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By PwC Deutschland | 15 June 2011

Undistributed reserves ignored for capital gain on sale of shares

The Supreme Tax Court has held that the capital gain on the sale of shares is the difference between the historical acquisition cost and the net proceeds received.

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One of the two shareholders in a GmbH sold his share to his fellow at a price corresponding roughly to the amount paid-in on the share and the attributable portion of the retained earnings. He argued that the retained earnings could have been distributed, and his agreement not to insist on a dividend represented an additional cost of his share in the amount of the dividend foregone. His capital gain was therefore nil. The Supreme Tax Court, however, has rejected this argument on the grounds that a capital gain is the difference between the price originally paid and the net proceeds realised. Undistributed reserves were not a factor in this calculation, but merely influenced the sales price.

Supreme Tax Court judgment IX R 15/10 of February 8, 2011 published on June15

Keywords

Sale of shares, capital gain