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By PwC Deutschland | 02. September 2015

Commodity warrants are not investments

The Supreme Tax Court has held that commodity warrants are not financial investments; thus gains on their sale or redemption are not taxable as investment income.

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Xeta-Gold warrants allow holders to speculate on the price of gold. Each represents one gram of gold and their price corresponds to the current gold market price. They have no fixed term, but are dealt with on the stock exchange and are redeemable in kind at any time on the demand of the holder. They are not redeemable in cash. The Supreme Tax Court has now held in two cases that neither the gain on sale on the stock exchange, nor the accretion in value on redemption is taxable as investment income.

The court's main point is that a Xeta-Gold warrant is not a financial investment. It does not have a nominal value or fixed term and is never repayable (redeemable) for cash. A gain on sale on the stock exchange is not therefore a capital gain on the sale of an investment and is also not a gain from a forward contract or from an option exercise (no fixed option price). The gain on value accretion on redemption is potentially taxable as a gain on a privately held commodity, although such gains are only chargeable if the asset was held for no longer than one year.

Supreme Tax Court judgments VIII R 35/14 (sale) and VIII R 4/15 (redemption) of May 12, 2015 published on September 2

Schlagwörter

Xeta, commodity warrant, financial investment