal treatment of advance contributions compared to timely contributions (i. e., those made by a limited partner during the same fiscal year in which a tax loss is incurred) and compared to the mere entry of a liability amount in the commercial register it is nevertheless objectively justified, the Supreme Tax Court said. A strict standard of proportionality need not be applied as the taxpayer is free to determine the timing of the contribution himself. Neither are personal freedoms significantly impaired nor is there an impermissible criterion of differentiation to be found.

When looking at the standards of arbitrariness, the provision is justified by its intention to simplify the application of the law. The correction item previously required by case law - with its numerous unresolved follow-up questions - is no longer necessary. Furthermore, losses are not permanently lost but merely deferred – an offset remains possible particularly upon the dissolution of the company or the sale of the co-partner’s share pursuant to § 15a (2) Sentence 2, ITA. The legislator remained within the bounds of its authority to classify cases by treating all instances of temporally mismatched contributions uniformly. A referral to the Federal Constitutional Court was therefore not necessary.

Source:

Supreme Tax Court, judgment of 26 February 2026 (IV R 27/23) published on 16 April 2026.

Schlagwörter

capital contribution, curtailment of losses, limited partner