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By PwC Deutschland | 05 April 2016

Forfeiture of loss relief on upstream merger

The Supreme Tax Court has held that an upstream merger leads to new assets in the accounts of the parent (surviving entity) and thus to forfeiture of that company’s remaining loss carry-forward if the new assets are substantial.

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Up to 2007, a company lost its loss carry-forward on transfer of more than half its share capital if its business continued or restarted with substantially new business assets. “Substantially new” business assets meant either that more than 50% by value of the existing assets were replaced with different items, or that the new items added were worth more than those previously existing. As the Supreme Tax Court has now emphasised, the test is based on an item-by-item approach, rather than on an overall increase in value. Thus a company with its investment in its subsidiary as its only significant asset lost its right to future relief on its losses brought forward on a group reorganisation involving the transfer of its shares within the group and its merger with its subsidiary. It had previously held an investment and now owned operating assets. The two were entirely different in nature; thus the upstream merger led to continuation or restart of business operations with substantially new assets.

Supreme Tax Court judgment IR 71/14 (NV) of October 14, 2015 published on March 30, 2016

Keywords

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