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Breaking Tax News

Tackling taxes

Austrian Ministry of Finance: Mandatory Absorption of Losses before the Balance Sheet Date not Subject to Capital Tax

If a shareholder gives the commitment to absorb the company's losses before the balance sheet date, the loss coverage does not trigger capital tax (BMF-010206/0211-VI/5/2012).

Legal Opinion in Austria so far. As outlined in our BTN no. 28 of 14 December 2011, a mandatory absorption of losses is not subject to capital tax provided that the shareholder has entered into the obligation to absorb the company's losses before the losses were "sustained" or "recorded" (ECJ 1 December 2011, C-492/10, Immobilien Linz). Up to now no specific statements were made precising the moment when the obligation has to be entered at the latest in order to avoid capital tax.

Now the Austrian Ministry of Finance published the following information: Provided that an enforceable claim against the shareholder arises before the balance sheet date, the absorption of the company`s losses is not subject to capital tax as losses become effective on the balance sheet date, independent of their source (operating activities, exercise of accounting options).

The commitment to cover the company´s losses has to refer to the balance sheet loss according to GAAP-rules. Contrary, the absorption of the loss resulting from a particular transaction would trigger capital tax.

Conclusion. The guidelines published by the Austrian Ministry of Finance make clear when the shareholder has to enter into the obligation to absorb the company`s losses. A mandatory absorption of losses based on a commitment of the shareholder given before the balance sheet date will not be subject to capital tax according to the opinion of the Ministry of Finance.

Your Deloitte Tax Advisor will be happy to answer your questions.