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By PwC Deutschland | 26. Mai 2026

Gratuitous transfer of endowment life insurance with right of usufruct

The gratuitous transfer of a life insurance policy (transfer of contract) is subject to gift tax at the time of the transfer and must be assessed for tax at its surrender value. Any usufruct retained by the donor does not take effect before the life insurance policy is terminated.

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Background and decision

Claims arising from a (endowment) life insurance policy may be subject to gift tax if, for example, with the insurer's consent, the donee assumes the legal position of the previous policyholder without consideration. In this case, pursuant to Section 9 (1) Number 2 of the German Inheritance and Gift Tax Act (IGTA), the tax is not only incurred upon payment of the insurance proceeds but rather at the time the contractual position vis-à-vis the insurer is granted.

In **the case in dispute**, the mother, as the original policyholder, had retained a usufruct for the cash value of the insured benefit (by way of either a lifetime pension or a lump-sum payment) when transferring the insurance benefits to her son. The contract could be terminated at any time, in whole or in part, by the plaintiff and M upon payment of the pro-rata surrender value. According to **the Supreme Tax Court** - as opposed to the view held by the lower tax court - the value of the usufruct is not deductible when determining the taxable value of the acquisition.

According to Section 12 (1) IGTA the valuation of inherited assets or gifts is based on the general valuation rules of the German Valuation Act (VA). Section 6 (1) of the VA states that obligations (charges, encumbrances) whose accrual depends on the fulfillment of a condition precedent are not taken into account. The gift tax assessment can, upon request, only be adjusted to reflect the actual value of the acquisition when the condition precedent is no longer valid. In this regard, the lower tax court failed to take into account that a usufruct of a right arises only once the right itself has come into existence.

In the case at hand, this requires the termination of the insurance contract either by the plaintiff or by his mother, the Supreme Tax Cort said. At the time of the gift this had not yet taken place, and therefore the right to the surrender value of the life insurance policy - and thus also the usufruct in favor of M - had not yet arisen.

Source: Supreme Tax Court, judgment of 28 January 2026 (II R 27/22) published on 21 May 2026.

Schlagwörter

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gift tax, gratuitous transfer