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No capital gain taxation from private sale of luxury motorhome

The Supreme Tax Court has commented on the requirements for an item of daily use and decided that the profit/loss from the sale of high-priced everyday items is not taxable as capital gain from "private disposals" (Section 23 (1) No. 2 Sentence 2 Income Tax Act).

Background

Section 23 of the German Income Tax Act deals with the taxation of capital gains from "private disposals" (Private Veräußerungsgeschäfte). It refers to the sale of private assets within a certain period after acquisition: Real Estate (Land and Buildings) is taxable if sold within ten years of purchase. A sale of other private assets is subject to income tax if sold within one year of purchase. Excluded from tax are sales of items for daily use, Section 23 (1) No. 2 Sentence 2 ITA. The latter provision was the subject of the dispute before the Supreme Tax Court.

Case in dispute

The plaintiffs (a married couple) purchased a motorhome for approximately €323,000. They leased it on a daily basis to a limited liability company of which the plaintiff is a shareholder. The motorhome was available for the plaintiffs' private use during the rest of the time. The tax office classified the rental income as other income in accordance with Section 22 No. 3 ITA. The depreciation of the motorhome led to losses which, however, were not deductible but could only be offset against future rental profits. Less than a year after the purchase, the plaintiffs sold the motorhome at a loss. Despite this, the tax office determined a profit from a private sale in accordance with Section 23 ITA. The profit was due to the fact that the depreciation had to be added back. The tax court of first instance agreed with the plaintiffs. It took the view that the motorhome was an item of daily use that was exempt from taxation.

Decision

The Supreme Tax Court dismissed the tax office's appeal and upheld the decision of the lower tax court.

Everyday items pursuant to Section 23 (1) No. 2 Sentence 2 ITA are economic goods which, from an objective perspective, are primarily purchased for use and are subject to a loss in value or have no potential for an increase in value; daily use is not a requirement.

The Supreme Tax Court has now decided that economic goods (assets) which, from the perspective of an average observer, can be classified as high-priced ("luxury goods") may also qualify as "everyday items". Furthermore, there are no significant indications in the wording of the provision or in the legislator's explanatory memorandum that an "item of daily use" requires that the asset be used exclusively for personal purposes. That is why the Supreme Tax Court ultimately found it irrelevant that the plaintiffs also used the motorhome as a source of income (rental).

This understanding is based on the view that items where the seller is generally only seeking to recover part of his or her own acquisition costs through resale should be excluded from the scope of taxation under Section 23 ITA.

Whether the motorhome could have had fundamental potential for an increase in value in the case of dispute, given the special market conditions during the coronavirus pandemic, is not relevant to the decision, the Supreme Tax Court adds, because the comparison of the purchase price and the sale price alone has already established the opposite - namely, a decline in value due to wear and tear - and this is sufficient for the assumption of an item of daily use.

Source:

Supreme Tax Court, judgment of 27 January 2026 (IX R 4/25) published on 24 February 2026.

Keywords

Capital gains taxation, private sale