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No RETT if indirect change in partnership incomplete

The Supreme Tax Court has granted a taxpayer’s appeal against a real estate transfer tax assessment on the grounds that an indirect change in the shareholdings in the members of a property owning partnership was less than a complete change of interest in the partnership.

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Real estate transfer tax (RETT) of between 3.5% and 5.5% of the taxable value of property owned by a partnership is due if at least 95% of the ownership interests in a partnership change over a five-year period. The change can be direct or indirect. On this basis, the tax office raised a RETT assessment on a partnership of two partners after the ultimate holding company of a 6% partner sold 50% of the shares in its immediate subsidiary to a third party following the transfer of the 94% partnership interest by the other partner to a different third party. The tax office contention was that the effective composition of the property owning partnership had changed by more than 95%, taking both changes together.

The Supreme Tax Court has now rejected the tax office's contention. Rather, only 94% of the partnership interest had changed hands (the first transaction) and the 6% holding remained unaffected. It reasoned that direct changes of ownership were a matter of legal form, whilst indirect changes could only be seen as a matter of business substance. A sale of 50% of the shares in a company owning the entire share capital of another company owning a 6% partnership share did not give the acquirer a 3% interest in the partnership. Rather, each shareholding level had to be seen separately, and a 50% acquisition did not give the acquirer the right to dictate policy to the company on the management of its investments.

Please note: Whether this judgment applies to indirect changes in shareholdings in a property-owning company is not entirely clear, although such a conclusion would seem logical.

Supreme Tax Court judgment II R 17/10 of April 24, 2013 published on June 19

Schlagwörter

RETT, real estate transfer tax