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By PwC Deutschland | 23 March 2013

Costs of aborted acquisition immediately deductible

The Supreme Tax Court has held that the costs of an acquisition attempt that came to nothing are immediately deductible without regard to the unanswered question as to whether due diligence costs of a successful acquisition should be capitalised.

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After extensive negotiations a company reached provisional agreement with the sellers to acquire a subsidiary. This agreement was documented in a letter of intent expressly subject to the results of a due diligence review. In the event, these results were unsatisfactory and the deal came to nought. The company wrote off the cost of the accountants' fees for the review to current business expense. The tax office accepted one-half of the amount as general business consultancy and/or strategic planning, but insisted that the other half be notionally capitalised as cost of acquistion and then written off as a failed investment. This write-off was not deductible for tax under the rule exempting dividends and capital gains on the sale of shares from corporation tax in the hands of another corporation.

The Supreme Tax Court explicitly declined to rule on the basic question as to whether due diligence costs were to be capitalised as a direct cost of acquiring the new investment. Rather, it took the view that such costs could not be capitalised if the acquisition was never completed. The potential acquirer had held at no time any form of ownership rights in the target company and therefore had never held an asset. Its costs incurred in the course of an unsuccessful attempt to acqure the asset were therefore current business expense and, as such, immediately deductible. The court went on to explain that this was in conformity with the spirit and purpose of the statute, to disallow the costs of earning tax-free dividend income. If the acquisition was not completed, there was at no time any prospect of earning a tax-free dividend, and thus no reason to see abuse in the costs incurred in that regard in vain.

Supreme Tax Court judgment I R 72/11 of January 9, 2013 published on March 20

Keywords

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