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Equitable relief measures under the minimum tax regime

To the extent that the minimum tax results in definitive taxation resulting from an ‘inverse accounting effect’, equitable relief measures under Section 163 of the General Tax Code should be given serious consideration, the Supreme Tax Court said in a most recently published decision.

The minimum taxation under Section 8 of the Corporation Tax Act (CTA) in conjunction with Section 10d of the Income Tax Act (ITA) provides that corporations may use loss carryforwards only to a limited extent thereby maintaining a minimum amount of taxable income. **This is how it works:**

Loss carryforwards are not restricted in terms of time but in amount. Specifically, the deduction of loss carryforwards up to a total amount of income of EUR 1 million (the so-called base amount) is possible. If the total income exceeds this base amount, then a deduction of loss carryforwards is only permitted with currently 70 percent of the income in excess of the base amount. The deduction of existing loss carryforwards is thus spread out over time. As a result of this ‘spreading technique’, there remains, despite the existence of additional loss carryforwards, a positive income which is subject to taxation. A corresponding rule regarding the reduction of losses applies in the context of the trade tax.

The Supreme Tax Court initially suspended the proceedings in the case of dispute and obtained a decision from the Federal Constitutional Court regarding the justification and validity of minimum taxation in cases of definitive effects. The Federal Constitutional Court subsequently ruled that the statutory provisions governing the minimum taxation under corporation tax and trade tax to be constitutional (order of 23 July 2025 - **2 BvL 19/14**).

What is especially interesting in this recent decision of the Supreme Tax Court, however, is not its adherence to the precedent set by the Federal Constitutional Court but rather the comments regarding the different tax assessments for reasons of equity. Two points are particularly significant.

First, it is important to note, from a procedural standpoint, that the appeal in the current case is successful because the request for equitable relief under Section 163 of the General Tax Code was made only in the course of the appeal to the tax office and was decided for the first time in the tax office's refusal notice. As a discretionary matter, however, the **initial decision of the tax office prior to the appeal** was lacking. The taxpayer is thus deprived of a level of discretion in this case, so that both the judgment of the lower tax court and the tax office's decision of the first appeal had to be set aside.

The second and most important point is that the present situation is an atypical case of minimum taxation. Such cases are considered inequitable if profits cannot be offset against loss carryforwards because of ‚inverse accounting effects’ (as in the case at hand). Therefore, minimum taxation must be waived on grounds of equity. With its decision, the Supreme Tax Court follows the guidelines set by the Federal Constitutional Court which expressly provide for the application of equitable relief in such cases.

Source:

Supreme Tax Court, judgment of 15 April 2026 I R 20/25 (I R 59/12) published on 13

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