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By PwC Deutschland | 13 September 2012

Inheritance tax liability unaffected by foreign legal basis for the transfer

The Supreme Tax Court has held that an asset transfer on death is chargeable to inheritance tax under German law, even though its basis was a foreign legal act without an exact German parallel but leading to exemption in the foreign state of residence of both parties.

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A German couple resident in France held property and business assets in Germany. They agreed by contract under French law that their entire assets should fall to the survivor on death of the first spouse. This type of contract excludes all claims from children or other relatives to shares in the estate and exempts the transfer from inheritance tax. As a legal instrument, it has no exact parallel in German law. In the event, the contract was implemented on death of the wife, and the widower as heir to her half of the estate claimed that the transfer of the German assets should be exempt from inheritance tax in Germany as the type of transfer was not mentioned in the Inheritance and Gift Tax Act. The tax office rejected this argument.

The Supreme Tax Court has now confirmed the tax office in its position. The French contract had to be seen in Germany in the light of its legal and actual consequences. In this case the result was a change from joint to sole ownership of the estate on death of a spouse. This was equivalent to a transfer of the ownership in one half of the estate. The transfer was thus chargeable to German inheritance tax insofar as the assets were regarded as domestic under the Inheritance and Gift Tax Act. The French exemption of the transfer was irrelevant to the German liability on the transfer of German assets. There was also no infringement of the parties' freedom of capital movement, especially as no double taxation arose. The same charge would have been incurred on the same transfer between two German residents.

Supreme Tax Court judgment II R 38/10 of July 4, 2012 published on September 12

Keywords

asset transfer, inheritance tax