Income Tax Act (EStG)
§ 17 Sale of shares in corporations
(1) 1 Income from a trade or business also includes the gain from the sale of shares in a corporation if the seller held, directly or indirectly, at least 1 percent of the corporation's capital within the last five years. 2 The constructive contribution of shares in a corporation to another corporation is equivalent to the sale of shares. 3 Shares in a corporation are shares, interests in a limited liability company, profit participation certificates or similar interests and expectations of such interests, as well as shares in an opting company within the meaning of Section 1a of the Corporation Tax Act. 4 If the seller acquired the sold share free of charge within the last five years before the sale, sentence 1 applies accordingly if the seller, although not himself, held an interest within the last five years within the meaning of sentence 1, or, if the share was transferred successively free of charge, one of the legal predecessors.
(2) 1 Capital gain within the meaning of paragraph 1 is the amount by which the sale price, after deduction of the selling expenses, exceeds the acquisition costs. 2 In the cases referred to in paragraph 1, sentence 2, the fair market value of the shares replaces the sale price. 3 If the seller proves that the shares were already attributable to him at the time unlimited tax liability arose pursuant to Section 1, paragraph 1, and that the increase in assets accrued up to that time was subject to a tax in the country of departure comparable to the tax under Section 6 of the Foreign Tax Act, the value used by the country of departure in calculating the tax comparable to the tax under Section 6 of the Foreign Tax Act replaces the acquisition costs, but not exceeding the fair market value. 4 Sentence 3 does not apply in the cases referred to in Section 6, paragraph 3, of the Foreign Tax Act. 5. If the seller acquired the sold share free of charge, the acquisition costs of the share are those of the legal predecessor who last acquired the share for consideration. 6. A loss on disposal is not to be taken into account to the extent that it relates to shares.
a)
which the taxpayer had acquired free of charge within the last five years. 2 This does not apply insofar as the legal predecessor could have claimed the capital loss instead of the taxpayer;
b)
that were acquired for consideration and have not been part of a shareholding held by the taxpayer within the meaning of paragraph 1 sentence 1 for the entire last five years. 2 This does not apply to shares acquired within the last five years, the acquisition of which led to the establishment of a shareholding held by the taxpayer within the meaning of paragraph 1 sentence 1, or which were acquired after the establishment of the shareholding within the meaning of paragraph 1 sentence 1.
(2a) 1 Acquisition costs are the expenditures incurred to acquire the shares within the meaning of paragraph 1. 2 Acquisition costs also include incidental

costs and subsequent acquisition costs. 3 Subsequent acquisition costs within the meaning of sentence 2 include, in particular,

1.
open or concealed deposits,

2.
Loan losses, insofar as the granting of the loan or the letting of the loan stand during the company's crisis was justified under company law, and

3.
Losses of claims for recourse against guarantees and similar claims, insofar as the provision or retention of the security in question was due to corporate law reasons.

4. A corporate law justification regularly exists if an unrelated third party would have demanded repayment of the loan or security within the meaning of paragraphs 2 or 3 under otherwise identical circumstances, or would not have granted it. 5. If the taxpayer makes payments into the company's capital exceeding the nominal value of his shares, these payments must be allocated equally among all his shares, including new shares received in the context of capital increases, when determining the acquisition costs.

(3) 1 The capital gain shall be subject to income tax only to the extent that it exceeds the portion of EUR 9,060 corresponding to the share in the corporation sold. 2 The allowance shall be reduced by the amount by which the capital gain exceeds the portion of EUR 36,100 corresponding to the share in the corporation sold.

(4) 1 For the purposes of paragraph 1, a disposal shall also include the dissolution of a corporation, a reduction of its capital if the capital is repaid, and the distribution or repayment of amounts from the tax equity account within the meaning of Section 27 of the Corporation Tax Act. 2 In these cases, the disposal price shall be deemed to be the fair market value of the assets of the corporation allocated or repaid to the taxpayer. 3 Sentence 1 shall not apply insofar as the distributions pursuant to Section 20 paragraph 1 number 1 or 2 are considered income from capital assets.

(5) 1 The restriction or exclusion of the Federal Republic of Germany's right to tax gains from the sale of shares in a capital company in the event of the transfer of the capital company's registered office or place of management to another state shall be equivalent to the sale of the shares at fair market value. 2 This shall not apply in the case of the transfer of the registered office of a European Company pursuant to Article 8 of Regulation (EC) No 2157/2001 and the transfer of the registered office of another capital company to another Member State of the European Union. 3 In these cases, the gain from a subsequent sale of the shares shall be taxed, irrespective of the provisions of any double taxation agreement, in the same manner as the sale of those shares would have been taxed if the registered office had not been transferred. 4 Section 15(1a), second sentence, shall apply mutatis mutandis.

(6) Shares within the meaning of paragraph 1 sentence 1 shall also include shares in corporations in which the seller has not held, directly or indirectly, at least 1 percent of the capital of the corporation within the last five years, if

1.
the shares were acquired as a result of a contribution transaction within the meaning of the Reorganization Tax Act, in which the book value or an intermediate value was used and

2.
at the time of contribution the conditions of paragraph 1 sentence 1 were met for the contributed shares or the shares are based on a contribution of a business, part of a business or co-entrepreneurial share within the meaning of Section 20 paragraph 1 of the Transformation Tax Act.

(7) For the purposes of paragraph 1 sentence 1, shares shall also include shares in a cooperative, including a European Cooperative Society.

footnote

(+++ § 17: For application see § 52 +++)