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Double assessment of real estate transfer tax in ‘signing/closing’ cases doubtful

In a recent decision, the Supreme Tax Court once again granted the taxpayer interim relief in the form of a suspension from execution and held that in the case of an acquisition of shares in a limited liability company (GmbH) where the contractual acquisition transaction (signing) and the actual transfer of the shares (closing) take place at different times, real estate transfer tax may not be levied twice.

In its interim decision, dated 27 October 2025 and published on 13 November 2025, the Supreme Tax Court considered it doubtful, following a summary examination, that in cases where the contractual acquisition transaction (signing) and the transfer of the shares (closing) take place at different times, real estate transfer tax can be assessed twice – namely once under Section 1(3) No. 3 of the German Real Estate Transfer Tax Act (“RETTA”) because of the right to transfer all shares in the limited liability company and again vis-à-vis the GmbH upon the change in the shareholder structure under Section 1(2b) RETTA – if the tax office is aware at the time of assessment for the signing that the closing has already occurred.

The Supreme Tax Court agreed with the applicant who had argued that the legislator did not intend to impose double taxation on the same transfer of shares with real estate transfer tax. Although different requirements were fulfilled, namely those mentioned in Section 1 (2b) RETTA and in 1 (3) No. 3 RETTA, the introductory sentence of Section 1 (3) RETTA expressly states that taxation under Section 1 (3) RETTA should only take place “insofar as taxation under paragraphs 2a and 2b is not applicable.”

The tax authorities assume that the provisions of Section 1 (2b) RETTA take precedence over taxation under Section 1 (3) RETTA only if the conditions laid down in Section 1 (3) No. 2 or 4 RETTA are fulfilled at the same time (Identical decrees issued by the highest tax authorities of the German Federal States of 5 March 2024 on the application of Section 1 (3) RETTA, para. 30). According to the Supreme Tax Court it is doubtful whether this view is consistent with the wording of the introductory sentence of Section 1(3) RETTA which states that "where a company or partnership owns domestic real estate, the tax will also be levied in the following (circumstances) unless tax is to be levied under Sub-sections 2a and 2b...“.

The fact that the tax assessments in questions were no longer subject to review - unlike in the case II B 13/25 (AdV) where it would have been possible to amend the tax assessment notice under Section 164(2) Fiscal Code as the assessment reserved the right to review - is of no relevance in the current case in dispute.

Source:

Supreme Tax Court interim decision dated 27 October 2025 case II B 47/25 (AdV) published on 13 November 2025.

Schlagwörter

real estate transfer tax, sale of property