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German Tax and Legal News

Local tax court of Düsseldorf rules on transfer of trade tax loss carryforwards following collapse merger of partnership

In a case decided by the [local tax court of Düsseldorf](#) (case reference: 11 K 3637/09), a German group streamlined its group structure by merging two corporations that were the sole partners of a limited partnership: the general partner with a 0 % participation was merged into the limited partner with a 100 % participation, with retroactive effect to the end of the previous fiscal year. As a result, the partnership collapsed because, under German civil law, a partnership must have at least two partners or it ceases to exist. The limited partnership had loss carryforwards for trade tax purposes. The tax authorities argued that those loss carryforwards should have been forfeited because of the collapse merger.

In general terms, a partnership is entitled to use trade tax loss carryforwards only if the loss-using partnership is identical to the partnership that incurred the losses. Consequently, the change of partners results in a partial or total forfeiture of the loss carryforwards. According to the local tax court, the transfer of the partnership's business to the 100 % limited partner safeguards the identity of the business (no harmful change). The court also clarified that the business that incurred the loss carryforwards must exist only at the time of the transfer: it is not necessary that the business be carried on after the collapse merger (i.e. the loss carryforwards survive even if the partnership's (former) business is sold).

From a timing perspective, the court clarified that the collapse merger benefits from the retroactive effect of the merger of the corporate partners in the case. The collapse merger into the surviving limited partner is a mandatory consequence. Accordingly, the partnership ceases to exist once the merger of the partners becomes effective for tax purposes. The tax court did not allow an appeal of its decision.

If you have any questions, please contact the authors of the article at gtln@deloitte.de or your regular Deloitte contact.

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