Downloaded from Blogs on 29.11.2026 11:00h

By PwC Deutschland | 11. September 2024

Inheritance tax: Transfer of privileged assets

In a most recently published decision, the Supreme Tax Court held that the transfer of the tax privilege for business assets, rented residential property and family homes among co-heirs requires that the assets are conveyed in the course of the division of the estate. The transfer would not be privileged if the decision to divide the estate and thereby transfer preferential (business) assets in exchange for non-preferential assets is based on a new decision of the community of heirs, when initially they deliberately left the estate undivided.

Downloaded from Blogs on 29.11.2026 11:00h

Background

The plaintiff and his brother are 50:50 heirs of their parents who died in 2015. The estate included a limited partnership interest held by the father and several properties. The tax office assessed the inheritance tax against the plaintiff subject to subsequent review. It granted concessions for the acquisition of the business assets and for individual plots of land in accordance with Sections 13a-13c Gift- and Inheritance Act as valid in the year of dispute ((GITA). Furthermore, the tax exemption under Section 13 (1) No. 4c GITA was applied to an apartment occupied by the plaintiff after the inheritance.

In general, these rules are intended to ensure that the respective benefits accrue to the person who receives the assets concerned, i.e. the person who continues the business, continues to use the family home, or makes the residential property available to the housing market.

During the settlement of the estate in 2018, the plaintiff received, among others, the shares in the limited partnership while his brother obtained a plot of land. The plaintiff then applied for the amendment of the inheritance tax assessment and to reallocate the tax benefits, which the tax office refused.

The Düsseldorf Tax Court upheld the claim and requested the tax office to grant tax relief of €29,000 for the housing, €312,000 for the business assets and €42,000 for the family home for own use of the plaintiff.

Decision

The Supreme Tax Court rejected the tax office's appeal and held that the tax privileges are to be granted for the business assets as well as for the rented residential property and the family home.

An inheritance settlement that takes place more than six months after the succession (here: the death of the parents) does not fundamentally exclude the tax privileges. It is essential that an intrinsic coherence with the inheritance exists.

This view of the Supreme Tax Court is contrary to the opinion of the tax authorities, which require a timely settlement within six months. However, a specific period of six months for the settlement of the estate is not provided for in the relevant Sections of the Gift- and Inheritance Tax Act, the Supreme

Downloaded from Blogs on 29.11.2026 11:00h

Tax Court says.

However, if the heirs consciously leave the estate undivided first, and only later decide to divide it, a tax relief is not available.

It is of vital importance that the transfer of the privileged assets takes place in the course of the division of the estate (Section 13b para. 3 GITA as valid at the time).

The six-month deadline for the settlement of the estate must not strictly be observed if there are special circumstances that warrant a delay. In the case of dispute, the delays were justified as tax and valuation issues had to be clarified first.

In particular, **the preferential treatment of the family home** requires that the purchaser intends to use the home himself, which was the case here. The plaintiff had already lived in the family home himself prior to the settlement, which was an indication for the claim brought by the plaintiff to grant the tax privilege.

Source:

Supreme Tax Court, decision of 15 May 2024 (II R 12/21) – published on 5 September 2024.

Schlagwörter

inheritance tax privilege