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By PwC Deutschland | 30 January 2013

Stock option benefit realised on disposal

The Supreme Tax Court has held that the benefit from stock options sold is realised on the date of disposal and is to be based on their value at that point in time.

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The managing director of a GmbH was granted options to acquire shares in the parent company, an AG. A month later, he transferred the options to his wholly-owned investment management company for a purely nominal amount of 10 ct. each. At that time the shares were quoted on the stock exchange at €1.84. The option exercise price payable to acquire them was fixed at 65 ct. Rather more than a year later, the company chose to exercise the options at which time the market value of the shares had risen to €5.41. The tax office ignored the transfer to the company – as at related-party transaction not at arm's length – and sought to tax the managing director on the benefit from "his" exercise of the options of the difference between €5.41 and 65 ct.

The Supreme Tax Court has now held that no benefit accrued to the managing director at the time of option exercise. His sale of the options to his investment management company was a genuine transaction to be recognised for taxation. The company was not abusive, as it had not been formed in connection with the grant of the options or in order to hold them. His benefit, therefore accrued, on sale of the options to the company and was based on the then current market rate of the shares. It was therefore the difference between €1.84 and 65 ct, i.e. €1.19 per option. The difference between this option value and the price of 10 ct. actually paid was a hidden capital contribution. Whether either consequence could be drawn in practice depended upon whether the tax assessments for the earlier year were still open to adjustment.

Supreme Tax Court judgment VI R 90/10 of September 18, 2012 published on January 30, 2013

Keywords

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