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By PwC Deutschland | 17. August 2011

Contributions under Reconstructions Tax Act 1995 always at recipient’s valuation

The Supreme Tax Court has held that the value of a contribution in kind under the Reconstructions Tax Act 1995 as taken up by the recipient is binding on the contributor. Changes in retrospect are binding on both parties.

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The Reconstructions Tax Act 1995 provided that contributions in kind of an entire business unit, or, as in this case, of an investment leading to a majority holding in a subsidiary, were to be taken up by the recipient company at the former book value in the books of the contributor, at current market value, or any value in between. The choice was that of the recipient but was binding on the contributor. The Supreme Tax Court has now held that this applied not only to the exercise by the recipient of valuation options, but also to valuation adjustments made by the tax office when reviewing the returns of the recipient. In this case, the tax office found that the recipient had valued the contribution received above its market value and ignored the excess when issuing the corporation tax assessment. It informed the tax office of the contributor accordingly. That tax office made a corresponding adjustment to the assessment of the contributor. He protested on the grounds that the revised valuation was not the result of an accounting option – in particular, the recipient had not amended its accounts – but rather a “unilateral” act of a tax office. However, the Supreme Tax Court has now confirmed that the valuation provisions of Reconstructions Tax Act refer to the accounting basis for taxable income, including any adjustments made in the course of assessment. Otherwise, there would be no certainty of correlation between the two (usually related) parties to the transaction.

The court explicitly left open the question of the binding effect on the contributor of a value taken up by the recipient above market, but accepted – or at least not queried – by the tax office.

The Reconstructions Tax Act was substantially revised in 2006. Transactions reported to the trade registry on or after December 13, 2006 fall under new law and the continuing relevance of this judgment must remain an open question, given that the recipient not longer has the sole choice in the valuation option. The same value must, however, still be taken up by both parties.

Supreme Tax Court judgment I R 97/10 of April 20, 2011 published on August 17

Schlagwörter

contribution in kind, contributor