Downloaded from Blogs on 08.11.2026 06:57

By PwC Deutschland | 25 October 2011

Minimum tax – payment suspension

The finance ministry has instructed tax offices to allow payment suspension requests on assessments to “minimum tax” where the future offset of the loss to be carried forward is excluded by law.

Downloaded from Blogs on 08.11.2026 06:57

Under the German concept of “minimum tax”, the maximum relief in any one year from losses brought forward is €1 m plus 60% of the remaining current income. Unrelieved losses may be carried forward in full, though the following year’s deduction is subject to the same limitation. Thus companies with annual incomes of more than €1 m retain their loss relief entitlement, whilst being obliged to pay at least some tax (on 40% of taxable income over €1 m). In principle, this denial of loss relief is temporary, though it becomes permanent if future loss offset is excluded. The Supreme Tax Court has seen serious constitutional doubts on the propriety of a minimum tax assessment where the increased loss carry-forward cannot be relieved by reason of law (in a case involving denial of relief for the loss brought forward on change of majority shareholder – reference I B 49/10, resolution of August 26, 2010). The court granted the aggrieved taxpayer a stay of execution on payment of the minimum tax due, pending its final decision on the main case (not yet heard) on the constitutionality of the provisions in these circumstances.

For the interim, the finance ministry has now issued a decree instructing tax offices to grant applications for payment suspension of minimum tax assessments where the loss carry forward cannot be realised. The decree lists the relevant circumstances of loss offset curtailment as change of shareholders, merger, liquidation, or (natural persons) death of the taxpayer. Loss curtailment for other reasons – the decree mentions withdrawal from a partnership (trade tax) and the pre-2008 provision to counter the sale of companies for their tax losses – is excluded from present application.

Keywords

Loss relief, carried forward, minimum tax, offset