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By PwC Deutschland | 05. Juli 2012

Sale of partnership share subject to trade tax if coincidental with merger

The Supreme Tax Court has held that the sale of a partnership share is subject to trade tax if the tax effective dates of sale and of its acquisition of the business of its GmbH subsidiary through merger are identical.

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If an unincorporated business sells shares in a company, the gain is subject to trade tax. If a partner sells a partnership share, the gain is not generally taxable as his business capacity ceases with the act of sale. However, one of the exceptions is a provision in the Reconstructions Tax Act charging a gain on the sale of a partnership share to trade tax if realised within five years of an acquisition of company assets. If this provision applies, the gain is chargeable in full, that is, including that part attributable to the original partnership's own assets.

A taxpayer attempted to avoid a trade tax charge on the sale of company assets by agreeing the sale of a partnership share a few days before agreeing to having the partnership absorb its wholly owned GmbH. The tax effective date of both transactions was December 31. However, the date of the contract of sale lay in the previous November and the merger was not registered until the following year. Thus, legally, the sale was before, not after, the merger. The Supreme Tax Court has, however, held that where the two events are to be effective as of the same day, the five year period includes that day. Thus, the taxpayer must now charge the entire gain on the sale of the partnership share to trade tax.

Supreme Tax Court judgment IV R 24/09 of April 26, 2012 published on July 4

Schlagwörter

capital gain, merger, trade tax