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By PwC Deutschland | 26. April 2026

First-time acquisition of partnership interest by former indirect shareholder subject to RETT

In a most recently published decision, the Supreme Tax Court held that the first acquisition of a share in a partnership by a party who was not previously a partner under civil law is a taxable event for real estate transfer tax purposes pursuant to Section 1 (2a) of the Real Estate Transfer Tax Act (RETTA).

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Contractual commitments under the law of obligations alone do not constitute a share in the joint estate within the meaning of the RETTA. In the case in question, the Supreme Tax Court Court upheld the tax office's assessment of real estate transfer tax upon the acquisition of a limited partnership interest despite interim economic participations.

Background: The dispute involved a GmbH & Co. KG that was initially structured as a shelf company. On 29 July 2014, the previous shareholder sold both its shares in the general partner GmbH and its limited partnership interest to M-GmbH. The transfer of the limited partnership interest was subject to the registration of the special succession in the trade register. Even before this entry, the acquirer was granted extensive powers of attorney. In addition, the KG purchased a plot of land on 31 July 2014. It was not until 19 August 2014, that M-GmbH was entered in the Commercial Register as a limited partner. The tax office saw this as a change in the shareholder structure subject to real estate transfer tax.

Decision in brief:

The acquisition of the limited partnership share by M-GmbH is not exempt from real estate transfer tax pursuant to Section 6 (3) Sentence 1 RETTA in connection with Section 6 (1) Sentence 1 RETTA. The purpose of this provision is to exempt the acquisition of real property by a joint ownership from real estate transfer tax insofar as, due to the joint ownership relationship among the partners, the property remains within the realm of attribution despite the change in legal entity. There is no identical partnership if a person who, from an economic perspective and pursuant to the attribition guidelines in Section 39 General Tax Code, is a member in a partnership and acquires a share in that partnership for the first time under civil law. In this case, the acquirer did not hold an interest in the partnership's assets prior to the share transfer, the Supreme Tax Court said.

Source:

Supreme Tax Court, judgment of 25 February 2026 (II R 5/24) published on 23 April 2026.

Schlagwörter

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