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*German Tax and Legal News*

## **Local tax court of Saxony rules on joint contribution of two operating businesses by single taxpayer**

The [local tax court of Saxony](#) (case reference: 2 K 322/10) recently ruled on the determination of the relevant tax equity where a single taxpayer contributes two individual business divisions. An individual contributed two separate enterprises at tax book value into a GmbH against new shares. One of the businesses transferred had a negative tax equity, but considered together, both businesses contributed had a positive tax equity. According to the German Reorganization Tax Act, a tax neutral contribution of a business unit against shares generally is possible only if the business division has a positive tax equity; otherwise, the transaction leads to a taxable step-up for the transferor.

The local tax court confirmed that a transfer of two separate operating business units generally qualifies as two separate contributions in kind. Thus, even if several contributions in kind are made in context of a single transaction, a separate analysis would be required to determine whether a step-up has to be made for each contribution. However, according to the court, where several contributions in kind are made in the context of one uniform transaction by the same person, the step-up requirement needs to be analyzed based on an overall assessment of all transferred business units. Thus, provided the tax book values of the assets of all transferred business units in total exceed the tax book values of the total transferred liabilities, a tax neutral transfer should be possible if made by the same person in a uniform transaction. The decision is now pending before the [Federal Tax Court](#) (case reference I R 79/10).

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