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Debts assumed by acquirer to be taken up under tax principles

The Supreme Tax Court has held that debt provisions otherwise disallowed in the tax accounts but which are assumed by an acquirer as part of a business takeover may be retained in the tax accounts of the latter until utilised or no longer required.

German accounting principles require adequate provision to be made for all anticipated, or threatening expenses or losses. German tax accounting, however, disallows such provisions until the liability materialises. Accordingly, a tax office insisted that an acquiring corporation release a provision carried in the balance sheet of an acquired business - and reflected in the purchase price - for employee's anniversary bonuses and contributions to the German Pension Guaranty Association.

In contrast to the opinion of the tax administration the Supreme Tax Court has confirmed that the acquirer may continue to reflect these provisions in his tax computations. Fundamentally, the court was led by the consideration that the debt had been assumed in the course of a business acquisition and had therefore been "paid for". An asset acquisition should not lead directly to a gain or loss. Rather more legalistically, the court argued that the items had changed their nature with the acquisition. It was now an actual obligation to hold the seller harmless from his future expenses and was therefore now an actual liability. The threat, or in this case the contingency, had materialised. Accordingly, the liabilities should be carried forward with tax effect as adjusted year by year to reflect changes in circumstance. (mh)

Supreme Tax Court judgment I R 72/10 of December 14, 2011 - published on February 29, 2012

Schlagwörter

Debt provision, anniversayr bonus, business acquisition, contingency obligation, pension guarantee assiciation