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By PwC Deutschland | 22. Februar 2026

Determination of capital gain on the transfer of special business assets for partial consideration

In the case of the partial transfer of individual business assets pursuant to Section 6 (5) Sentence 3 No. 2 Income Tax Act, the taxable profit is not to be determined by adhering to the so-called strict separation theory but rather according to the modified separation theory with proportional allocation of the book value up to the amount of the partial consideration. This was decided by the Supreme Tax Court in a most recently published judgment.

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Background

The tax courts were asked to decide whether the transfer for partial consideration of individual business assets within the scope of Section 6 (5) Sentence 3 No. 2 Income Tax Act (ITA) from the special business assets of a partner to the joint assets of a sister partnership led to a taxable gain.

According to Section 6 (5) Sentence 3 No. 2 in conjunction with Sentence 1 ITA, and provided that the taxation of hidden reserves is ensured, the value resulting from the tax accounting rules for profit determination are to be applied to the transfer insofar as an asset is transferred free of charge or in return for grant or reduction of company rights from the special business assets of a co-entrepreneur to the joint assets of the same partnership or another partnership in which he participates, and vice versa. According to the Supreme Tax Court, the “value determined in accordance with the provisions on profit determination” is the book value at the time of transfer, which must be applied in accordance with the principles of commercial and tax law profit determination.

Case in dispute

The plaintiff is a GmbH & Co KG (limited partnership with no natural person bearing unlimited liability) in which, among others, A-GmbH held an interest. On of the other limited partners (B) owned a developed property as his special business assets. He also held an interest in C-GmbH & Co. KG (C-KG). In the year in dispute (2017), B transferred both the building and the land to C-KG at book value which was below the market value. The plaintiff argued (referring to the so-called modified separation theory) that this did not generate any capital gain. According to the strict separation theory applied by the tax office, however, a capital gain arose.

Decision

Based on the general principles for determining profits and the separation theories applied to the transfer of individual assets for partial consideration, the Supreme Tax Court held that within the scope of Section 6 (5) sentence 3 ITA the modified separation theory must be applied with proportionate allocation of the book value up to the amount of the partial consideration. The transfer of the developed property at book value to the joint property of C-KG in return for partial consideration was therefore carried out without realizing a taxable profit.

The key point here is the meaning and purpose of Section 6 (5) Sentence 3 ITA which should enable restructuring of partnerships by transferring individual assets without triggering income tax, the Supreme Tax Court said.

Under both the modified separation theory and the strict separation theory transfers for partial consideration are divided into a paid portion and an unpaid portion. However, the modified separation theory allocates the book value of the asset to the partial

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consideration in a different manner.

Source:

Supreme Tax Court, decision of 11 December 2025 (IV R 17/23), published on 19 February 2026.

Schlagwörter

asset transfer, consideration, special business assets