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Marketable securities to be written down to year-end rate

The Supreme Tax Court has held that marketable securities held as fixed assets may be written-down to their lower year-end market rate, provided the write-down exceeds 5% of the opening balance.

The Income Tax Act provides that investments may be written down to their current value, provided the loss in value is expected to be permanent. The finance ministry interpreted this in a decree of 2009 to mean that the market value of quoted securities should have fallen by at least 40% below cost on balance sheet date, or should have fallen by at least 25% on each of two consecutive year-ends. The Supreme Tax Court has previously held this approach to be unfounded in law and that the only generally appropriate measure for quoted investments is a lower market rate at year-end, regardless of the level of the loss in value. The court has now followed its earlier case, confirming in particular its rejection of the finance ministry's 40%/25% minimum write-down levels, and that subsequent rises in market value before the accounts are drawn up are subsequent events for consideration in the following year, rather than indications of an inherent value at year-end. It has, however, refined its previous finding to hold that:

- The year-end rate is to be taken as indicating a permanent fall in value at year-end unless signs that it was unrealistic become apparent by the time the accounts are drawn up. The two examples it gives are manipulation of the market, e.g. through insider trading, and where there has been very little trading for some time in the security concerned.
- Falls in value of up to 5% below cost (or the previous written-down value) are to be ignored as trifling. However, once the value falls below that level, the full amount of the fall is to be taken into account.

In the meantime, this case has lost its immediate relevance for corporations in view of the Corporation Tax Act classification of capital gains on the sale of shares as tax-free income. However, it is still relevant to investments held by unincorporated businesses.

Supreme Tax Court judgment I R 89/10 of September 21, 2011 published on December 28.

Schlagwörter

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