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By PwC Deutschland | 25 May 2011

1999 minimum taxation rules do not affect loss carry-back to 1998

The Supreme Tax Court has held that the 1999 introduction of “minimum taxation” rules limiting loss offset by income type do not apply to a 1999 loss carried back to 1998.

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From 1999 to 2003 the “minimum taxation” rules allowed an unrestricted loss offset against income of the same type, but restricted the offset against income from a different type of activity to the first DM 100,000 plus one-half of the remainder. The finance ministry decreed that these rules applied to losses when incurred, and thus to the offset of a 1999 loss carried back to 1998. A tax office followed this decree in limiting the carry-back of a 1999 trading loss against 1998 employment income. The taxpayer appealed against this decision.

The Supreme Tax Court has now granted the appeal. The implementation provisions of the Income Tax Act specify 1999 as the first year of application of the “minimum taxation” provisions without going into further detail. That this was intentional and not a mere oversight was evident from the explanatory material published with the bill embodying the new provisions and from the past (and future) practice of explicitly stating all instances of retrospective and prospective application of loss relief provisions. The court therefore chose to follow its established practice of judging loss relief against the statute in force in the year of offset, rather than that in the year of incurrence. The finance ministry decree to the contrary was without legal basis.

Supreme Tax Court judgment IX R 72/04 of March 9, 2011 published on May 25

Keywords

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