Downloaded from Blogs on 14.11.2026 20:57h

By PwC Deutschland | 15. Juni 2011

Payment of capital shown by circumstances

The Supreme Tax Court has held that the payment of a shareholder's capital can be demonstrated by circumstantial evidence if the bank voucher is no longer available twenty years after the event.

Downloaded from Blogs on 14.11.2026 20:57h

A shareholder claimed a capital loss in the amount of his nominal holding in a GmbH that had been struck off the register after the court had refused to open liquidation proceedings for lack of assets. However, he was unable to prove payment of the amount on formation twenty years ago, and the tax office rejected his claim. The lower tax court confirmed the tax office in this rejection, because the circumstances advanced in support of the capital payment (declarations made to the notary on formation, annual accounts consistently showing the capital as fully paid and similar) did not amount to absolute proof. The Supreme Tax Court has now held that this approach was too narrow. It was unreasonable to expect a shareholder to still retain a bank voucher showing the payment of the capital twenty years after the event. In the nature of things, no one circumstance could substitute for the absolute proof of a payment voucher, although all the circumstances together could amount to a sufficiently high degree of probability. In this particular case, there had never been any suggestion that the share capital might not have been paid in and all required declarations of payment had been made at the appropriate time. The Court also pointed out that the balance sheets attached to the tax audit reports had regularly shown the share capital as fully paid. Had this not been the case, the failure of the company to charge interest on the outstanding amount would have been at least a potential hidden distribution in favour of the shareholder, calling for tax auditor attention.

Supreme Tax Court judgment IX R 44/10 of February 8, 2011 published on June 15

Schlagwörter

paid in, payment of capital, share capital