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By PwC Deutschland | 18 June 2014

Sale of mining right as sale of real estate

The Supreme Tax Court has accepted the sale of mining rights attaching to a property no longer owned by the seller as the sale of a real estate right to be taxed as a capital gain.

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A farmer transferred his holding to his son, but retained the right to mine the salt deposits underneath the site. He then sold this right to an energy company. The energy company's intention was to flush out the salt and then to use the hollow for the storage of natural gas. The contract for the sale of the mining right described the transfer as a final, irrevocable transaction for a single payment. The seller followed this description and treated the transaction as the sale of a property right, taxable under the rules for capital gains. In this case the gain was exempt as the mining right had been held for more than ten years. The tax office saw the sale of the mining right as a mining royalty paid in advance and thus taxable in full as current income over the expected period of active mining.

The Supreme Tax Court has now held the sale to have been a final transfer of the right. Accordingly, it should be taxed as a sale of property. The proceeds were not a mining royalty paid in advance as there was no provision for the eventual reversion of the right, or the right to use the hollow, to the seller. Rather, that right had been fully transferred to the buyer and it was now for him to arrange with the site-owner (landlord) the necessary access for exploitation.

Supreme Tax Court judgment IX R 25/13 of February 11, 2014 published on June 18

Keywords

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