The Supreme Administrative Court rejected the concept of tax loss chaining

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The amount of tax can only be changed (at the will of either the tax administrator or the taxpayer) for a certain period of time within the so-called tax assessment deadline. Generally, this period is three years and begins on the day the ordinary tax return was to be filed. However, in special cases, this period shall be extended.

A situation where the taxpayer is assessed a tax loss is also such a case. Pursuant to a special regulation in § 38r of the Income Taxes Act, the tax assessment deadline for the loss period, and for all subsequent tax periods in which the loss can be claimed, expires at the same time as the deadline for the last of these periods.

There was uncertainty as to the effect of the assessment of a further loss during one of the five periods in which the initial loss could be claimed on the running of the tax assessment period. In other words, uncertainty as to whether there will be tax loss chaining and a repeated extension of the tax assessment deadline in relation to the previous tax period.

For illustration, we will use a simplified model example. A taxpayer was assessed a tax loss for the 2010 tax period. The taxpayer has the opportunity to claim this loss in the years 2011 to 2015. For all these tax periods (2010 to 2015), the deadline for tax assessment will not expire until 2019.

However, if the taxpayer were to be assessed a loss, for example, also in 2013, the deadline for the 2015 tax period would not end in 2019, but in 2022 (at the same time as the deadline for determining the tax for the 2018 tax period). When chaining tax losses, postponing the deadline for 2015 would also mean that the end of the deadlines for 2010, 2011 and 2012 would be postponed to the same point. The loss assessed in one of the future tax periods would thus be decisive for the assessment of the tax assessment period for previous years.

In its landmark judgment of 13 May 2020, No. 8 Afs 58/2019 -48, the Supreme Administrative Court unequivocally rejected the interpretation allowing tax loss chaining for being disproportionate interference with the legal certainty of tax entities. In the extreme case, thanks to regularly recurring losses, it would be possible to extend the deadlines indefinitely. At the same time, the SAC rejected another possible view, which does not explicitly exclude tax loss chaining, but limits such a procedure, especially with regard to the ten-year (maximum) deadline for tax assessment pursuant to § 148 (5) of the Tax Code.

In view of the above, the Supreme Administrative Court annulled the related judgment of the Regional Court in Pilsen of 14 November 2018, Ref. No. 30 A 167/2018 -50, which, on the contrary, confirmed the concept of the tax loss chaining.

The Supreme Administrative Court's interpretation is generally favourable for taxpayers. However, its related effects need to be carefully analysed in the light of the specific circumstances of a given case.

If you have any questions, please do not hesitate to contact the article's authors or your preferred tax advisor.

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