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By PwC Deutschland | 14 April 2016

Exchange loss on investment in foreign partnership is part of foreign trading result

The Supreme Tax Court has confirmed its previous case law that the foreign exchange loss on the return of capital invested in a foreign partnership is part of the trading results attributable to that partnership. Hence, it is not deductible in Germany if the income is not taxable by treaty or statute.

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A partnership took up a minority share in a US LLP. Later, the LLP was dissolved and the capital returned to the partners. However, the euro had in the meantime strengthened against the dollar, so the capital repayment resulted in an exchange loss for the German investor partnership. Because the tax office notification of the allocation of the partnership's income to the individual partners had, in the meantime, become final and binding, the partners claimed a deduction for their share of the exchange loss in their own returns. They also claimed a deduction for trade tax. The tax office refused both claims.

The Supreme Tax Court has upheld the tax office' point of view in a judgment confirming previous case law on the subject. The exchange gain or loss on the capital invested in a foreign partnership was part of that partnership's trading income. Accordingly, it was part of the trading profit or loss to be allocated by the German investor partnership to its own partners. If that allocation was no longer alterable, there was no possibility of attributing the loss to the partners directly. This applied regardless of whether the foreign income was taxable or, as in this case, exempt under the US double tax treaty (the desired effect was to have the loss taken into account in the calculation of the tax rate). Because the loss in question was part of the US trading income it necessarily fell under the Trade Tax Act exemption for trading income from foreign permanent establishments or partnerships. Thus, no German deduction was available, regardless of the treaty position.

Supreme Tax Court judgment I R 13/14 of December 2, 2015 published on April 13, 2016

Keywords

exchange loss, foreign partnership