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By PwC Deutschland | 29 May 2013

Option premium not part of sale proceeds

The Supreme Tax Court has held that the premium received by the seller of shares for the grant of an option to the buyer is not tax-free in the hands of a company as part of the proceeds of sale.

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An asset management company frequently dealt in shares. It customarily offered prospective buyers and sellers call and put options to give them time to obtain the necessary approvals. In its accounts it treated the premiums received on options exercised as part of the proceeds of sale or cost of purchase. The tax office disputed this treatment, claiming the option to be taxable as a separate transaction.

The Supreme Tax Court has now agreed with the tax office, at least in respect of an option granted to protect a sale. The option premium was not part of the proceeds from the sale of shares, even if the option was exercised and the only reason for its grant was to allow the buyer time to obtain his necessary approvals without fear of price rises in the meantime. A gain on the sale of shares was exempt for a corporation under the Corporation Tax Act. However, the grant of an option was not a sale of shares, but rather the sale of a right to acquire shares for a fixed price. As such, its premium was taxable as sundry income in the hands of a corporate recipient.

Supreme Tax Court judgment I R 18/12 of March 6, 2013, published on May 29

Keywords

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