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By PwC Deutschland | 14. Februar 2026

Real estate transfer tax after acquisition of own shares

In a most recently published decision, the Supreme Tax Court held that real estate transfer tax falls due on the acquisition by a company of its own shares if this led to a holding of a little over 95% (90%) of the issued share capital in the hands of one of the shareholders.

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Background

Real estate transfer tax becomes due if a transaction leads to a holding of at least 95% of the issued share capital in the hands of a single shareholder. In the case of dispute, none of the shareholders held at least 90 % (in 2010, the year in dispute: 95%) of the shares in the limited liability company owning real estate.

The plaintiff is a limited liability company (GmbH) whose sole shareholder is a city. Together with other shareholders, the plaintiff held a 94.444% interest in X-GmbH. X-GmbH itself held 0.303%, the city owned 4.688% of the capital, and Y-AG had a 0.553% stake. The remaining shares were held by other shareholders. X-GmbH was initially the sole limited partner of a real property partnership (Z-KG). Both X-GmbH and Z-KG owned substantial real property. After a restructuring, the plaintiff then held a 94.9% interest in Z-KG's assets and X-GmbH was left with 5.1%. In January 2010, Y-AG sold its share in X-GmbH to X-GmbH. As a result of the acquisition by X-GmbH, the plaintiff then held slightly more than 95% of the shares in X-GmbH, not taking into account the shares held by the company itself.

The tax office assessed real estate transfer tax on the chargeable value of the property under a provision in the Real Estate Transfer Tax Act (RETTA) rendering a share transfer a taxable event because it led to a holding of at least 95% of the issued share capital in the hands of the GmbH. The transfer at issue did not, in the view of the plaintiff, meet this condition as the company now held some of its own shares.

The appeal before the lower tax court was dismissed.

Decision

The Supreme Tax Court disagreed with the plaintiff’s view and dismissed the appeal as unfounded.

The acquisition of its own shares by X-GmbH constitutes a taxable transaction pursuant to Section 1 (3) No. 1 or No. 2 RETTA with regard to both the real estate-owning X-GmbH and Z-KG. According to the Supreme Tax Court, these regulations apply equally to real estate-owning partnerships and corporations.

When determining whether the 95% quota has been reached in the case of a direct or indirect consolidation of shares in one hand own shares held by a corporation as an intermediate company or by the real property-owning company itself are not taken into account. The acquirer who purchases at least 95% of the shares in the corporation that are not held by the corporation itself controls the corporation's assets in the same way as if the corporation itself did not hold any shares.

The acquisition of X-GmbH of its own shares was not primarily aimed at consolidating the shares in the property-owning company in the hands of the acquirer. However, in this case, the condition of concentrating 95% of the issued share capital in a single hand for a

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real estate transfer tax assessment as provided in Section 1 (3) No. 1 RETTA is met beyond its wording because if X-GmbH acquires its own shares its company assets are only reflected in the shares of the remaining shareholders. To put it another way; Since the acquisition of own shares by X-GmbH are not to be taken into account in the calculation of the quota the plaintiff's shareholding in X-GmbH increased to 95.26%.

With regard to the properties belonging to Z-KG: This had also led to a partial direct and partial indirect consolidation of shares. Prior to the acquisition of its own shares by X-GmbH, the plaintiff held a 94.9% direct interest in Z-KG as limited partner. Since its shareholding in X-GmbH increased to 95.26%, the limited partnership share of X-GmbH amounting to 5.1% was also attributable to it. It then held at least a 95% share in Z-KG and thus fulfilled the requirements of Section 1 (3) No. 2 RETTA.

Source:

Supreme Tax Court, decision of 22 October 2025 (II R 24/22), published on 12 February 2026.

Schlagwörter

own shares, unification of shares