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By PwC Deutschland | 17 December 2015

Selling costs of realising partially taxable capital gains to be deducted from taxable portion

The finance ministry has decreed that the selling costs of investments leading to a partially taxable gain are to be set against the taxable portion only.

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In July 2010, the Constitutional Court held that a change in the Income Tax Act reducing the definition of a significant shareholding from over 25% to over 10% was unconstitutional insofar as it led to the taxation of a capital gain that had already accrued tax-free on the date of its promulgation (March 31, 1999). Accordingly, it was necessary to split gains on the sale of shares from holdings of more than 10% but less than 25% into taxable and non-taxable portions, based on the value on March 31, 1999. The finance ministry has now issued two decrees ordering the deduction of the entire costs of the sale from the taxable portion only and refusing any split between the two portions. This applies to gains on selling significant holdings and to those accruing from contributions of shares to a company's operating capital at more than book value (capital contributions in kind as a capital injection or on a merger). However, the decrees are silent on the application of the same principles to a subsequent reduction of the 10% limit to below 1% in 2002 and on the consequences of an excess of selling costs over the taxable portion of the gain. On the other hand, these decrees have no application to private capital gains realised from 2009 onwards which are governed by different principles.

Keywords

capital gain, selling costs, significant shareholding