By PwC Deutschland | 21. August 2026

No further use of trading losses pursuant to Section 10a of the Trade Tax Act following the death of a co-partner

If a partner leaves the partnership, his or her share of the trading loss ceases to exist. A legal successor who assumes the partner's share cannot utilize this portion of the loss due to a lack of entrepreneurial identity. The reason for the withdrawal is irrelevant, the Supreme Tax Court said in a most recently published decision.

Background

A change in the partnership's shareholder structure leads to the loss of business identity and, consequently, to the elimination of the operating losses to the extent the shareholder structure changes. In the case of dispute, the question was whether this also applies to the transfer of a partner's interest without consideration by way of succession.

The plaintiff argued that the required business identity would continue provided that - as in the case at hand - the transfer of the business interest occurred by way of universal succession (in this case: inheritance). The lower tax court dismissed the claim as unfounded. Business identity ceases to exist in both cases of individual succession and universal succession.

Decision

The Supreme Tax Court also dismissed the plaintiff's appeal.

Even if a partner leaves the partnership due to death and his or her partnership interest passes to the heir without consideration, the particular share of the business loss ceases. Therefore, a legal successor who assumes the partnership interest cannot utilize this part of the loss.

The trade tax loss relief is subject to the restriction that both the business and its operator recovering the loss must be the same entity that made it (corporate identity and also entrepreneurial identity). In case of partnerships, each partner is seen as a joint operator of the business. A change in partnership therefore leads to the partial curtailment of loss carryforward in the proportion attributable to the retiring (here: deceased) partner based on his capital ratio.

The Supreme Tax Court does acknowledge that, in the case of partnerships, the business identity depends on the identity of the partners, whereas in the case of a corporation, the business identity is preserved if the corporation has retained its legal identity despite a restructuring process. The latter, however, is due to the fact that, unlike a partnership, a corporation is itself the entity to conduct the business and holds the right to deduct losses.

Source:

Supreme Tax Court, judgment of 10 June 2026 (IV R 14/24) published on 20 August 2026.

Schlagwörter

Trade Tax Loss Carry-Forward, curtailment of losses