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By PwC Deutschland | 08. November 2026

Inheritance and gift tax: Preferential treatment for business assets with regard to number of employees

In a recently published decision, the Supreme Tax Court held that a full-time shareholder-managing director who was employed by a GmbH at the time of his death is to be counted as an employee when determining the preferential tax treatment under Section 13a(1) of the Inheritance and Gift Tax Act. Part-time employees must also be counted as employees on a per capita basis.

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Legal background

Section 13a(1) of the Inheritance and Gift Tax Act (IGTA), as previously in force, provided that business assets transferred - in this case by way of inheritance - were largely exempt from taxation. The basic requirement for this preferential treatment was that the business be continued for five years and that a wage sum of 400% be reached during that period. According to Section 13a(1) Sentence 4 IGTA, this wage-sum test did not apply, among others, if the business had no more than 20 employees.

Case of dispute

Until his death, the decedent was the employed managing director and sole shareholder of a limited liability company (GmbH) that employed, in addition to him, 18 other full-time employees and two part-time cleaning workers. The heirs argued that the business assets were not subject to inheritance tax even without observing the wage sum test and given that the GmbH had no more than 20 employees. The decedent should not be included in the calculation. Furthermore, the part-time employees should not be counted at all or, at most, on a pro-rata basis. In the opinion of the tax office, however, the GmbH had 21 employees at the time of the decedent’s death which is also the tax assessment date.

Supreme Tax Court confirms tax office's position

With its decision, the Supreme Tax Court clarified legal issues that had long remained unanswered. Although it concerns Section 13(1) of the IGTA in its previous version and thus does not reflect currently applicable law, its analysis of employee status and headcount remains nevertheless currently relevant beyond the specific case in dispute.

According to the Supreme Tax Court, the term “employees” within the meaning of previous Section 13a(1) Sentence 4 IGTA must be interpreted in relation to the business. The exemption in Section 13a was meant to preserve jobs in the broad sense; therefore, a person must be counted as an “employee” as regards the wage sum test if, viewed independently, that person had a job at the business that was to be preserved during the evaluation period.

The decedent’s employment did not end under civil law until his death and remained in effect until that time. He is therefore to be counted as an employee within the meaning of Section 13a(1) Sentence 4 IGTA. The number of employees must be determined on a per capita basis. This ensures that the preservation of jobs - which is the objective of the provision in order to justify the tax exemption - applies equally to full-time and part-time employees under the same circumstances. In addition, counting on a per capita basis serves to simplify administrative procedures, the Supreme Tax Court said.

In practice, it is important to note that the number of employees - as well as the amount of the initial wage sum - must be determined separately. These are independent and separate determinations that may be challenged together or separately. In the case at hand, only the number of employees was in dispute. The amount of the initial wage sum was therefore not an issue in the proceedings.

Source: Supreme Tax Court, judgment of 17 June 2026 (II R 34/23) published on 5 November 2026.

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