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By PwC Deutschland | 02. Juli 2014

Benefit from employee shares to be measured on contract date

The Supreme Tax Court has held that the benefit from the grant of employee shares is to be based on the value of the shares on the date the transfer agreement became binding on both sides. It also held that there was no automatic presumption that a share transfer to the spouse of an employee was made in consideration for employee services rendered.

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The managing director and majority shareholder of an AG that had recently obtained a stock exchange quote sold shares at, it was claimed, a discount to employees, former employees, their close relatives, existing shareholders and selected business partners. The company did not establish a benefit for its employees and therefore made no move to account for payroll taxes. A director maintained that this attitude was correct. His wife had acquired shares from the majority shareholder for market value consideration as a private transaction.

The Supreme Tax Court has now emphasised that shares transferred to an employee or his or her dependants or close relatives lead to a taxable benefit (employment income) for that employee if the consideration for the transfer was less that the market value of the shares and the discount was granted in recognition of services rendered by that employee in that capacity. However, it made the point that the valuation date was not the date of the transfer (the taxable event), but on the date the transfer obligation became binding on both sides. It argued that subsequent movements in the market price were irrelevant to the valuation of an employee benefit, as any advantage they might give to the employee was not granted by the employer for services rendered. This was because both sides had already agreed to a definite transfer price.

The court also held that the mere fact that the employer had passed an asset to the spouse of an employee at a price below its market value did not mean that he had done so in consideration of work done by that employee as an employee. Thus a court could not assume without further ado that the benefit from the transfer was employment income. Further investigation was required.

Supreme Tax Court judgment VI R 73/12 of May 7 2014 published on July 2

Schlagwörter

benefit, employee shares, share transfer