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# Reconstruction balance sheet may include newly capitalised intangibles

**The Supreme Tax Court has held that the opening balance sheet of a partnership converted from a GmbH may include intangibles that the GmbH could not take up in its closing balance sheet.**

A GmbH changed its legal form to that of a partnership. In doing so, it took advantage of the valuation option in the Reconstructions Tax Act allowing the conversion balance sheet – closing balance sheet for the old entity, opening balance sheet for the new – to be drawn up based on previous book values or at a higher value not exceeding market value. In doing so, it capitalised its goodwill and its customer order book. This led to a profit to be set against a loss brought forward and a correspondingly higher depreciation base for the successor entity. The tax office refused to accept this capitalisation because of the Income Tax Act prohibition on capitalisation of self-generated intangibles. The GmbH was unable to contest this decision before the courts for lack of any disadvantage from the tax office' refusal to allow it to increase its taxable income, and the partnership was unable to appeal against the tax assessment of a different entity.

The Supreme Tax Court has now allowed the partnership's appeal. It was bound to open its books with the closing balance sheet of the GmbH and to refuse it the right to appeal against a tax office decision against the GmbH would effectively free the tax office from all judicial control. In the substance of the case, the court held the capitalisation of intangibles to be acceptable as the wording of the Reconstructions Tax Act set the valuation range between the book values as taken for the computation of taxable income and the market values as objectively determined. The prohibition on capitalisation of self-generated intangibles was a tax rule without relevance to the determination of a market value.

Supreme Tax Court judgment IV R 49/14 of September 19, 2015 published on January 28, 2016

### **Keywords**

Goodwill, intangibles, reconstruction