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No extension of inheritance tax privilege for repeated transfers to transfers taxable abroad

The Supreme Tax Court has now finally ruled that the German inheritance tax privilege relieving repeated transfers within the same family should not be extended to previous transfers taxable in another member state.

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Background: According to the German Inheritance Tax Act a provision for partial credit for the tax previously paid on a prior transfer of the same estate during the previous ten years is available. The credit declines with time, is only available for transfers between spouses or relatives in the direct line and is calculated on the basis of the current transfer, but may not be higher than the proportional amount of the previous charge. Transfers of estates previously taxed abroad are therefore excluded from credit.

The case: A mother living with her daughter in Austria inherited on the latter's decease. The transfer was charged to Austrian inheritance tax. The mother then moved to Germany and died shortly afterwards, leaving her estate to her German resident son. The latter claimed the privilege based on the legislative intent of avoiding double taxation and cited the free movement of capital when the tax office refused to grant it.

ECJ decision: On June 26, 2016 the ECJ has held that the German inheritance tax privilege relieving repeated transfers within the same family need not be extended to previous transfers taxable in another member state. It was the Supreme Tax Court who has asked the ECJ for a ruling on the case. The ECJ held that the free movement of capital would not be restricted because the two situations – a previously foreign estate taxed abroad and a home estate taxed at home – are not comparable. There was no obligation on Germany to relieve Austrian taxation. Rather, the German relief remained a wholly German matter. The ECJ went on to add that, in addition, the resulting restriction on the freedom of capital movement can be justified on the basis of the coherence of the German tax system, which credits a German tax previously paid by in effect the same taxpayer from a German liability now to be borne.

Now the Supreme Tax Court followed and came to its final judgment. The German legislative intent was to partially relieve a double charge to tax on transfer within the immediate family within a short period of time by waiving part of the overall inheritance tax due and payable in Germany. The principle of granting tax advantage for "double inheritances" as set forth in Sec. 27 of the German Inheritance Tax Act reflects a logical symmetry. That "mirror effect" would be disturbed if that tax advantage were also to benefit persons inheriting assets which did not give rise to the imposition of German inheritance tax.

The advantage resulting from the reduction in inheritance tax is thus directly linked to the fact that there had already been an imposition of inheritance tax in respect of the previous acquisition by inheritance of the same asset. The objective is to reduce, in the case where there are multiple transfers of the same asset within a period of 10 years between persons in Tax Class I, by up to 50%, the inheritance tax relating to that asset in so far as it has resulted in the imposition of tax on the previous transferee.

Supreme Tax Court judgment II R 37/13 of September 27, 2016 published on December 21

The ECJ case reference is C?123/15 Feilen judgment of June 30, 2016

Schlagwörter

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