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Consideration in kind valued on day of contract fulfilment

The Supreme Tax Court has held that the capital gain on the exchange of shares is realised when the shares are delivered but should be based on the value of the shares received when received.

A shareholder contributed a holding of just over 25% to another company in exchange for new shares to be issued by that company – contribution in kind. The contract set the value of the new shares to be received in consideration at €24. At the time of transfer of the holding, the stock exchange price of the shares of the class to be issued was €18.69. However, this price had fallen to €€2.20 by the time the new shares came to be issued, some ten months later. The tax office assessed the seller to a capital gain on the basis of the stock exchange price of the shares to be received on the date of delivery of the shares contributed. Its argument was that the consideration – in the form of the new shares to be issued – was due as of the date of contribution of the shares transferred and that future changes in value of that consideration were as a subsequent event a matter for the recipient. The recipient claimed that the gain should be based on the lower value as being the value actually received.

The Supreme Tax Court has now decided the issue in favour of the taxpayer. In this it follows previous rulings reducing a capital gain by the buyer's default, but extends this to value changes to the consideration before delivery and independent of any action by either of the two parties to the transaction. Consideration payable in kind was to be valued on the day of its actual delivery. On the other hand the date of realisation of the capital gain was the date of the transfer of the shares contributed to their new holder.

Supreme Tax Court judgment IX R 43/14 of October 13, 2015 published on January 13, 2016

Keywords

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