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By PwC Deutschland | 10. Juli 2026

Real estate transfer tax: Requirements for tax exemption in case of group restructurings

In a most recently published decision, the Supreme Tax Court held that a group of natural persons who are not organized in the legal form of a partnership or another corporation or a community of heirs is not considered as a legal entity under civil law or real estate transfer tax law and cannot therefore be a controlling company within the meaning of Section 6a Sentence 3 Real Estate Transfer Tax Act which governs the tax exemption for group restructurings in cases of the unification of shares.

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I. Tax regulation in dispute

Section 6a (1) of the Real Estate Transfer Tax Act (RETTA) provides that real estate transfer tax is not levied on certain legal group transactions resulting from a restructuring under the Reorganization Act. A controlling company (and one or more of its subsidiaries) must be involved in the restructuring. A company is dependent if the controlling company has held at least 95 percent of its capital or assets directly or indirectly, or partly directly and partly indirectly, without interruption for a period of five years prior to the legal transaction and five years after the legal transaction.

Specifically, **Sentence 3** states (quote) "*that one controlling company and one or more controlled companies or several companies controlled by one controlling company must be involved in the restructuring*".

II. Background

The decedent's estate included a non-controlling interest - for thepurpose of real estate transfer tax - in two real estate-owning limited liability companies (GmbH 1 and GmbH 2). The three heirs divided the estate in such a way that the GmbH investments held jointly by the community of heirs were split into equal shares of 1/3 each. The heirs had, for the most part, already owned additional shares in the GmbHs prior to the distribution of the estate ("old shares"). The three heirs then formed a limited partnership (KG; the plaintiff) in which they became limited partners. The limited partnership contributions were made entirely by transferring the previously divided estate - including the shareholdings in the two GmbHs, as well as the individual heirs' prior ("old") shareholdings - to the limited partnership. The plaintiff thus became the sole shareholder of both GmbHs.

With the transfer of all shares in the two GmbHs to the newly established plaintiff, which resulted in a first-time unification of all shares in the two GmbHs, the conditions for a taxable transaction pursuant to Section 1(3) Number 1 RETTA were met. The plaintiff requested the application of the tax exemption in Section 6a RETTA.

III. Decisions

In the opinion of the tax court of first instance, no tax exemption under Section 6a RETTA was available. The Supreme Tax Court agreed and dismissed the plaintiff's appeal.

First, the scope of application for the tax exemption was in principle available because the contribution of the company shares was made on the basis of the articles of association. However, no controlling company - nor any company controlled by it - was involved in the legal transaction. This was in contrast to the requirement set forth in Section 6a Sentence 3 RETTA. The GmbH & Co. KG was not a dependent company because no controlling company held at least a 95% interest in its corporate assets, also no one of the heirs held at least a 95% interest.

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Nor can the plaintiff's shareholders be viewed in their entirety as a controlling entity within the meaning of Section 6a Sentence 3 RETTA because they had not effectively formed a legally independent partnership or corporation. The Supreme Tax Court further notes that, in principle, no specific form is required for the conclusion of a partnership agreement with respect to a civil law partnership (GbR). However, this would require the partners to express, in some other way, their legally binding intent to unite for a common purpose.

The community of heirs, which initially consisted of the plaintiff's shareholders following the decedent's death, could in principle be considered a legal entity under real estate transfer tax law. In the case at hand though, the community of heirs was expressly dissolved prior to the contribution of the shares. Subsequently, the shareholders contributed their individual shares in GmbH 1 and GmbH 2 to GmbH & Co. KG. The estate included only the decedent's 50% interest in GmbH 1 and his 25% interest in GmbH 2.

Source: Supreme Tax Court, judgment of 8 April 2026 (II R 2/23) published on 9 July 2026.

Schlagwörter

RETT exemption, group relief, unification of shares