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Commercial transactions between friends; recognition of losses

On 8 November 2017 the Supreme Tax Court published a decision made on 9 May 2017 on a case involving a gratuitous share transfer between friends, where the transferor had significant acquisition costs. The Court held that the presumption of a commercial transaction is not rebutted purely because a friendship exists between the contracting parties.

The case related to a decision of the lower court relating to an agreement, where the lower court held that the contracting parties had agreed and economically executed a gratuitous transfer; the lower tax court's decision was principally based on the fact that the contracting parties had a long-standing friendship originally arising from their relations as neighbours. According to the Supreme Tax Court, however, the lower tax was wrong to characterise a relationship between friends as equal to a relationship between relatives and thus rebutting the presumption of a share transfer for a valuable consideration.

The existing presumption that third parties tend not to give away anything in the course of normal business, can be refuted by the relevant parties through either direct proof or with the support of circumstantial evidence. However, the lower tax court should recognise that the higher the economic value of the shareholding is between the parties, the harder the presumption will be to rebut.

Source:

Supreme Tax Court decision of 9 May 2017 (IX R 1/16) published on 8 November 2017.

Keywords

Income Tax Act, arm's length, share transfer