Downloaded from Blogs on 24.11.2026 20:09

By PwC Deutschland | 01 April 2015

Capital gain holding period runs to date of binding agreement to sell

The Supreme Tax Court has held that the ten-year holding period for exempting a gain on sale of privately held property runs to the date the agreement to sell the property is binding on both parties regardless of any as yet unfulfilled condition subsequent.

Downloaded from Blogs on 24.11.2026 20:09

Capital gains from the sale of privately held property are exempt from income tax if the property was held for more than ten years when sold. A taxpayer purchased a property from a disused railway site on April 1, 1998 and sold it by contract of January 30, 2008. The tax office included the gain in the individual's income tax assessment for 2008 on the grounds that the property had been held for less than ten years. He protested that the sale was not final until December 10, 2008, the date the railway authority confirmed formally that there was no longer any railway interest in the site. The sale was conditional on this confirmation and would have been reversed, had the confirmation not been forthcoming. The Supreme Tax Court has now held, though, that the date of sale was the date the sale became binding on both parties, that is, in this case on January 30, 2008. From that date on, neither party had any choice but to follow the terms of the contract, including the obligation to reverse the sale should the railway authority elect to maintain its interest in the site.

Supreme Tax Court judgment IX R 23/13 of February 10, 2015 published on April 1

Keywords

capital gain, holding period, property