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By PwC Deutschland | 08 November 2026

ECJ Opinion: Entitlement to tax credit carry forward in case of losses incurred by parent company

The Supreme Tax Court submitted four questions to the European Court of Justice (ECJ) for a preliminary ruling regarding the right to carry forward tax credits under EU law. In his Opinion, Advocate General Rimvydas Norkus concludes that Directive 2011/96/EU (the Parent-Subsidiary Directive) precludes the German rule under which foreign taxes on dividends paid by a subsidiary - in case of loss carryforwards of the parent company - are final and permanently excluded from being credited.

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I. Background

The questions referred for a preliminary ruling came about because the plaintiff in the main proceedings (a public limited company) and C AG (which was later merged with the plaintiff) did not incur any German corporate income tax during the years in which the dividends were received and thus was not able to credit the Greek corporate income taxes charged. Nevertheless, the gross dividends distributed from 1993 through 2000 reduced the loss carryforward of the plaintiff and C AG , notwithstanding the lack of the option for tax credit. The Double Tax Treaty with Greece also does not impose any limitations of the scope of taxation as it did not provide for an exemption from taxation for such dividends.

Since the German tax office refused to grant the credit of the tax paid by the subsidiary in Greece on the distributed profits, the Supreme Tax Court submitted to the ECJ the question of whether such a provision is compatible with Directive 90/435.

In its referral, the Supreme Tax Court believes that the purpose of Directive 90/435/EEC supports the requirement for a tax credit carryforward because, according to its third recital, the directive is intended to ensure that profit distributions by a subsidiary resident in one Member State to its parent company resident in another Member State are tax neutral.

II. Relevant EU legislation in the case referred

Directive 90/435 EU applies to the relevant period at issue in the main proceedings, which covers the tax years 1997 through 1999 and the tax year 2002.

Article 4, paragraph 1, second point of the Directive provides for the following:

Where a parent company, by virtue of its association with its subsidiary, receives distributed profits, the State of the parent company shall, except when the latter is liquidated, tax such profits while authorizing the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits and, if appropriate, the amount of the withholding tax levied by the Member State in which the subsidiary is resident (…) up to the limit of the amount of the corresponding domestic tax.

III. Opinion

Advocate General Rimvydas Norkus shares the view of the Supreme Tax Court and **submits the following conclusion** for the ECJ to decide:

Article 4, paragraph 1, second point of the Directive 90/435/EEC precludes

a national provision under which dividends paid by a foreign subsidiary to a domestic parent company - which incurred losses in the year the dividends are received - reduce the parent company's loss carryforward, whereas the tax paid on the profits distributed by the subsidiary cannot be credited, either in the year the dividends are received or in a subsequent tax assessment period, up to the amount of the corresponding domestic tax, and insofar as those distributed profits result in a corresponding domestic tax

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liability in that subsequent tax assessment period due to the reduction of the loss carryforward.

If the parent company's Member State has chosen the credit method but has not implemented it in accordance with this Directive, and if an interpretation in conformity with the Directive is not possible, the parent company may **directly invoke that provision against that Member State** in order to obtain, in a subsequent tax assessment period and up to the amount of the corresponding domestic tax, a credit for the tax paid by its foreign subsidiary to the extent the distributed profits give rise to a corresponding domestic tax liability in that subsequent tax assessment period because of the reduction in the loss carryforward.

The Advocate General further explains that the limitation provided for in the Directive "up to the amount of the corresponding national tax" constitutes a limitation in amount but not in time. If the tax effect of the dividends is deferred in time due to the reduction of the loss carryforward the possibility of tax credit must necessarily follow from that deferral.

If the ECJ accepts these points of view in its subsequent judgment, answers to questions 3 and 4 would be obsolete.

Source

ECJ, case reference C-546/25 *Beteiligungsgesellschaft* - Opinion delivered on 5 November 2026.

Note: The English language was not yet available for download at the time this post was published.

Keywords

foreign tax credit, loss carry forward