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By PwC Deutschland | 12. Januar 2026

Increase in value of shares in a corporation subject to gift tax

According to Section 7 (8) sentence 1 of the Inheritance and Gift Tax Act, the increase in value of shares in a corporation is deemed to be a gift. In a most recently published decision, the Supreme Tax Court held that this provision does not contain any subjective elements, neither in the form of awareness of the gratuitous nature nor of an intention of personal enrichment.

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Background

The plaintiff was a shareholder in a limited liability company (GmbH) together with his father and brother. It had originally been agreed in an inheritance contract that the sons would each receive half of their father's share in the GmbH. On 15 January 2013, the father annulled the inheritance contract with the plaintiff's brother who agreed that the shares in the GmbH originally earmarked for him would be transferred to the plaintiff. On the same day, the plaintiff's brother undertook to sell his share in the limited liability company to the limited liability company or a third party to be designated by it with effect from 1 November 2017. A purchase price of €2,100,000 was agreed taking into account any profit distributions made after the date of notarization.

The plaintiff's father died in 2013. In 2017, the plaintiff, as managing director of the limited liability company, exercised his right of nomination to the effect that the limited liability company itself should acquire the shares held by the plaintiff's brother. The transfer of shares was notarized in 2018.

The tax office assessed gift tax on the plaintiff for the transfer of shares using 1 November 2017 as the reference date. The fact that the capitalized earnings value of the share in the limited liability company on the specified reference date amounted to €9,688,883 according to the capitalized earnings value method led to a so called mixed gift (which, per definition, is a transaction involving both a transfer for consideration and a gratuitous part, e.g. by selling an asset for significantly less than its market value). The plaintiff objected by arguing that he had been estranged from his brother and that there was no intention to make a gift between estranged siblings. A personal intention to enrich the recipient on the part of the donor is a prerequisite for taxation.

The lower tax court (the Münster Tax Court) had agreed with the plaintiff.

TheSupreme Tax Court upheld the appeal brought by the tax office, overturned the decision of the lower tax court, and referred the case back for further hearing and decision. Since the lower tax court - true from its point of view at the time - did not make any findings regarding the existence of an increase in value the Supreme Tax Court was not able to reach a final decision here.

According to Section 7 (8) sentence 1 Inheritance and Gift Tax Act (IGTA), the (mere) increase in value of shares in a corporation that a natural person (i. e., the beneficiary) holding an interest in the corporation obtains through the contribution of another person (the donor) to the corporation is also regarded as a gift. In contrast to the basic concept of Section 7 (1) no. 1 IGTA, the gratuitousness of the benefit to the company is not a prerequisite for taxation. This provision is lex specialis and takes precedence over the general provision on gratuitous gifts in Section 7(1) No. 1 IGTA. A gratuitous shifting or transfer of assets is not required. The sole criterion for taxation under Section 7 (8) sentence 1 IGTA is the objective appreciation (increase) in the value of the shares. However, in the case in dispute it is still unclear whether there has actually been an increase in value.

In summary, the Supreme Tax Court had the following to add:

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The circumstances described in Section 7 (8) sentence 1 IGTA - through legal fiction - presumes a gratuitous gift. The provision does not contain any subjective elements neither in the form of an awareness of gratuity nor an intention of personal enrichment.

If the increase in value of shares in a corporation within the meaning of Section 7 (8) sentence 1 IGTA is due to the transfer of a share in a GmbH the date of execution generally corresponds to the date on which the transfer becomes effective under civil law. Whether the payment has led to an increase in the value of the shareholders' shares must therefore be examined as of this point in time.

If an assignment agreement is provisionally invalid („pending invalidity“) due to the actions of an unauthorized representative pursuant to Section 177 (1) of the German Civil Code (BGB) gift tax only arises upon approval as required in Section 184 (1) BGB. The retroactive effect of the approval under civil law has no implications for gift tax purposes.

Source:

Supreme Tax Court, decision of 23 September 2025 (II R 19/24), published on 8 January 2026.

Schlagwörter

gift tax, taxable value, value impairment