Downloaded from Blogs on 03.11.2026 06:12

By PwC Deutschland | 21 March 2013

Acquired pension provision to be carried at consideration received

The Supreme Tax Court has held that a pension obligation taken over from another company should continue to be carried at the consideration received until, with the passage of time, the “tax” value is higher.

Downloaded from Blogs on 03.11.2026 06:12

A company acquired a business with pension obligations towards its employees. These along with all other assets and liabilities were valued at their fair market value in the acquisition balance sheet on which the contract was based. The tax office accepted this valuation for the date of acquisition only, but insisted that the company reduce the provision to the lower amount called for under the tax rules in the next annual balance sheet. This resulted in a partial release to income to which the company objected.

The Supreme Tax Court has now sided with the company. The tax office argued that the pension provision valuation rules were based on an explicit provision in the Income Tax Act and thus took precedence over the more general rules requiring assets and liabilities to be taken up at cost. The court, though, rejected this argument on the grounds that the provision had been “acquired” in that it had been taken into consideration in setting the overall price for the total acquisition. As an acquired liability, it could not be shown below “cost” unless its value had diminished through payment. This followed from the principle that an acquisition could not, of itself, generate a profit or loss. On the other hand, annual increments were new liabilities arising in the current year and should be accrued on the rules specific to pension obligations. Each obligation – each beneficiary – should be calculated individually. The court also pointed out that this judgment is consistent with its law on other accruals subject to special rules designed to limit or defer tax recognition of the expense.

The Supreme Tax Court decided in the same vein in a second case on the same day, this time involving pension obligations transferred as part of a piece-meal assets transfer not falling under the Reconstructions Tax Act. In this case, the assets were regarded as a contribution in kind to share capital and the liabilities were treated as part-payments. Here, too, the same principle applied, that the acquisition of an asset (assumption of a liability) could not, of itself, lead to a profit or loss; thus the pension liability must be taken up at its contractual value and this value must be retained until the liability is paid.

Supreme Tax Court judgments *I R 69/11* of December 12, 2012 published on March 20, 2013 and *I R 72/10* of December 14, 2011 published on February 29, 2012

Keywords

pension obligation, pension provision