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By PwC Deutschland | 25 March 2026

The Supreme Tax Court clarifies the requirements for the actual implementation of profit transfer agreements

In its decision I R 37/22 of 5 November 2025, published on 12 March 2026, the Supreme Tax Court addresses the implementation of profit transfer agreements under Section 14(1), first sentence, no. 3, first sentence of the Corporation Tax Act. In particular, the Supreme Tax Court comments for the first time on the temporal requirements for the actual implementation of the profit transfer agreement.

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In the case in question, claims for profit transfers and related interest were recorded over a period of years in a clearing account labelled ‘Liabilities to shareholders’, in which neither set-offs nor lump-sum payments of any kind were recorded. Nor were the accounts settled on a regular basis.

I. Time limits for the fulfilment of obligations under the profit transfer agreement.

In the decision the Supreme Tax Court addressed for the first time the question – which had not been ruled upon by the highest court and had been the subject of controversial debate in professional literature – of whether there was a time limit within which claims arising from a profit transfer agreement had to be de facto fulfilled in the context of a tax group and the requirement that the profit transfer agreement must be implemented. Agreeing with the Cologne Tax Court in the previous instance, the Supreme Tax Court also considered that a timely fulfilment of the claims arising from the profit transfer agreement was necessary. The Supreme Tax Court defined ‘timely’ as a period of twelve months following the due date of the respective claim. The First Senate explained the twelve-month period by referring to Section 355(2) of the German Commercial Code, according to which, in the case of ongoing business relationships, a statement of account must normally be provided after twelve months. The Supreme Tax Court rejected the prevailing view in the literature, according to which the implementation requirement will be met, if the claims arising from profit transfer agreement are fulfilled by the time the agreement is terminated or within a reasonable time thereafter. This, so the Court, is already apparent from the wording of Section 14(1), first sentence, no. 3, first sentence of the Corporation Tax Act, which requires the profit transfer agreement to be implemented ‘during’ its entire term – and not only at its conclusion. Furthermore, extending the timeframe for fulfilment would mean that taxpayers could dissolve the tax group with unlimited retroactive effect. This would thus provide the option, even decades after the conclusion of the profit transfer agreement, to opt out of taxation under tax group principles retroactively by failing to settle the claims definitively.

The Supreme Tax Court did not have to make a final decision in the present case as to whether and to what extent minor irregularities in the performance of the agreement might be harmless on grounds of proportionality. This was not the case here, as the plaintiff had in any event far exceeded the twelve-month deadline for fulfilling the profit transfer obligations at the time of the possible set-off (agreement of 18 December 2017).

For the same reason, the Supreme Tax Court was also not required to rule conclusively on the conditions under which a profit transfer agreement is deemed to be fulfilled if, due to special circumstances, there are delays in the due date of the claims.

II. Accounting treatment of claims arising from the profit transfer agreement

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In its decision, the Supreme Tax Court also confirms its case law I R 37/19 of 2 November 2022 regarding the two-stage nature of the performance of profit transfer agreements (accounting recognition and actual fulfilment). Accordingly, the actual implementation of the profit transfer agreement pursuant to Section 14(1), first sentence, no. 3, first sentence of the Corporation Tax Act does not relate solely to the actual settlement of the claims and liabilities arising from the profit transfer agreement. Rather, it is necessary, as a first step, to recognise and record the relevant receivables and liabilities in the annual financial statements (of the controlled company and presumably also of the controlling company). In the case in question, the Supreme Tax Court deemed it sufficient for this purpose that the liabilities for the transfer of profits generated in the years in question were recorded in a separate account and reported cumulatively under the balance sheet item “Liabilities to shareholders”. Provided that it can be objectively verified from the account statements that the relevant liabilities to the parent company have been recorded and disclosed in the balance sheet, the Supreme Tax Court considers that a separate disclosure of the respective profit transfer obligations is not necessary.

III. Actual fulfilment via clearing accounts

Finally, in its decision, the Supreme Tax Court also commented on the requirements for the fulfilment of profit transfer claims via clearing accounts.

An entry in a clearing account may, in principle, be suitable for effectuating the actual fulfilment of the claims required under Section 14(1), first sentence, no. 3, first sentence of the Corporation Tax Act. However, this does not apply if only the claims for profit transfers and interest are posted to this account, but there is no posting of set-offs or lump-sum payments that would have made a settlement possible. In particular, there was no statement of account, as provided for in Section 355 of the German Commercial Code for current accounts, which is the civil law prerequisite for the extinction of the claims and liabilities recorded in an account.

Source: Supreme Tax Court decision (I R 37/22) of 5 November 2025, published on 12 March 2026

Keywords

profit pooling agreement, tax group