By PwC Deutschland | 26. April 2026

Requirements for application of continued book values in case of a share exchange

The application pursuant to Section 21 (2) Sentence 3 of the Reorganization Tax Act to use the book value (acquisition cost) or an intermediate value as the sale price of the shares in the case of an exchange of shares does not require any specific formal requirement. It can also be made expressly or implied.

Background

In both domestic and cross-border cases, a qualified share exchange within the meaning of Section 21 of the German Reorganization Tax Act (RTA) at book value or at an intermediate value is possible upon application. The case in dispute involved the question when such an application is effectively valid and thus deemed to be submitted and whether these requirements are compatible with Article 8 of the EU Merger Directive.

Section 21 (2) RTA deals with the valuation of a share exchange: On application, the book value or a higher value not exceeding market value may be taken as the sales price of the shares contributed if the right of Germany to tax the gain on sale of the shares received is not excluded or restricted, or if the gain on the share exchange may not be taxed by reason of Article 8 of the EU Merger Directive (Council Directive 2009/133/EC).

According to **Section 21 (2) Sentence 4 RTA** the application is to be made to the responsible tax office at the latest with the first submission of the tax return.

Case in dispute: In summary, a request for book value is not subject to a formal requirement and may not only be made oral or in writing but also implied. It must be submitted to the tax office responsible for the contributor no later than the first filing of the tax return. In the case in dispute, the tax return was submitted electronically on 4 May 2020 - however, no explicit application for book value had been made. Instead, only a specific amount had been declared as capital gain. It was not until 12 May 2020 that additional documents were provided explaining the specification and calculation of the amount reported earlier.

Decision

The Supreme Tax Court dismissed the plaintiff’s appeal as unfounded. While the court acknowledged that it is possible to make an implied request for application at book value even in the case of a cross-border exchange of shares without observance of formal requirements it nevertheless held that valuation options under the RTA must be exercised without reservation and within the prescribed time limit.

It is therefore insufficient if, as in the present case, the sales agreement

merely provides for a request to use the book value. The mere indication of the amount of capital gain does not suffice to establish a valuation that unambiguously and with sufficient certainty indicates a share swap at book value. After all, it may also be in a taxpayer's interest to choose a value higher than the book value, for example, because they wish to utilize loss carryforwards, the Supreme Tax Court said.

The statutory deadline for filing an application under Section 21 (2) Sentences 3 and 4 RTA is **compatible with the EU Merger Directive**. It constitutes a permissible procedural requirement that upholds the EU principles of equivalence and effectiveness.

In light of the relevant case law of the ECJ, the Supreme Tax Court has no reservations that the regulatory framework of the RTA does not violate the provisions set out in Article 8 (1) and (4) of the Merger Directive insofar as it makes tax exemption from the application of the book value or the acquisition cost subject to a request by the taxpayer. Even a regulation that bases tax exemption not only on an application by the taxpayer but also on approval by the tax administration is compatible with the Merger Directive.

According to **Article 8 (1) of the Merger Directive** a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder. **Article 8 (4**) further states that this shall apply only if the shareholder does not attribute to the securities received a value for tax purposes higher than the value the securities exchanged had immediately before the merger, division or exchange of shares.

Source:

Supreme Tax Court, judgment of 2 December 2025 (X R 32/23) published on 23 April 2026.

Schlagwörter

exchange of shares, transfer at book value