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Transactions in own shares

The finance ministry has issued a decree on the tax consequences for a company dealing in its own shares following the realignment under the Accounting Modernisation Act (BilMoG).

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Traditionally a company treated its own shares purchased as an asset, unless the purpose of acquisition was their cancellation. Accordingly, companies generally carried their own shares purchased at their purchase cost and showed a gain or loss on any sale. However, the Accounting Modernisation Act of 2009 (BilMoG) changed the approach to require companies to show their own shares held at nominal value as an openly disclosed deduction from issued share capital. Amounts paid in excess of the nominal value are to be deducted from the distributable reserves. Sales proceeds in excess of the nominal value are to be added to the distributable reserves up to the amount of the original deduction. Remaining amounts are to be taken to capital reserve. The costs of purchase or sale are current expenses. In principle, the purchase of a company's own shares is to be equated with a reduction of capital and the sale with a capital increase. The finance ministry has now issued a decree calling on tax offices to follow the new accounting rules in computations of taxable income.

A purchase of a share for more than its nominal value is to be seen as a capital repayment up to the nominal amount and then as a dividend. If distributable reserves are insufficient, the excess is a repayment of capital reserve. If the share is purchased for less than its nominal amount, the difference is to set against the share capital from the capitalisation of revenue reserves. Remaining amounts are to be taken to capital reserve. There is to be no withholding tax on a deemed dividend from the purchase of an own share, as the seller has made a sale of an asset and will tax a capital gain as applicable.

A sale by a company of its own shares does not lead to a tax-relevant gain or loss. The nominal value of the sale reduces the deduction from the issued share capital. An excess receipt is taken to capital reserve and a deficit is to be deducted from a positive balance on that account. Any remaining deficit is a balancing item representing capitalisation of reserves.

The tax accounts and computations are to follow the legal accounts. The new approach to a company's own shares is thus to be applied in the same year for both purposes. An existing balance carried as an asset is to be treated as a reduction of share capital and the "reserve for own shares held" is to be released back to (taxed) income. An excess of the previous book value over the nominal value is to be deducted from distributable reserves.

Schlagwörter

Accounting Modernisation Act, Bilanzrechtsmodernisierungsgesetz (BilMoG), own shares