Downloaded from Blogs on 03.11.2026 06:02

By PwC Deutschland | 05 July 2026

Addback when using the simplified capitalized earnings method for evaluation of partnership share

The value for gift tax of a limited partnership share which is gratuitously transferred to a related party may be calculated by using the capitalized earnings value method in order to determine the "sustainably achievable annual yield" and to correct one-time expenses. In these circumstances, the expense of a fine imposed for an antitrust violation must be added back to the relevant baseline profit, the Supreme Tax Court said in a most recently published decision.

Downloaded from Blogs on 03.11.2026 06:02

Background

The value of the share in the business assets must be determined separately if it is relevant for gift tax purposes. The parties involved may choose between the standard capitalized earnings value method and a simplified approach of that method which is based on the "sustainably achievable annual yield". In the case of dispute, the latter method was used. The operating results of the last three fiscal years ending prior to the valuation date are decisive in this respect.

Pursuant to Section 202 (1) Sentence 2 No. 1 Letter c of the Valuation Act, when determining the operating result (in the context of share valuation), extraordinary expenses from the past three years must be added back to the base value (the tax profit). This adjustment ensures that one-time or atypical expenses do not distort the result thereby ensuring that the company’s sustainable earnings are correctly mirrored.

Case in dispute

In 2014, the plaintiff set aside a provision for a fine. In 2015, this provision was increased for fear that the penalty would be increased even further in the appeal proceedings. After the proceedings were concluded in 2020, the portion of the provision that was no longer needed was released. In 2017, a limited partner transferred part of her interest to her son as a gift. As part of the valuation of the shares the tax office considered the creation of the provision as extraordinary expenses within the meaning of Section 202 (1) Sentence 2 No. 1 Letter c of the Valuation Act and therefore corrected the relevant baseline value by adding that amount when determining the operating results. The appeal filed with the lower tax court was not successful.

Decision

The Supreme Tax Court dismissed the plaintiff’s appeal. Extraordinary expenses are operating expenses that do not typically arise in the course of normal business operations. Accordingly, items included in the net income relevant for tax which occurred only once or which, due to their unusual nature, have no significance for the sustainable annual income and must be adjusted.

The expense incurred from a provision for an antitrust fine meets these requirements. The fine is intended to deter the companies involved in the antitrust violation from committing further violations (specific deterrence) and to prevent potential imitators (general deterrence). It thus aims to ensure that improper conduct and the need for punishment are not repeated. It is irrelevant whether the expense resulting from the fine was generated over several fiscal years, e. g. because the company set up a provision and subsequently increased it (as in the case at hand).

Source: Supreme Tax Court, judgment of 25 March 2026 (II R 17/23) published on 2 July 2026.

Downloaded from Blogs on 03.11.2026 06:02

Keywords

gifts, share transfer, valuation