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Capital transfer tax not precluded by Sixth Directive

The ECJ has held that a Spanish transfer tax on the purchase of shares in a property-owning company is not similar to VAT and is therefore not precluded by the tax duplication prohibition of the Sixth Directive.

Transfers of shares in Spanish companies holding at least 50% of their assets in real estate are subject to a capital transfer tax if the transfer allows the acquirer effective control over the property. Transactions subject to this tax are specifically exempt from VAT under the VAT Act. A Spanish pension fund acquired 64% of the shares in a property company, bringing its total holding to 67%. It protested against its assessment to capital transfer tax on the grounds that the tax was, effectively, a substitute for VAT and thus precluded by the provisions of the Sixth (and now the VAT) Directive. However, the ECJ has rejected this claim, holding that the capital transfer tax is not similar to VAT and not therefore precluded by the Sixth Directive.

The ECJ case reference is C-139/12 *Caixa d'Estalvis i Pensions de Barcelona*, judgment of March 20, 2014.

Note: the corresponding German tax, real estate transfer tax (RETT), is levied on share transfers in any company owning German real estate that lead to the acquistion of an interest of at least 95%. The two taxes are not identical, although the arguments of the ECJ in support of the Spanish tax also hold good for the German levy.

Schlagwörter

RETT, Real Estate, capital transfer tax, property, transfer tax