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By PwC Deutschland | 13. Februar 2026

No reinstatement if notary fails to meet deadline

If a notary fails to comply with his obligation to notify the tax office of legal transactions with relevance to real estate transfer tax within the two-week period as provided for by law he cannot apply for reinstatement into the status quo ante pursuant to Section 110 of the German Tax Code (AO) with respect to the missed notification deadline. This was decided by the Supreme Tax Court in three recently published judgments.

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Legal background

If a notary certifies a contract relating to real property in Germany, he must, pursuant to Section 18 (1) Sentence 1 no. 1 in conjunction with (3) Sentence 1 Real Estate Transfer Tax Act (RETTA), notify the competent tax office of the legal transaction within two weeks of certification. In addition, and independent of the notary's obligation to report, the contracting parties, as debtors of the real estate transfer tax, must also submit the property contract to the tax office (Section 19 RETTA).

Consulting the law often simplifies the search for justice. Here, the wording of **Section 110 General Tax Code** seems unequivocal at first glance: Where „a person“ has, through no fault of his own, been prevented from observing a statutory time limit, he shall, upon application, be granted restitutio in integrum. The fault of a representative shall be deemed to be that of the person he represents.

Case of dispute (case II R 22/23)

In the case in dispute, the plaintiff (a notary), certified a partial inheritance settlement agreement between the brother and his sister (here: the plaintiffs in proceedings II R 20/23 and 21/23). The estate included shares in a limited liability company that owned domestic real estate. The notary reported the certification to the tax office but failed to do so within the two-week deadline. The siblings also failed to report it in a timely manner. Ultimately, the siblings reversed the partial distribution of the estate. This led to the question whether the real estate transfer tax incurred for the partial division of the estate could be waived due to the subsequent revocation.

One of the prerequisites for non-assessment would have been that the agreement on partial division of the estate had been notified to the tax office within the two-week period. Timely notification by the notary could then have worked in favor of the siblings. The notary therefore applied to the tax office for reinstatement into the status quo ante pursuant to Section 110 of the General Tax Code. The application was rejected by the tax office. The tax court of first instance also refused the application of the notary.

Decision

The Supreme Tax Court agreed with the opinion of the lower tax court. The notary cannot submit a such an application because she is not a “person” within the meaning of Section 110 sentence 1 General Tax Code. Only taxpayers involved in the real estate transfer tax proceedings – in this case: the siblings – are eligible to submit such request. Only they can file an application for reinstatement into the status quo ante with regard to the deadline which they failed to meet.

The notary, on the other hand, is not involved in the real estate transfer tax procedure. By submitting the notification pursuant to Section 18 (1) sentence 1 no. 1 RETTA, he fulfills his own obligation towards the tax office. Therefore, he is not liable for any failure to

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comply – neither to the taxpayer nor to the tax office.

The Supreme Tax Court went on to say, that it is important in practice that taxpayers are aware of their own reporting obligation under Section 19 RETTA and report notarized real estate contracts themselves in a timely manner independent from the notification of the notary.

In cases II R 20/23 and II R 21/23 (published on the same day), it was also in dispute whether the taxpayer himself, who had failed to report the legal transaction subject to real estate transfer tax in good time pursuant to Section 19 (3) sentence 1 RETTA and due to lack of knowledge of its tax liability, should be granted reinstatement. Here, too, the Supreme Tax Court rejected the plaintiffs' appeals.

Source:

Supreme Tax Court, decision of 8 October 2025 (II R 22/23), published on 12 February 2026.

Schlagwörter

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