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Allowable depreciation after acquisition of share in asset-managing partnership

According to a ruling of the Supreme Tax Court, the shareholder (partner) of an asset-managing partnership who has acquired his share for a consideration, can claim depreciation on the jointly owned depreciable assets on a pro rata basis and only in accordance with his acquisition costs and the remaining useful life of the respective asset at the time the share was acquired.

Background

Two brothers each held a 50% interest in the plaintiff, an asset-managing partnership under civil law (GbR). The GbR generated income from leasing and letting. One partner left the company by selling part of his share to his brother and part to his sister-in-law. The main dispute was whether the loans taken up by the GbR for the acquisition of real estate (liabilities of the GbR) would increase the acquisition cost of the purchasers and, accordingly, the amount of depreciation on the share of the acquired buildings attributable to them. The tax office and Tax Court of Cologne had rejected this request.

Decision

The appeal of the plaintiff (GbR) was granted by the Supreme Tax Court.

The Tax Court of Cologne erred when determining the purchaser's entitlement to depreciation after the acquisition of shares. According to the Supreme Tax Court depreciation is based and calculated on his acquisition costs and the remaining useful life of the assets acquired pro rata at the time of the share acquisition. The liabilities of the Company increase the acquisition costs of the acquirer on a pro rata basis insofar as they are individually attributable to the indirectly acquired depreciable assets which are jointly owned by the partners ("*Gesamthandsvermögen*").

According to established case law of the Supreme Tax Court it is the partnership that must determine the jointly generated income in a first step. In doing so, it considers (at partnership level) depreciation on the leased buildings based on historical acquisition costs. The income determined in this manner is then allocated directly to the partners in accordance with their shareholdings. This also applies if a shareholder transfers his share to one or more new shareholders for consideration. However, shareholders who have subsequently (later) acquired their shareholding cannot claim the depreciation included in their share of the profit. Instead, their entitlement to depreciation is determined based on the individual acquisition cost and the expected remaining useful life of the portion of the depreciable asset acquired at the time of the acquisition of the share. The share of profit attributed to them must therefore be adjusted to the extent the depreciation to which they are entitled differs from the depreciation taken into account when determining the income at company level.

In its decision the Supreme Tax Court also deals in detail with the question of how the correction amount is to be determined. The court also explains that the adjustment amount is still part of the uniform and separate determination of profits ("*einheitliche und gesonderte Gewinnfeststellung*"), even if it only concerns the personal circumstances of individual shareholders.

Source

Supreme Tax Court decision of 3 May 2022 (IX R 22/19), published on 22 September 2022.

Keywords

Asset & Wealth Management, depreciation, partnership