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Tax consultancy fees in connection with the sale of a company share not tax deductible

Tax consultancy expenses incurred in connection with the preparation of the tax return and the determination of the profit from the sale of a shareholding in a corporation are not tax-deductible costs of disposal within the meaning of Section 17(2) sentence 1 of the Income Tax Act.

Section 17 (2) sentence Income Tax Act (ITA) states that the gain from disposal of a share in a corporation is the amount by which the sales price exceeds, after deducting the costs of making the sale, the original acquisition costs.

In **the year in dispute**, the plaintiff sold her shares in X AG which she held as private assets. Her shareholding amounted to 5.93%. She retained a tax advisor to prepare her tax return and claimed the tax advisory fees as disposal costs when determining the capital gain in accordance with Section 17 (2) sentence 1 ITA.

The tax office refused the deduction of the tax consulting fee. The appeal before **the lower tax court** was successful. In the opinion of the court, the definition of disposal costs does not require a direct connection between the expenses and the disposal itself. Rather, it is solely a matter of congruence between the two which can also include indirectly caused expenses. The tax consulting costs were caused by the sale because the “originating moment” for the incurrance of these expenses was the sale itself.

The Supreme Tax Court disagreed. In its opinion this depends on whether the expenses are triggered by the sale and if they are more related to the sale than to current income.

According to case law of the Supreme Tax Court, a correlation to the sale is required, and it is assumed that the triggering factor for the cost expenditure is not the sale itself, but rather its taxation. The reason is that these expenses are a consequence of the tax liability of the sale.

In the case at issue, the Supreme Tax Court did not consider the sale itself to be the triggering event for the costs incurred but rather the obligation to file a tax return and the plaintiffs' decision, based on this obligation, to hire a tax advisor to fulfill the tax reporting duties. The trigger was therefore not the sale but the fulfillment of tax obligations.

Source:

Supreme Tax Court, decision of 9 September 2025 (IX R 12/24), published on 13 November 2025.

Schlagwörter

Sale of shares, fees, tax consultancy