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By PwC Deutschland | 23. Oktober 2014

Merger loss of life assurance company partially deductible

The Supreme Tax Court has held that the merger loss of a life assurance company is deductible insofar as it arose from an excessive book value of the shares in the acquired company.

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A life assurance subsidiary was merged onto its parent at a book loss. The tax office disallowed this loss under a provision in the Reconstructions Tax Act stating that merger gains and losses (the difference between the transfer value of the assets as shown in the merger balance sheet and the book value of the cancelled shares in the acquired company) should be ignored for taxation. The Supreme Tax Court has, however, now held that this provision as such only applies insofar as the book value of the cancelled shares was equal to, or below, their market value. If their market value was less than the book value (here, the book value had been inflated with the cost of lengthy legal battles over a squeeze-out of minority shareholders), the book value should be written down, before calculating the merger loss under the Reconstructions Tax Act. This write-down was allowable – in contrast to the general rule in the Corporation Tax Act excluding value adjustments (along with capital gains and losses) on investments in the shares in other companies from taxation – under a special provision for life assurance and health insurance companies.

Supreme Tax Court judgment I R 58/12 of July 30, 2014 published on October 22

Schlagwörter

like assurance, merger loss