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By PwC Deutschland | 25 October 2026

Amendment of assessment notice as indirect consequence of hidden profit distribution

Section 32a(1) Sentence 1 of the Corporation Tax Act, as a provision amending the rules on hidden profit distributions, also permits the corresponding recognition of hidden contributions indirectly connected with the hidden profit distribution as subsequent acquisition costs for a participation in another corporation, the Supreme Tax Court said in a recent decision.

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Background

Section 32a Sentence 1 Corporation Tax Act (CTA): “Insofar as an assessment on a corporation is raised, withdrawn or amended in respect to a hidden distribution of profits, a tax assessment on, or notification to, the shareholder to whom the hidden distribution is to be attributed, or on his related party, may be raised, withdrawn or amended. In this respect, the period for issuing the notice does not expire before one year following the date from which the assessment on the corporation could no longer be challenged”.

In essence, Section 32a CTA ensures corresponding taxation between the company and shareholder level. Application of this provision is mandatory (discretion reduced to zero) and therefore does not offer any options. There is no limit on the amount of the adjustment. Until now, the scope of this provision had been somewhat unclear. As described below, the Supreme Tax Court supports a broad application.

Case in dispute

The plaintiff (a natural person) held a 100% interest in A GmbH during 2015 (the year in dispute) and acted as its managing director. He also held a 50% share in B GmbH. A GmbH had granted loans to B GmbH over several years which the latter was supposed to repay by December 31, 2017. In fact, B GmbH made only three very small installments in 2010 and no further payments thereafter. In December 2015, B GmbH was removed from the commercial register.

During a tax audit at A-GmbH, the plaintiff agreed that the loan receivable from B GmbH should be written off in the tax balance sheet as of 31 December 2012, and that the profit be adjusted off-balance-sheet because a hidden distribution of profit to the plaintiff had taken place.

In addition, the tax office amended the plaintiff’s 2012 income tax assessment pursuant to Section 32a(1) CTA and treated the hidden profit distribution as investment income pursuant to Section 20 (1) No. 1 Sentence 2 Income Tax Act (ITA); referred to there as “other income derived from hidden profit distributions”. In his income tax return for 2015, the plaintiff did not claim a loss from the dissolution of B-GmbH. The respective income tax assessment for the plaintiff thus became final.

In 2020, the plaintiff applied for an amendment of the 2015 income tax assessment. The tax office denied the request. The lower tax court decided in the plaintiff’s favor: The assessment had to be amended pursuant to Section 32a(1), Sentence 1 CTA.

Decision

The Supreme Tax Court reversed the lower court’s decision but agreed (on procedural grounds) that Section 32a(1) Sentence 1 CTA, as a correctional provision, not only allows for the direct recognition of hidden distributions as investment income for the shareholder

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but also for indirect consequences of a hidden profit distribution such as a hidden contribution to the sister company and an increased liquidation loss resulting from the treatment of the hidden contribution as subsequent acquisition costs of the investment.

In the opinion of the Supreme Tax Court, Section 32a(1) Sentence 1 CTA is not limited to the direct tax consequences of a hidden distribution of profits but also encompasses the indirect (follow-up) consequences for the shareholder such as a subsequent hidden contribution to an affiliate and a resulting liquidation loss under Section 17(4) of the Income Tax Act (ITA).

The case was referred to the lower tax court for further hearings and final decision. According to the Supreme Tax Court, the lower tax court had - on substantive grounds - merely established that A-GmbH had written off its loan receivable in 2012. Thus, there were neither sufficient determinations of facts regarding the existence of a hidden contribution to B GmbH nor sufficient findings regarding the legal questions that remain unclear in the case at hand, namely when (i.e., in which tax year) the plaintiff incurred the liquidation loss under Section 17(4) ITA with respect to his 50% interest in B GmbH.

Source: Supreme Tax Court judgment of 8 September 2026 (IX R 16/25) published on 22 October 2026.

Keywords

hidden distributions, tax amendments