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By PwC Deutschland | 02. März 2011

Ring transfer of shares to realise losses not abusive

The Supreme Tax Court has held that a concerted sales action by shareholders among themselves to realise losses was not abusive despite unchanged holding ratios.

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Seven individuals held equal shares in an asset management GmbH. The stock market took a down turn and the GmbH's investments lost in value. Since the GmbH did not trade, it was without intangibles. The value of its shares was thus directly derived from the value of its investments. Accordingly, each shareholder carried an unrealised loss of one-seventh of the GmbH's own realised and unrealised losses. Acting in concert, the shareholders decided to realise their losses in order to claim tax relief. Each sold his share to one of his fellows and bought a replacement share from another. At the end of the day, the shareholders remained unchanged and, as at the start, each held one-seventh of the equity. However, each had realised one-seventh of the stock market valuation losses of the company. The tax office took the view that there had been no genuine sale of the shares and disallowed the claim for loss relief.

The Supreme Tax Court has now granted the relief claimed. Each share had been sold and the sale was genuine. The loss had been realised and was therefore deductible. The sole purpose of the transaction was to obtain a tax advantage, but that did not make it abusive. It fulfilled the object of the statute - to grant relief for realised losses only - thus any non-tax reason would be irrelevant. An abusive transaction was one carried out solely to obtain a tax advantage contrary to the intentions of the law. The court also explained that the immediate purchase of a different share did not make the sale artificial. In any event, the lower base cost for a future capital gain meant that there was "no cause" to review any abuse of legal forms.

Schlagwörter

abuse of legal forms, capital gain, compensating share transfer, ring share transfer