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By PwC Deutschland | 29 November 2019

Inheritance Tax: spousal residence exemption

According to the Supreme Tax Court in its judgment of 11 July 2019 – (II R 38/16), published on 28 November 2019, the inheritance tax exemption on the inheritance a family home by the surviving spouse or civil partner will not apply retroactively where the surviving spouse/partner transfers ownership of the family home to a third party within ten years of acquisition.

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This will also be the case where the surviving spouse/partner continues to use the home for residential purposes under the terms of a lifetime interest.

Background

After the death of her husband, the plaintiff had inherited the jointly occupied family home and had remained in it. One and a half years after the inheritance, she gave the house to her daughter. She retained a lifelong interest to live in the house and did not move out. As a result, the tax office revoked the tax exemption under Section 13 (1) no. 4b of the Inheritance Tax and Gift Tax Act (IHTGA) retroactively because the plaintiff had given away the family home.

Judgment

Subject to the spercified conditions, Section 13 (1) No. 4b IHTGA exempts from inheritance tax, the transfer on death of the family home (or a co-ownership in it) to the surviving spouse or life partner. For these purposes the family home is a parcel of built-up land on which the deceased occupied an apartment or a house for his or her own residential purposes up to the time of death. The property must be designated immediately to the heir "for his own use for his own residential purposes". Following any event giving rise to the subsequent taxation, the tax exemption will be revoked retroactively. This will apply where the heir no longer uses the family home for his own residential purposes within a ten-year period following the inheritance; the exemption should not berevoked where it can be shown that there are compelling reasons preventing the heir from "using it for his own residential purposes".

Both the lower court and the Supreme Tax Court confirmed the retroactive revocation of the tax exemption. In the introduction of the tax exemption, the intention of the legislator had been to protect the living space of the family and promote the attainment by families of residential property. Accordingly, only those surviving spouses or life partners, who become the owners of the real estate and actually live there may apply the exemption. If within ten years of the inheritance the heir no longer lives in the property, the exemption is revoked with retroactive effect. The same applies where the heir is no longer the owner of the property. If this rule did not exist, a property could be inherited tax-free and resold a short time later. This would run counter to the stated objective of the promotion of home ownership. If the intention were only to link the exemption to the use of the property with the ten-year period, the provision could have been worded more simply, such as "own-use for residential purposes" or "use for own residential purposes" . The term "*own*-use for *own* residential purposes" used in the provision suggests that both the use and the ownership status of the surviving spouse or civil partner would have to be maintained during the ten-year period.

Source:

Supreme Tax Court judgment of 11 July 2019 – (II R 38/16), published on 28 November 2019,

Keywords

family home exemption, inheritance tax, spousal residence exemption