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Real estate transfer tax on capital contribution of shares to be written off

The Supreme Tax Court has again held that the real estate transfer tax due on a contribution of a shareholding in another company is to be written off as a current operating expense.

A sole shareholder contributed its holding in another company as a contribution to capital reserve. This contribution was (correctly) taken up at market value. Its effect was to increase the first company's holding in the second to "at least 95%", the threshold for levying real estate transfer tax on the deemed value of any property the company transferred might own. Accordingly, the company paid the transfer tax and wrote-off the amount as a business expense. However, the tax office insisted that it be capitalised as a cost of acquiring the new holding.

The Supreme Tax Court has now declined to answer the contentious question – whether a charge to real estate transfer tax can be part of the cost of acquiring a shareholding – as irrelevant in a case concerning an investment to be taken up at market value. It has, however, held that the charge has no influence on the market value of the shares and thus cannot be taken into account in establishing the amount. The market value of the investment was the sum of the market values of each share held, and these were not influenced by the incidence of real estate transfer tax on reaching a given threshold. The tax was a consequence of the acquisition and not a cost of the transaction.

It is worthy of note that the Supreme Tax Court has already held that real estate transfer tax was not to be capitalised as a cost of acquiring an investment by contribution at book value in settlement of an increase in share capital (judgment I R 2/10 of April 24, 2011).

Supreme Tax Court judgment I R 40/10 of March 14, 2011 published on August 10

Keywords

capital reserve, contributions, real estate transfer tax