

Assessment on whether the liquidation loss of the affiliated company will be considered as an expense in the detection of corporate income

In this article, we will try to explain whether the liquidation process of the affiliated company results in loss in the presence of the participating company and whether the loss will be considered as expense in the detection of corporate income.

Opinion of the Revenue Administration

The administration has different rulings on different dates containing various opinions regarding the issue.

Revenue Administration's ruling dated 14.04.2006 contains explanations indicating that if any value of the participation shares is not left as a result of the liquidation of the affiliated company and if it is documented, it can be considered as an expense during the detection of the corporate income and removed from the entries.

Revenue Administration's ruling dated 06.10.2010, differentiating its previous opinion, refers that in the circumstance of a disposal of participation stocks that existed in the assets of the institutions for at least two full years, profit / loss arising in the transaction will be determined on the basis of the most recent revision before the transaction, the disposal's occurrence during the liquidation process will not change the status; in the event that no gain arises from the sale of participation stocks that have been registered for more than 2 years, 75% of the losses (expenses) related to this sale shall be deemed as non-deductible expenses and will not be possible to deduct from earnings from other activities of the company, however the remaining 25% of the losses (expenses) related to this sale can be taken into account in detecting the cost as expense.

Revenue Administration's ruling dated 09.06.2011, contrary to the previous opinions, contained explanations indicating that it is not possible to consider the loss arising as a result of the affiliated company's losing its value following the liquidation as an expense in the detection of corporate income.

In the ruling's detail, during the detection of commercial income, it's indicated that the provisions of the Tax Procedure Law and the provisions of articles 40 and 41 of the Income Tax Law and the provisions on exemptions within the Corporate Tax Law should be complied and concluded that within the aforementioned articles there is no provision that the loss resulting from the liquidation of the affiliate cannot be considered as an expense in the detection of the corporate income.

Judicial decisions

In the circumstance that the shares in affiliates account are removed from the assets as a result of the decision on the liquidation of the affiliated company, regarding the controversy whether that loss would be taken into account during the detection of corporate income or not, the Fourth Chamber of the Council of State has decided that the loss resulting from the liquidation of the affiliated company should be taken into account during the detection of the corporate income and the ruling's detail indicates that the participation of a company in another company is a part of the commercial activity and therefore is based on the fact

that the loss arising from the affiliate is due to the loss of the commercial enterprise and that it cannot be claimed that it is not related to the business. (Dated 16.10.2001 E: 2000/2194 K: 2001/3835)

In a different decision of the Istanbul 7th Tax Court in 2017, the court decided on return the accrual transaction in accordance with the portion equivalent to the loss on the grounds that the loss arising from the liquidation of foreign affiliate is caused by the participation stock purchase activity related to the company's field of activity and it is not a cost item. It was decided to dismiss the appeal in the case of the appeal filed by the Administration in the First Tax Case Office of the Regional Administrative Court.

Assessment

It's seen that there is lack of uniformity within the aforementioned opinions from the Administration and pursuant to judicial decisions on the matter of how to consider the losses arising from reductions in the registered value of shares since the affiliated company is liquidated with regard to the participating company.

It's obvious that the Administration's most recent opinion on the concerning losses is on the direction that the concerning losses should not be considered during the detection of corporate income since the loss arising from the liquidation of the affiliate is not explicitly stated in the articles that include provisions related to the expenses to be deducted within the Income Tax Law and the Corporate Tax Law.

However, decisions are made in favour of taxpayers in recent years concerning the matters resorted to jurisdiction.

Considering the attitude of the Administration which is on the direction that the losses arising from liquidation of the affiliated company should not be considered as expense during the detection of corporate income, we are of the opinion that judicial remedy can be left open through submitting the corporate tax return with mental reservation.

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