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By PwC Deutschland | 01 September 2023

Merger of church parishes followed by formation of new parish subject to real estate transfer tax

If a new church parish is established by merging several church parishes, real estate transfer tax is payable if the original parishes held shares in real estate-owning GmbHs and these GmbH shares are all in the hands of the newly established church parish after the merger. The Supreme Tax Court decided that this also applies if those GmbHs operate charitable institutions such as hospitals or retirement homes.

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Background

The plaintiff, a church congregation with the status of a corporation under public law, was established based on a decree of the competent bishop by uniting various church congregations. The united parishes were also corporations under public law. All the assets of the original church congregations, including the shareholdings in property-owning GmbHs, were transferred to the plaintiff. The tax office considered this transaction to be subject to real estate transfer tax and issued a corresponding assessment notice for taxation.

Decision

The Supreme Tax Court confirmed the opinion of the tax office and held that the new formation of the plaintiff through the merger of various church congregations was subject to real estate transfer tax at the time the merger became effective for the public (state) sector. This is not called in question by the fact that the restructuring of the parishes had initially taken place under purely internal church law.

The Supreme Tax Court also decided that no exemption from real estate transfer tax applies in case of a merger of parishes. A transaction may be exempt from the real estate transfer tax if it at the same time qualifies as a gift to avoid a double exposure to real estate transfer tax and gift tax. However, this was not the case here, because the former parishes had not donated anything to the plaintiff, but the transfer of assets to the plaintiff had rather taken place while carrying out internal church laws.

The exemption provided for the transfer of real estate between corporations by public law and the simultaneous transfer of functions of public law, such as the fulfillment of charitable purposes, is also not relevant in the case at hand. According to the unambiguous wording of the law, this provision only covers the direct transfer of real property from one public corporation to another, but not the collection in one hand of shares in property-owning companies.

Source:

Supreme Tax Court, decision of 10 May 2023 (II R 24/21), published on 31 August 2023.

Keywords

merger, property company, real estate transfer tax