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By PwC Deutschland | 17 September 2024

Increase in value of GmbH shares as taxable gift

In a recent judgment the Supreme Tax Court decided that the increase in value of shares in a corporation for the purposes of inheritance and gift tax must be determined in accordance with the rules of Section 11 of the Valuation Act. For this purpose, the market value of the beneficiary's share prior the transfer must be compared with the market value of this share after the contribution.

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Statutory provision

The general rule of Section 7 (1) no. 1 Inheritance and Gift Tax Act (IGTA) provides that “any gratuitous contribution (bestowment) between living persons is deemed to be an inter vivos gift if the beneficiary is enriched by it at the expense of the donor (,,,)”. According to Section 7 (8) sentence 1IGTA the increase in the value of shares in a corporation that a natural person or foundation (beneficiary) with a direct or indirect interest in the company acquires through the contribution from another person (donor) to the company is also **deemed to be** a gift. A benefit within the meaning of that provision is any action, tolerance or omission that results in the transfer of assets. The assignment of a share in a corporation to the corporation itself also qualifies as a benefit as defined in the law.

Background (in brief)

In the case of dispute the heirs of a shareholder had sold a share in a GmbH to the GmbH for EUR 300,000, although the established value of this share was significantly higher (EUR 1,819,176). The tax office considered the difference to be a gift from the heirs to the other limited partners of a limited partnership who was also a shareholder of the GmbH and assessed gift tax. The plaintiff argued that there was no gift as the sale of a share to the GmbH did not result in an increase in assets for the company. Furthermore, he held this rather to be a hidden contribution and thus a transfer for consideration and therefore not free of charge, which otherwise would be a prerequisite for gift tax.

The Tax Court of Saxony had confirmed the view of the tax office and rejected the claim of the plaintiff.

Decision

Following the co-heir's appeal, theSupreme Tax Court set aside the judgment of the tax court of first instance and referred the matter back for a different hearing and final decision. This is what the Supreme Tax Court had to say:

According to Section 7 (8) sentence 1 IGTA, the increase in value of shares in a corporation is deemed to be a gift. This applies in the case of dispute as it increased the value of the shares of the remaining shareholders. In contrast to the basic concept of Section 7 (1) no. 1 IGTA, the gratuitousness of the benefit to the company is not a prerequisite for taxation. The decisive criterion is the increase in the value of the shareholders' shares as a result of the transfer.

The difference between the actual purchase price of EUR 300,000 and the established shareholder value (corporate value) of EUR 1,819,176 gave rise to a voluntary contribution, which is relevant for gift tax purposes. However, it must yet be examined in each individual case whether and to what extent the shares of the remaining shareholders have increased in value.

TheSupreme Tax Court also pointed out that the increase in value of the shares is determined based on the market value („gemeiner Wert“) of the (partially) gratuitous consideration.

Furthermore, theSupreme Tax Court held that the tax relief in Sections 13a and 13b IGTA for certain types

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of businesses assets is not applicable in the case of dispute. An increase in the value of shares in a GmbH is not the type of transaction privileged under the regime of theIGTA.

The tax court of Saxony had incorrectly interpreted Section 7 (8) sentence 1 IGTA by assuming that the increase in value of shares in a corporation corresponded to the value of the share transferred partly free of charge to the company. The Supreme Tax Court went on to say, that this is merely an upper limit (cap) for the increase in value within the meaning of Section 7 (8) sentence 1 IGTA.

The Supreme Tax Court could not finally decide the case. Specifically, whether there had been an increase in the value of the company shares within the meaning of Section 7 (8) sentence 1 IGTA in accordance with the above-mentioned principles.

Source:

Supreme Tax Court, decision of 10 April 2024 (II R 22/21) – published on 12 September 2024.

Keywords

Contribution of shares, inheritance and gift tax, taxable value