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By PwC Deutschland | 16. Februar 2024

Federal States Supreme Tax Authorities Identical Decrees: Application of the option exemption in the Inheritance Tax and Gift Tax Act

In identical decrees issued by the Supreme Tax Authorities of the Federal States, the tax authorities comment upon the judgment of the Supreme Tax Court of 26 July 2022 (II R 25/20) and upon the underlying view that the option relief under Section 13a (10) Inheritance Tax and Gift Tax Act (or Section 13a (8) IHTA old version) can be exercised separately for each economic unit transferred. This applies to all open cases.

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Background

In its judgment of 26 July 2022 (II R 25/20), the Supreme Tax Court ruled – with respect to the law applicable until 30 June 2016 - that in the case of a uniform life-time gift of several separate economic units out of preferential business property, the declaration of optional full exemption (Section 13a (8) IHTA old version) can be made separately for each economic unit. Following the systematic of the exemption provisions (Sections 13a and 13b IHTA), each transferred business must be considered individually.

Where a declaration for the optional full exemption was submitted for an economic unit which did not fulfil the requirements for optional full exemption, the Supreme Tax Court took the view that the standard exemption (Section 13a (1) and (2) IHTA old version) should also not be available for that particular economic unit, even if requirements for the standard exemption were themselves fulfilled.

The rationale behind this decision is to be applied to assets acquired on death and also to the legal situation post 1 July 2016 (Section 13a (10) IHTA).

In identical decrees (Supreme Tax Authorities of the Federal States dated 22 December 2023), the tax authorities have set out in detail how in their opinion the rules are to be applied.

The the main points of the ministerial announcement in brief:

Separate consideration of each individual economic unit when acquiring several economic units

The availability of relief under Section 13a (1) or (10) IHTA or Section 13c IHTA must be examined separately for each economic unit. Guideline 13a.1 (2) Sentence 3 Inheritance Tax Guidelines and Guideline 13b.8 (1) Sentences 1 and 2 IHT Guideline are no longer applicable. The separate application for each economic unit means that in cases involving several economic units of preferential assets, the standard exemption and the option exemption can be applied in parallel.

Examination of the threshold value pursuant to Section 13a (1) Sentence 1 IHTA

The Supreme Tax Court judgment does not affect the assessment of the threshold value. Guideline 13a.2 IHT Guidelines continues to apply.

Deduction amount Section 13a (2) IHTA

If the acquisition comprises several independent economic units of preferential assets within the meaning of Section 13b (2) IHTA, the deduction amount is to be calculated from the sum of the values remaining after applying Section 13a (1) IHTA.

Section 13c and Section 28a IHTA

The Supreme Tax Court judgment will have no impact on applications for taper relief under Section 13c (1) IHTA or on applications for relief subject to a needs-related examination under Section 28a IHTA.

Section 10 (6) IHTA

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The judgment will have no impact on the computation of non-deductible debts and charges in connection with the assets exempt under Sections 13a and 13c IHTA.

Rate limitation Section 19a IHTA

Guideline 19a.1 to Guideline 19a.3 of the IHT Guidelines continue to apply, taking into consideration of the rationale set out in the identical decrees of 13 September 2021.

Payroll regulation Section 13a (3) IHTA

Compliance with the minimum wage requirement must be checked separately for each economic unit. The previous aggregation of the minimum wage totals from the individual independent economic units into a minimum wage total for the entire gift/inheritance no longer applies.

Retention rule Section 13a A (6) IHTA

A breach of the retention rule for only one economic unit leads to subsequent taxation only for this economic unit. In the case of several economic units, different retention periods may apply depending on whether the standard exemption or option exemption were applied.

Application of subsequent taxation

The scope of the subsequent taxation will depend upon whether the provisions relevant to the option exemption or the standard exemption apply. Guidelines 13a.19 (1), (2) and (4) to (7) IHT Guidelines continue to apply.

Protection of legitimate expectation

According to the previous opinion issued by the tax administration, an application for an option exemption could only be made uniformly for all economic units of an acquisition. According to the Supreme Tax Court ruling of 26 July 2022 (II R 25/20, BStBl 2024 II p. 21), it is now possible to submit a separate application for each economic unit.

A reversion to the standard exemption is now no longer possible if an application for an option exemption has been submitted and the requirements for the option exemption are not met. Insofar as the application for an option exemption was submitted prior to 25 January 2024, for reasons of legitimate expectation, the same procedure will be applied as before, where the standard exemption would have been granted under the old rule as an alternative to the option exemption.

Subsequent application for an option to be exempted.

Where the tax assessment is not yet substantively final, an heir/donee can now also apply for an option exemption limited to specific individual economic units. This does not apply if a standardised application for an option exemption for all economic units has already been submitted.

Application regulation

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The decree is to be applied in all open cases. The above regulations are to be applied respectively to acquisitions for which inheritance and gift tax arose before 1 July 2016.

Reference:

Federal Tax Gazette I 2024, page 69.

Schlagwörter

Business heirs, family business, inheritance and gift tax, inheritance tax exemption