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ECJ: Portuguese rules on the taxation of real estate transfer due to corporate restructure in breach of EU law

In a request for a preliminary ruling from Portugal the ECJ held, that the national legislation which provides taxation of a transaction involving the formation of a capital company the share capital of which is fully paid up by means of shares held in other companies owning immovable property, and which receives as consideration the entire share capital of the company thus formed contravenes the Directive 2008/7/EC concerning indirect taxes on the raising of capital.

I. The objective of DIRECTIVE 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital:

Exemption: The indirect taxes on the raising of capital, namely the capital contribution tax (the duty chargeable on contributions of capital to companies and firms), the stamp duty on securities, and tax on restructuring operations, regardless of whether those operations involve an increase in capital **interfere with the free movement of capital**.

Exception: However, the directive **does not prohibit Member States** from introducing a national tax on transfers of immovable property under certain circumstances. The question in the main proceedings is whether the abovementioned exemption from the tax also covers the transfer of shares in companies that own immovable property may infringe that directive.

II. Background (in brief)

Nova Iberomoldes (Nova) was formed on 28 March 2019 as a public limited company incorporated under Portuguese law. Its share capital was fully paid up by means of non-cash contributions in the form of shareholdings held by its sole shareholder in several companies. Part of the assets of one of those companies, namely a limited liability company the share capital of which is now 100% owned by Nova, consisted of two immovable properties. The tax authority took the view that the transaction relating to the formation of Nova (contribution of assets) did not satisfy the requirements for the application of a regime known as the 'rules on tax neutrality' and that the transaction was subject to tax in respect of the transfers of immovable property for consideration (IMT) pursuant to Article 2(2)(d) of the Code on municipal tax on transfers of immovable property for consideration (IMT Code).

Nova is of the opinion that the formation of a capital company gave rise to a contribution of capital within the meaning of Article 3(a) of DIRECTIVE 2008/7/EC concerning indirect taxes on the raising of capital and which should not be subject to any kind of indirect tax whatsoever in accordance with Article 5(1)(a) of that directive. It also maintained that the transfer of the shares which constitutes the contribution of capital and which gave rise to the supplementary assessment for IMT does not fall within Article 6 of Directive 2008/7, which provides for an exclusion from tax exemption.

III. ECJ decision

The ECJ considers the imposition of Portuguese real estate transfer tax (a tax who is based on the property's tax reference value, in the Court's own words) to be incompatible with the DIRECTIVE 2008/7/EC if the underlying transaction meets the requirements for constituting a restructuring within the meaning of that Directive.

In its judgment, the ECJ states that the contribution is a restructuring operation within

Article 4(1) b (i. e., “*the acquisition, by a capital company which is in the process of being formed or which is already in existence, of shares representing a majority of the voting rights of another capital company, provided that the consideration for the shares acquired consists at least in part of securities representing the capital of the former company*”). According to Article 5(1) e, however, such transaction is not subject to indirect tax. In consequence, Member States may not levy any indirect taxes in this regard including the real estate transfer tax at issue here.

The alternatives for **exception to the prohibition on indirect taxes** laid down in Article 6(1) of the directive do not apply because the real estate transfer tax levied in the case in dispute is neither a tax on the transfer of securities nor a tax on the transfer, to a capital company, of businesses or immovable property or on assets of any kind transferred to a capital company, in so far as such property is transferred for a consideration other than shares in the company.

Finally, the ECJ notes that the levy of the tax could also not be justified on the grounds of preventing tax fraud and tax evasion.

IV. Takeaway from a German point of view: (free translation of excerpts from the German blog post (regarding the ECJ judgment of 4 June 2026 case C-837/24)

From the ECJ decision, implications to the German RETT treatment of share deals might ensue. The relevant provision of Portuguese law closely resembles the German rules governing the taxation of share deals, particularly the consolidation of shares within the meaning of Section 1(3) RETTA. It can be assumed that the decision will also be significant for the levying of German real estate transfer tax in restructuring cases. Some of the types of reorganizations listed in Article 4 of the DIRECTIVE 2008/7/EC go well beyond the scope of application covered by the currently applicable group clause in Section 6a RETTA.

A case with file number II R 8/23 concerning Section 1(3) No.4 of the Real Estate Transfer Tax Act (RETTA) is currently pending before the Supreme Tax Court. In a case decided in 2007 concerning Section 1(3) No.1 RETTA, the Supreme Tax Court held that the taxation was consistent with the preceding EU Directive, which was identical in this respect, and did not refer the matter to the European Court of Justice (ECJ) at the time.

Source:

ECJ, judgment of 4 June 2026 [C?837/24](#) *Nova Iberomoldes*.

Keywords

[immovable property](#), [real estate transfer tax](#), [restructuring](#)