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Düsseldorf Tax Court: Doubts as to whether the distribution of estate with real estate owning company among heirs falls under Section 1 (2b) RETTA

Serious doubts as to whether a distribution of an estate will lead to a change in the shareholder structure of at least 90% of the shares in a property-owning limited liability company within the meaning of Section 1(2b) of the Real Estate Transfer Tax Act (RETTA)

The 11th Senate of the Düsseldorf Tax Court had to decide on the suspension of the execution of a real estate transfer tax assessment in connection with a distribution of an estate (among heirs and coheirs) involving shares in a limited liability company (GmbH) which owned real estate.

Background

A shareholder who died in 2018 held more than 90% of the shares in a limited liability company (GmbH) which owned real estate. The community of heirs comprised the six children of the deceased. In 2024, they concluded an inheritance distribution agreement, and each received equal shares in the business.

The tax office then issued a real estate transfer tax assessment, as it considered the inheritance distribution to be a taxable transaction under Section 1 (2b) RETTA.

The applicant argued, however, that the transfer of shares as part of the distribution of the estate constituted an acquisition by reason of death. According to Section 1 (2b) sentence 6 RETTA, this must be disregarded. Alternatively, the tax exemption under Section 3 No. 3 RETTA (the acquisition of a property belonging to the estate by co-heirs for the purpose of dividing the estate) applied. The tax office, on the other hand, was of the opinion that the distribution of the estate had removed the status of the properties as part of the estate.

Decision

The Senate granted the application for suspension due to serious doubts about the legality of the decision (decision of 15 July 2025, 11 V 170/25 A(GE)). In doing so, the Senate left open the question of whether the distribution of the estate actually resulted in a change of shareholders within the meaning of Section 1 (2b) RETTA, as the community of heirs did not have legal capacity under civil law. Rather, the decisive factor was that even if a change of legal entity were assumed, the heirs could not be regarded as ‘new’ shareholders.

In doing so, the Senate adhered to the legislative intent of Section 1(2b) Sentence 6 RETTA with regard to the prevention of abuse. In the case of a division of the estate in accordance with the inherited shares without any compensation payments, it did not appear justified to levy real estate transfer tax, especially when considering that in the case of a single heir the inheritance would exempt from taxation under Section 1 (2b) sentence 6 RETTA. The tax exemption provision of Section 3 No. 3 RETTA was therefore irrelevant.

Source:

Düsseldorf Tax Court 11 V 170/25 A (GE)

Schlagwörter

Taxation of real estate, indirect transfers of real estate, inheritance, real estate transfer tax