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By PwC Deutschland | 21. Juni 2026

Consolidation gain arising from cross border reconstruction subject to tax

The Supreme Tax Court decided that so-called “consolidation gain” from the settlement of liabilities and receivables following a universal transfer of assets from a French Société à Responsabilité Limitée (SARL) to its sole shareholder GmbH cannot be neutralized off-balance-sheet in analogy to Section 8b (3) Sentence 8 of the Corporation Tax Act.

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Background

Section 8b (3) Sentence 8 Corporation Tax Act (CTA), as valid at the time, provides that “gains from the write-up of a loan (…) are ignored in the computation of income insofar as sentence 3 was applied to the previous write-down.” Sentence 3 states that - in analogy to Sentence 2 - losses in connection with a loan are to be ignored in computing income.

A so-called **consolidation gain** (gain from confusion of rights) arises when receivables and liabilities (e.g., from loans between a parent company and a subsidiary) are held by the same entity. This occurs, for example, when a subsidiary is merged into its parent company, causing the parent company to “inherit” its own receivable from the subsidiary and write it off.

The main **issue of dispute** was how to calculate the gain arising from a consolidation resulting in the case of the transfer of the assets of a French Sarl to the plaintiff, as its sole shareholder (a GmbH), by way of a “transmission universelle du patrimoine” (TUP).

A TUP is a French simplified legal mechanism that allows a company to be dissolved without going into a formal liquidation. The dissolving company's entire pool of assets and liabilities is automatically absorbed by its sole owner (dissolution by confusion of assets).

The tax office was of the opinion that the consolidation gain arising from the TUP merger and where the loan receivable had previously been written down do not fall under the tax exemption for gains under Section 8b (3) Sentence 8 CTA. The lower tax court confirmed the view of the tax office.

Decision

The Supreme Tax Court followed this conclusion and held that the consolidation gain arising from TUP merger is not neutralized off-balance-sheet. An analogous application of the tax exemption for gains from write-ups pursuant to Section 8b (3) Sentence 8 CTA is not possible in this case. Nor is there any unintended oversight by the legislator. The legislature’s intent in Section 8b (3) CTA was specifically to prevent tax-neutral reductions in profits, but not to tax incidental or merger-related gains arising from the write-off of receivables.

Section 8b (3) Sentence 8 CTA clearly and exhaustively governs cases where a gain related to a loan receivable that has been written down to a lower partial value and is thus limited in application to gains arising from such scenarios.

The Supreme Tax Court went on to explain that, in the case in dispute, the “merger gain” arises rather because, as a result of the transfer of liabilities, the original creditor now has liabilities and receivables of the same face value that offset each other and are thus eliminated under civil law while the tax-accounting value of the liabilities exceeds the receivables.

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However, the Supreme Tax Court did not confirm the profit at the amount determined by the lower tax court but at a significantly lower figure. The reduction was necessary because the TUP constitutes a dissolution under civil law pursuant to Art. 1844-5 of the Civil Code in which the company's entire assets are transferred in full to the sole shareholder without liquidation.

The SARL's assets consisted of its bank balance and receivables from third parties (€128,714) and its liabilities to the plaintiff (€800,274). However, the plaintiff then waived €724,241 of these claims thereby reducing the Sarl's assets to €76,033 which resulted in a consolidation gain of €52,681.

Source:

Supreme Tax Court, judgment of 11 March 2026 (I R 10/23) published on 18 June 2026.

Schlagwörter

exchange gain, merger, reconstruction