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By PwC Deutschland | 02. November 2025

Exemption from real estate transfer tax upon division of the estate

The Supreme Tax Court decided that the transfer of real estate from a community of heirs to a partnership in the context of the division of the estate is exempt from real estate transfer tax up to the share in which a co-heir participates in the acquiring partnership. The tax exemption does not apply if the co-heir's share in the partnership decreases within five years following the transfer.

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Background

According to Section 3 No. 3 sentence 1 Real Estate Transfer Tax Act (RETTA) the acquisition of a property belonging to the estate by co-heirs for the purpose of dividing the estate is exempt from real estate transfer tax. This also applies if intermediate steps still take place. This provision is intended to help facilitate the dissolution of communities of heirs.

In the underlying case, the plaintiff, a civil law partnership (GbR), had acquired two parcels of land (parcel 2 and 3) from a community of heirs(A and five of his siblings) in connection with the division of the estate. At the same time, the plaintiff acquired, among other things, parcel 4 from another civil law partnership (GbR). In a contract signed immediately thereafter on the same day, the plaintiff transferred parcel 4 to A.

The tax office assessed real estate transfer tax as only part of the transfer was regarded as tax-exempt: The participation of one of the co-heirs (A) was reduced to 0.55%. The Cologne Tax Court dismissed the plaintiff's action because it did not consider the transfer to be a division of the estate within the meaning of the Real Estate Transfer Tax Act because the community of heirscontinued to exist with regard to another parcel of land.

Decision

Although the Supreme Tax Court found that the transfer was part of the division of the estate, it pointed out that the tax exemption could not be granted in full due to the reduced share of a co-heir within the five-year period. The plaintiff therefore remains eligible for a reduction of only 83.85% of the real estate transfer tax.

Source:

Supreme Tax Court judgment of 4 June 2025 II R 42/21 published on 30 October 2025.

Schlagwörter

heir