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By PwC Deutschland | 15. Juni 2026

Prohibition of deduction for write-down in case of interest-free shareholder loan

In a most recently published decision, the Supreme Tax Court commented on Section 8b (3) Corporation Tax Act which deals with a prohibition on deductions (such as the write-off in case of impairment of loans) in case of tax-exempt dividend income received by a corporation from shares held in another company. In addition, the court held that the disallowance is not applicable where a natural person is a related party to the company.

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Relevant statutory provisions in the case in dispute

Section 8b(1) of the Corporation Tax Act (CTA), as valid at the time, exempts profit distributions that a corporation receives from another corporation. The same applies to gains from the disposal of shares in another corporation, Section 8b(2) CTA. Section 8b(3) Sentence 3 CTA precludes the recognition of profit reductions arising in connection with a share in a corporation within the meaning of § 8b(2) CTA.

Section 8b(3) Sentence 3 of the Corporation Tax Act is complemented by sentences 4 et seq., which are intended to prevent circumvention of the aforementioned non-deductibility (profit reduction) that could have been achieved by not injecting equity capital into the loss-making capital company but instead granting shareholder loans, which - in the event of a loss in value - could be written off against taxable income because they are not covered by Section 8b(3) Sentence 3 CTA.

Background

The plaintiff is a limited liability company (GmbH) whose sole shareholder and managing director in 2013 was A. A also held an interest in another GmbH and acted as its managing director until 2010 and as an authorized signatory until early 2012. In the year in dispute, he held a 66% interest in GmbH while the remaining 34% of the shares were held by managing director B.

In 2012, the plaintiff granted the GmbH two loans and expressly waived interest as of 1 January 2013. Based on a subordination agreement pursuant to Section 39(1) No.5 Insolvency Code, the plaintiff recorded specific provisions for impairment as regards the loans in 2013. Furthermore, it recognized the waiver of interest in the income statement.

The tax office took the view that the income reductions under Section 8b(3), Sentences 3 to 7 CTA were not to be taken into account. The lower tax court of Berlin-Brandenburg (court of first instance) upheld the claim only to the extent that the profit reductions in the amount of some €136,600, which the tax office had not taken into account, also included interest claims of some €11,900.

Decision

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First of all, the plaintiff was permitted to write down the receivables from the GmbH to €0 based on the qualified subordination and to record the waiver of interest as a reduction in profit because the claims under the agreed qualified subordination clause were to be satisfied only after all other liabilities, and an outside third party, such as the purchaser of the plaintiff's business, would therefore not have attributed any value to them in excess of €0. Contrary to the opinion of the lower tax court, however, these profit reductions were not to be added back to taxable income pursuant to Section 8b(3), Sentences 4 through 7 CTA.

Furthermore, the lower tax court had wrongly interpreted Section 8b(3), sentence 5 CTA to mean that the statutory non-deductibility also applied to a situation where the granting of a loan or the drawing on of collateral is carried out by a corporation with a natural person holding an interest which is also a shareholder of the borrowing company, and that therefore the close relationship within the meaning of Section 1(2) of the Foreign Tax Act (FTA) is established by this natural person. In this regard, the Supreme Tax Court had the following to say:

The application of Section 8b(3) Sentence 5 CTA was not possible. It provides that „*this (i.e. the non-deductibility of losses…) also applies to related parties of the shareholder within the meaning of Sec. 1(2) of the Foreign Tax Act (…) or to losses from the recourse of a third party to the holder of more than one quarter oft he ordinary share capital or to his related party by reason of a loan to the company.*" Hence, the provision applies only to related parties of a shareholder falling under Section 8b(3) Sentence 4 CTA. In this context, the related party can only be a corporation. A mere personal connection via a common natural person as shareholder is not sufficient. The lower tax court therefore erred by extending the scope of application to situations in which the related party status is established solely by a natural person.

However, the case had to be referred back to the lower tax court because it still needs to be decided whether and to what extent the disputed transactions constitute a hidden distribution of profits by the plaintiff to its sole shareholder A. Specifically, the issue concerns the profit adjustment referred to in Section 8(3) Sentence 2 CTA regarding the prohibition of income reduction through hidden profit distributions. Although the requirements of Section 8b(3) Sentence 4 CTA are not met in the present

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case with respect to the plaintiff, the further application of Section 8(3) Sentence 2 CTA is not blocked.

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Supreme Tax Court, judgment of 1 April 2026 (I R 11/24) published on 11 June 2026.

Schlagwörter

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