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By PwC Deutschland | 12 February 2019

Deduction of final branch losses – a change of track?

The Lower Tax Court of Hesse, with reference to the ECJ case Bevola und Jens W. Trock, decided that final losses of a foreign (UK) permanent establishment are deductible in Germany.

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The plaintiff is a German stock corporation, who realized losses through its UK branch. Those losses were exempt in Germany according to the Germany-UK double tax treaty. The activities of the PE were discontinued in 2007. The plaintiff applied for a deduction of the final losses in Germany at the time of closing the PE EU Law.

The competent tax office refused the deduction of the final foreign losses. In the *Bevola* case (**C-650/16**), the ECJ decided that final losses of a foreign PE were deductible in Denmark as a head office state under the freedom of establishment. Therefore, the *Bevola* case brought new life into the tax treatment of final PE losses after the negative ECJ judgment in the case *Timac Agro* (**C-388/14**).

Applying the Bevola case, the Lower Tax Court of Hesse decided that the freedom of establishment requires the deduction of the final losses accrued at the level of the German parent company for corporate tax and trade tax purposes. Not deducting the losses in the country of head office would be disproportionate as the plaintiff lost the possibility of deducting foreign losses from future foreign gains in the UK by closing the PE.

Source

Lower Tax Court of Hesse, judgment of September 4, 2018 (8 K 1279/16); appeal is pending before the Supreme Tax Court (case I R 32/18).

Keywords

Final PE losses, foreign branch losses