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By PwC Deutschland | 24 October 2025

Roll-over provision under Section 6b of the Income Tax Act (ITA) and principles of formal balance sheet consistency

In its judgement of 2 July 2025 (XI R 27/22), the Supreme Tax Court ruled that a roll-over provision created incorrectly in accordance with Section 6b(3) of the Income Tax Act (ITA) must be corrected in accordance with the principles of formal balance sheet consistency.

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The plaintiff sold its entire real estate portfolio in 2002. It allocated the profit realised in the process to a roll-over provision in accordance with Section 6b (3) ITA. The tax office issued a corporation tax assessment for 2002 on this basis. The proviso for the re-examination of the assessment was later lifted. For the disputed year 2003, the tax office determined that the roll-over provision should not have been formed in 2002 and should now be dissolved in accordance with the principles of formal balance sheet consistency. According to these principles, a balance sheet error must generally be corrected in the first closing balance sheet in which this is procedurally possible. In the view of the tax office, these conditions were met in the year in dispute. This is because the corporation tax assessment for this year was not yet final.

The tax court took a different view and upheld the appeal. It assumed that the principles of formal balance sheet consistency were not relevant for a roll-over provision in accordance with Section 6b of the Income Tax Act (ITA). Thus, there was no balance sheet error. Section 6b (3) ITA merely addresses a balancing item in tax equity. The total equity remained unchanged after the provision was recognised.

The Supreme Tax Court disagreed with this. It overturned the previous ruling and clarified that a provision under Section 6b(3) of the Income Tax Act – if it was created incorrectly – must be corrected in the first year in which the proceedings are still open. The main argument for this is that, contrary to the opinion of the tax court, a provision that has been wrongly recognised in accordance with Section 6b(3) ITA does not merely represent an incorrect accounting treatment. Rather, it constitutes an incorrect balance sheet item – a balance sheet error. This is because even if the hidden reserves, which remain subject to tax within the roll-over provision, essentially represent equity, a separate liability item must be reported for this in the tax balance sheet.

Source:

Supreme Tax Court judgment of 2 July 2025 XI R 27/22 published on 23 October 2025.

Keywords

Income Tax Act, roll-over relief provision