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By PwC Deutschland | 10. September 2025

Lump-sum compensation in exchange for waiver of post-marital claims subject to gift tax

In a most recent judgment, the Supreme Tax Court held a free gift to be subject to gift tax where the wife, before the marriage and according to a prenuptial agreement, receives a piece of property from her partner as compensation for waiving her claim for equalization of accrued gains between spouses (Zugewinnausgleich), for post-marital alimony, and for allocation of household goods. The Supreme Tax Court further decided that the waiver itself does not reduce the enrichment of the wife and the assessment basis for gift tax.

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Background

Accrued gains (Zugewinnausgleich) means the amount by which the final assets of a spouse exceed the initial assets (Section 1373 Civil Law).

Section 7 (1) no. 1 Inheritance and Gift Tax Act: Any gift between living persons is considered a gift inter vivos, provided that the recipient is enriched at the expense of the donor. **Paragraph 3** provides that compensation (consideration given in return to the gift) that cannot be estimated in monetary terms shall not be taken into account when determining whether enrichment has occurred.

In **the case of dispute**, the plaintiff concluded a notarized marriage contract with his future wife before the marriage. The statutory matrimonial property regime (community of accrued gains - Zugewinngemeinschaft) was agreed upon but excluded again in cases of termination of the marriage other than that of the plaintiff's death. In this regard, the amount of compensation for gains was limited. Pension equalization (pension rights adjustment) was excluded. Post-marital spouse support was mutually waived, as were any claims for household equipment to be divided between the spouses.

Under the contract, the plaintiff committed to pay his wife a total of €6 million for the agreements on the matrimonial community of accrued gains, the waiver of post-marital alimony, and the division of household goods. To fulfill this obligation, the plaintiff agreed to transfer a residential property after the marriage, the value of which was estimated by the future spouses to be at least €6 million.

The tax office assessed gift tax on the transfer of the private property. The appeal brought before the Hamburg Tax Court was not successful.

Decision

The Supreme Tax Court confirmed the former decision and dismissed the action as unfounded. The transfer of the property is subject to gift tax.

The plaintiff's wife received valuable property without providing any consideration in return. She also gained financially at the plaintiff's expense. At the time of the property transfer the plaintiff suffered a corresponding reduction in own assets. In return, he had already been released prior to the marriage from future claims that might arise in the event of a divorce regarding the equalization of gains, alimony, and the division of household goods belonging to his wife. However, the value of these claims cannot be set in monetary terms pursuant to Section 7 (3) Inheritance Tax and Gift Tax Act (ITGTA) as their future occurrence was uncertain as to cause and amount at the time of the future wife's waiver.

The wife's waiver of a possible future claim for equalization of accrued gains prior to entering marriage does not constitute a veritable consideration within the meaning of the ITGTA because the claim for equalization of accrued gains only arises when the

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community of accrued gains ended. The same applies to the claim for post-marital support (alimony) and the claim from the division of household goods. In particular, the fact that the future wife had partially waived any claim to post-marital support did not give rise to any legal claim for payment.

The plaintiff's assumption that the waiver of equalization of accrued gains and other post-marital claims declared by his future wife precluded enrichment on her part and therefore does not constitute a gratuitous gift is held by the Supreme Tax Court as an insignificant error of interpretation of the law. The court went on to say that even a legal novice is aware that a claim to equalization of accrued gains or other post-marital claims, such as the claim to post-marital alimony, can only arise at the time of the termination of the marriage by divorce.

Lastly, the Supreme Tax Court notes that there are also **no constitutional concerns** regarding the assumption of a generous gift pursuant to Section 7 (1) no. 1 ITGTA.

In particular, the taxation does not violate the scope of protection provided by Article 6 (1) of the Basic Law (under which marriage and the family enjoy the special protection of the state). The liability to gift tax does not typically or otherwise affect married couples or couples who wish to marry but rather applies in the same way to all parties involved in such types of gratuitous gifts, i. e. where the recipient is enriched at the expense of the donor.

Source:

Supreme Tax Court decision of 9 April 2025 II R 48/21 - published on 4 September 2025.

Schlagwörter

compensation, gifts, spouse