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By PwC Deutschland | 05 July 2024

No inheritance and gift tax privilege for parking garage

In a recent decision, the Supreme Tax Court held that a multi-storey car park (parking garage) is not eligible for the inheritance tax privilege available for business assets.

https://blogs.pwc.de/en/german-tax-and-legal-news/article/244129/

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Background

Sections 13a and 13b of the Inheritance and Gift Tax Act (IGTA) provide certain tax exemptions for business assets and for property.

The plaintiff was the sole heir of his father, who died in 2018. The estate included a petrol station and a property with a multi-storey car park. The testator had originally operated the multi-storey car park himself as sole proprietorship and from 2000 let it to the plaintiff for an indefinite period. The income received by the testator was taxed as business income. The petrol station, which made up approximately 7% of the total developed land, was leased to a limited company (GmbH) until the end of 2018.

The tax office assessed the value of the business assets. At the same time, it treated the parking garage as so-called administered asset („*Verwaltungsvermögen*“), which is not eligible for the inheritance tax privilege.

Decision

The Tax Court of Cologne had dismissed the claim in the first instance, the Supreme Tax Court now also rejected the appeal of the plaintiff.

According to the Supreme Tax Court, business assets are generally privileged for inheritance and gift tax purposes. However, this does not apply to certain items of the so-called administered assets as defined in Section 13b IGTA. In principle, this also includes "land (property) let to (any) third parties for use".

"Third party" within the meaning of Section 13b para. 4 no. 1 sentence 1 IGTA is any person other than the transferor. Third parties can therefore be natural persons - including relatives -, corporations or partnerships.

Land (property) let to third parties for use may also be privileged under the regime of the IGTA, for example if - as in the case in dispute - the testator leases the business he initially had operated himself for an indefinite period and appoints the lessee as heir in his will. However, this does not apply for businesses that did not meet the requirements for privileged status already prior to the lease. This is the case here: The parking spaces available where part of the multi-storey car park and were already previously let to drivers - and thus to third parties - by the testator.

Furthermore, the case of dispute does not involve the letting of residential apartments, which the legislator has privileged for reasons of public welfare. It is also not relevant whether other professional services such as entry and exit control and a payment service are provided. This is not envisaged in the IGTA.

The Supreme Tax Court also saw no unequal treatment in relation to other property transfers, such as in the context of the sale of own products by a brewery or in connection with agricultural and forestry business activities. The fact that the legislator considered such businesses - as well as the aforementioned housing companies - to be worthy of subsidy is covered by its broad scope of discretion.

Source:

Supreme Tax Court, decision of 7 June 2024 (II R 27/21), published on 27 June 2024.

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Keywords

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