

By PwC Deutschland | 25 April 2014

Shares sold to be specifically identified by serial numbers

The Supreme Tax Court has held that shares sold from a mixed holding should be identified from their serial numbers. GmbH shares sold should be identifiable from the contract.

The capital gain on shares sold depends on their base cost. This may not be immediately obvious if less than the entire investment in a particular stock is sold and the investment was acquired at different times from different sources. This was the case at issue before the Supreme Tax Court where the seller argued that the shares sold could not be specifically identified following a ten-for-one share split and the taxable gain from the sale should therefore be calculated taking the highest base cost first. The court, though, held that if it really was impossible to identify the specific source of an investment, the base cost should be taken as the average cost of acquisition. However, it would usually be possible to identify the individual shares sold by their serial numbers. This held true for the present case of a share-split following an acquisition, since the new shares issued could be directly linked to the old shares cancelled. The court also added that had a GmbH's share(s) been sold, identification would have been clear from the contract of sale (a GmbH does not issue share certificates and shares do not have to be for identical amounts. Indeed, initially each shareholder often holds a single share for his or her portion of the share capital. If necessary, shares can be split – for example to facilitate the sale of only part of a holding – although splits will always be documented in the notarial deed for the primary transaction – e.g. contract of sale.)

Supreme Tax Court judgment IX R 45/12 of December 11, 2013 published on April 24, 2014

Keywords

base cost, capital gain, serial number, shares sold