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By PwC Deutschland | 18. März 2015

Sole shareholder for RETT despite own shares held by company

The Supreme Tax Court has held that real estate transfer tax falls due on the acquisition by a company of its own shares if only one other shareholder remains.

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A GmbH was formed by two shareholders, each holding 50% of the issued share capital. The company owned real estate. One of the shareholders wished to withdraw and sold his share to the company. The tax office assessed real estate transfer tax on the chargeable value of the property under a provision in the Real Estate Transfer Tax Act rendering a share transfer a taxable event if it led to a holding of at least 95% of the issued share capital in the hands of a single shareholder. The transfer here at issue did not, in the view of the company, meet this condition as the company now held 50% of its own shares.

The Supreme Tax Court disagreed with the company's view. The company could not act as a shareholder in its own self as it was not a separate body. Thus, its acquisition of its own shares from the original second shareholder effectively left it with a single shareholder with the ability to dispose over the company's assets – including the real estate – as their sole owner. This met the condition of concentrating 95% of the issued share capital in a single hand for a real estate transfer tax assessment.

Supreme Tax Court judgment II R 8/13 of January 20, 2015 published on March 18

Schlagwörter

RETT, own shares, real estate transfer tax, share transfer