By PwC Deutschland | 04. August 2026

No real estate transfer tax upon change of investment fund’s management company

According to a decision of the Baden-Württemberg Tax Court, the change of an investment fund’s Luxembourg-based management company is not subject to real estate transfer tax. The transfer of the power of management is not regarded as a taxable transfer of shares because the legal ownership of the shares remains with the investors. The transfer of the power of management thus does not automatically result in a transfer of shares.

Background

The plaintiff is a management company that, pursuant to a master agreement and a subsequent transfer agreement, was entrusted with the management of investment fund A. A is a so-called Undertaking for Collective Investments (UCI) in the form of an investment fund under Luxembourg law without legal capacity („Fonds Commun de Placement“ – FCP) that indirectly holds shares in a company owning German property.

Following a change of the management company, the broad management powers relating to the investments in a two-tier corporate structure with real estate located in Germany were transferred to a new management company. The management company thereby has the exclusive right to manage the asset portfolio and the right to dispose of these assets in its own name but on account of the FCP. A owned, among others, the entire share capital of an S.à.r.l., which in turn held a 100% interest in another S.à.r.l. that owned the German real estate. The tax office viewed this as a transfer of shares subject to real estate transfer tax (RETT).

Decision

The Baden-Württemberg Tax Court did not agree with this approach.

The change in the management company did **not** lead to an indirect transfer of at least 95% (currently: 90%) of the shares in the real estate-owning S.à.r.l. that would be subject to real estate transfer tax under Section 1 (3) Number 4 Real Estate Transfer Tax Act (RETTA).

Under Luxembourg law, the FCP is not the legal entity under civil law of the assets belonging to the fund’s portfolio, it is rather the investors. According to the findings of the court, the management company is also not the owner.

A taxable transfer or change of shares pursuant to Section 1 (3) Nos. 3 and 4 RETTA is assumed if the shares are transferred to a different legal entity under civil law. In the present case, however, no shares have been transferred; only the power of management has changed. The tax court found that the case law of the Supreme Tax Court concerning the consolidation of shares in trust arrangements - as asserted by the tax office - did not suggest to conclude that the mere transfer of power of disposal, authority of disposal, or control over the assets is subject to RETT.

The Luxembourg FCP is rather comparable to the German investment fund of the contract type, i. e. special fund or open-end investment fund ("Sondervermögen") which is structured as a joint ownership arrangement and not, as the tax office claims, as a trust structure. The entries in the Luxembourg commercial registers are purely for informational and explanatory reasons and have no bearing on the allocation for RETT purposes.

A so-called comparison of legal types is also not appropriate in the case at hand because the nature of the FCP is irrelevant in determining whether shares were legally and validly transferred. If the plaintiff had transferred the shares at issue, for example, to another Luxembourg FCP on behalf of A, the conditions of Section 1 (3) No. 4 RETTA would have clearly been met without resorting to a comparison of the FCP with structures under the German Capital Investment Code (Kapitalanlagegesetzbuch, KAGB).

The investors (*copropriétaires*) retain legal ownership, while the management company is granted only comprehensive management and disposal rights. And: The legal distinction between ownership rights and power of management may not automatically be treated as equivalent for real estate transfer tax purposes.

Source:

Baden-Württemberg Tax Court, judgment of 13 March 2026 (5 K 1969/23). - No information is currently available concerning the filing of an appeal.

Schlagwörter

investment funds, management agreement, share transfer