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By PwC Deutschland | 27 March 2013

First €1 m full loss offset for each period of assessment

The Supreme Court has held that the initial full loss offset on €1 m applies to each period of assessment, rather than to each calendar year. Thus it can only be claimed once for a multi-year assessment.

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The “minimum taxation” rules provide that only the first €1 m of taxable income may be set off in full against losses brought forward. Thereafter, the loss offset is reduced to 60% of taxable income, thus ensuring a “minimum taxation” on 40% of income over €1 m. The statute bases the calculations on the period of assessment, rather than on a business, calendar or tax year. Thus the full offset is only granted once, even if the period of assessment covers more than one year.

The Supreme Tax Court has confirmed this conclusion in a case brought on behalf of a company in liquidation making a profit in at least some of the liquidation years. In contrast to the normal period of assessment – the calendar year, the assessment to be based on the results of all business years ending in that period – the period of assessment for a company in liquidation is the full liquidation period, running from the year the resolution took effect to the final winding-up of the estate. However, the liquidation period is not generally to be longer than three years – as stated in the Corporation Tax Act – and this usually prompts tax offices to issue interim assessments at three yearly intervals during a longer lasting liquidation period. The liquidator of a company in this position applied to the court for a full loss offset of the first €3 m for the first three years of the liquidation period on the grounds that his company was at an unfair disadvantage compared with companies with annual assessments. However, the court rejected the claim on the basis of the clear wording of the statute. It also pointed out, though, that the company was not necessarily at a disadvantage over other taxpayers. Ultimately, the entire period of liquidation was subject to a single assessment, the interim assessments being subsequently embodied into the single final assessment for the whole period. That meant that gains and losses within the liquidation period were automatically netted before the minimum taxation rule could be applied to the losses brought forward from the period of active trading.

Supreme Tax Court judgment I R 35/12 of January 23, 2013, published on March 27

Keywords

Liquidation, loss offset, minimum taxation, multi-year