



# NEWS INTERNATIONAL

E-MAIL NEWSLETTER  
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Dear Sir/Madam,

The end of the summer of the century is slowly but surely in sight. Nature enjoys cooler weather and the odd rain shower. On the other hand, the case law on the subject of the deduction of final losses from EU permanent establishments has not cooled down and is even less foreseeable.

By judgement of 12 June 2018 (C-650/16) in the A/S Bevola and Jens W. Trock ApS case against the Danish Ministry of Finance, the European Court of Justice announced that losses of foreign permanent establishments may be included in the domestic tax calculation under certain conditions. True to the motto "There's life in the old dog yet" the Timac Agro (C-388/14, ECJ of 17 December 2015) case law was thwarted. For the time being, the ECJ has, with the latter judgement, definitively refused recognition of losses incurred by foreign permanent establishments. In principle, the German Federal Fiscal Court followed this case law in its judgement of 22 February 2017, I R 2/15.

Regarding the circumstances of the case: The Danish company had a permanent establishment in Finland, which was operating at a loss and closed in 2009.

The unused, but economically burdensome losses from Finland were not recognised by the Danish tax authorities. Finally, the case was referred to the ECJ as the non-recognition of losses constitutes a restriction on the freedom of establishment guaranteed by Article 49 TFEU. The ECJ confirmed this and also clarified that not only losses of foreign subsidiaries (case Marks & Spencer, C-446/03, ECJ of 13 May 2005) but also those of foreign permanent establishments must be taken into account for tax purposes when they become final. Final means that all possibilities of the foreign state to use the losses have been exhausted, as well as that no income is generated via the foreign unit. The ECJ is on a "slalom course" in this respect, the question of when final foreign losses are to be taken into account in the home country is still open now.

With regard to pending proceedings, corresponding losses should be declared and (rejection) notices should be kept open. We will be happy to advise you.

Best regards,

René Teresiak

The author

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After completing his training as a tax consultant in June 2009, Mr Teresiak began working for Michels Simon Rottländer Groß GmbH (now DORNBACH GmbH) in Cologne and therefore represented a successful home-grown business of the Cologne location of DORNBACH. In 2013, he completed an extra-occupational tax law course of study and achieved a Bachelor of Arts (BA) degree. As part of the corporate tax law postgraduate programme at the University of Cologne, he acquired the academic degree of Magister Legum (LL.M.) in 2015.

After taking the tax consultant's exam, Mr Teresiak was appointed as a tax consultant by the Cologne Chamber of Tax Consultants in March 2016. As of 1 January 2018 he became part of the management of the company in Cologne.

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