


URL: <http://www.deloitte-tax-news.de/german-tax-legal-news/tax-court-of-lower-saxony-rules-on-minimum-tax-rule-in-a-liquidation-case.html>

 30.05.2012

German Tax and Legal News

Tax court of Lower Saxony rules on minimum tax rule in a liquidation case

The tax court of Lower Saxony has expressed doubts that the application of the minimum tax rules in the liquidation of a company, which can result in a final forfeiture of losses, is in line with the purpose of the law. As a result, the tax authorities may have to allow a full offset of losses.

In a recently published decision (case reference: 6 K 63/11), the tax court of Lower Saxony ruled on a case in which the German minimum tax rules led to a final forfeiture of tax loss carryforwards. Under the minimum tax rules, 40% of the profits exceeding EUR 1 million remain taxable irrespective of the amount of available losses brought forward. This may lead to a situation in which the taxpayer has to pay tax on the “remaining profits” even though tax losses are available and remain unused. Since losses can be carried forward indefinitely in Germany, the rule usually only results in the deferral of the loss utilization. In the case, however, the company was liquidated so that the losses that were unable to be offset against profits due to the application of the minimum tax rules could not be used at all.

The taxpayer argued that the minimum tax rules should not be applied and that it should be allowed to fully utilize the losses carried forward because applying the rules in a liquidation situation would not be in line with the legislative intent and would lead to an inequitable result. The tax authorities disagreed, but the court held that, although the tax authorities have discretion to determine whether the minimum tax rules should be applied, the tax authorities must take all relevant facts and circumstances into account when making this decision. The court emphasized that, according to the technical explanations to the minimum tax rules, any restriction on the use of tax losses should be to extend them over time – the losses should not be eliminated with final effect. The court therefore referred the case back to the tax authorities asking them to reconsider their decision, but it also approved an appeal of its decision to the Federal Tax Court.

The decision should be viewed in the context of a series of cases in which German tax courts have expressed doubts in comparable situations as to whether the application of the minimum tax rules are in line with the German constitution (see [Deloitte Tax-News](#)). The tax authorities have issued guidance indicating that they will suspend execution of the minimum tax rules to taxpayers in certain cases where application of the rules would lead to a final elimination of tax loss carryforwards (see [Deloitte Tax-News](#)).

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

Diese Mandanteninformation enthält ausschließlich allgemeine Informationen, die nicht geeignet sind, den besonderen Umständen eines Einzelfalles gerecht zu werden. Sie hat nicht den Sinn, Grundlage für wirtschaftliche oder sonstige Entscheidungen jedweder Art zu sein. Sie stellt keine Beratung, Auskunft oder ein rechtsverbindliches Angebot dar und ist auch nicht geeignet, eine persönliche Beratung zu ersetzen. Sollte jemand Entscheidungen jedweder Art auf Inhalte dieser Mandanteninformation oder Teile davon stützen, handelt dieser ausschließlich auf eigenes Risiko. Deloitte GmbH übernimmt keinerlei Garantie oder Gewährleistung noch haftet sie in irgendeiner anderen Weise für den Inhalt dieser Mandanteninformation. Aus diesem Grunde empfehlen wir stets, eine persönliche Beratung einzuholen.

This client information exclusively contains general information not suitable for addressing the particular circumstances of any individual case. Its purpose is not to be used as a basis for commercial decisions or decisions of any other kind. This client information does neither constitute any advice nor any legally binding information or offer and shall not be deemed suitable for substituting personal advice under any circumstances. Should you base decisions of any kind on the contents of this client information or extracts therefrom, you act solely at your own risk. Deloitte GmbH will not assume any guarantee nor warranty and will not be liable in any other form for the content of this client information. Therefore, we always recommend to obtain personal advice.