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By PwC Deutschland | 05. Juli 2012

Revised sales price calculation not retrospective subsequent event

The Supreme Tax Court has held that a subsequent revision to a contract of sale setting different targets to be achieved with the asset acquired is a taxable event in the year of the revision.

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The sole shareholder in a GmbH sold 52% of the capital for an initial sum to be revised in the light of results to be achieved during the next seven years. The revision and its calculation were established in a series of call and put options and were therefore effectively fixed. Four years later buyer and seller came to a different agreement on a lower additional purchase price based on results achieved to date. The tax office treated this payment as a subsequent price adjustment taxable in retrospect as additional income earned by the seller in the year of sale. The taxpayer (seller) saw it as a current event in the year the new agreement was reached.

The Supreme Tax Court has held that subsequent price adjustments are retrospective if agreed in advance. Thus a payment under the original agreement seven years later would have increased the gain on sale taxable in the year of sale. Here, however, the original agreement was changed by mutual consent four years later, leading to a lower additional payment. This payment was taxable as a gain in the year of the new agreement.

Supreme Tax Court judgment IX R 32/11 of May 23, 2012 published on July 4

Schlagwörter

gain on sale, subsequent event, taxable event