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By PwC Deutschland | 07 December 2025

Compensation for waiver of usufruct on leased property subject to income tax

The remuneration for waiving a right of usufruct to a private property is taxable as compensation in accordance with Section 24 No. 1 letter a of the Income Tax Act (ITA) if the owner of the usufruct right at the time of the waiver has actually leased the property and earned taxable income from rental and leasing. According to a recent decision of the Supreme Tax Court, this applies irrespective of whether the taxpayer receiving compensation for lost or foregone income was under legal, economic, or actual pressure at the time the agreement for waiver was concluded.

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Background

Section 24 No. 1 letter a ITA provides that income tax is also levied on compensation paid for income lost in the past or in future.

In 2008, the plaintiff was granted the right to usufruct to a piece of land as part of a legacy. In 2012, she transferred the land to a limited partnership in which she herself was a partner. The rental income was classified as special business income. After the plaintiff left the limited partnership in 2018, she transferred the right of usufruct to her private assets at a value of €0 in compliance with the opinion of the tax authorities and henceforth treated the rental income as income from rental and leasing. In November 2019, the plaintiff waived her right of usufruct in return for compensation.

The tax office treated the redemption of the usufruct right against payment as a private sale in the income tax assessment for 2019. The tax court of first instance upheld the appeal. The usufruct right was not sold as a result of the waiver. Acquisition or sale is understood to refer to the acquisition and transfer of an asset to a third party in return for payment. A “sale” therefore requires not only that the transfer be made in return for payment but also that there be a change in the legal ownership of the asset sold.

Decision

The Supreme Tax Court considered the appeal to be justified and referred the case back to the tax court for further hearing and decision.

A German usufruct („Nießbrauch“) is the right to use and enjoy real or personal property in accordance with Sections 1030 to 1067 of the German Civil Code**.**

In its decision, the lower court failed to take into account that the waiver of the right of usufruct in a property rented out by the owner of the usufruct in return for payment leads to taxable compensation for lost income from renting and leasing in accordance with Section 24 No. 1 letter a ITA. According to Section 23 (2) ITA (which deals with the taxation of capital gains), this takes precedence over the type of income assumed by the tax office.

The effects of Section 24 ITA are twofold. First, it determines the type of income to which compensation is attributable. Second, it clarifies that all compensation that does not fall under the main income categories defined in Section 2 (1) ITA is subject to taxation under Section 24 ITA.

The usufruct for a rented property is an asset. According to a decision of the Supreme Tax Court from 1992, it is not considered compensation within the meaning of Section 24 No. 1 letter a if a holder of usufruct waives this right, which is held as private asset, for compensation. This erstwhile decision is in line with the view held by the tax authorities which consider the redemption of a reserved or legate usufruct in return for a one-time

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payment to be a non-taxable restructuring of an asset. In a later decision of 20 September 2024 though, the Supreme Tax Court held that the termination of the right to usufruct is a taxable transaction if the holder of the right to usufruct over shares in a private limited company (GmbH) is also the economic owner of the shares in the GmbH (see**blog post of 2 December 2024**).

If the owner uses his usufruct right to lease the property to a third party with the intention to generate income, the consideration received for waiving the usufructuary right represents, from an economic point of view, compensation for the loss of income from leasing and letting. In this case, the actual income generated is the essence of the relinquished right. The compensation replaces the rental income which would have continued had the waiver not occurred.

Source:

Supreme Tax Court, decision of 10 October 2025 (IX R 4/24), published on 4 December 2025.

Keywords

compensation payment, waiver