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No real estate transfer tax exemption for the unification of shares prior to settlement of the estate

According to the Münster Tax Court, the exemption in Section 3 No. 3 of the German Real Estate Transfer Tax Act (RETTA), regarding the settlement of estates, does not apply to a unification (concentration) of shares taxable under Section 1 (3) No. 1 RETTA if the company shares have already been transferred to the heirs by way of singular succession prior to the settlement of the estate.

Legal background

Section 3 Number 3 Real Estate Transfer Tax (RETTA)

The acquisition of real estate belonging to an estate by co-heirs for the purpose of dividing the estate is exempt from taxation. The surviving spouse or domestic partner is treated as a co-heir if he or she is required to divide common property with the heirs of the deceased spouse or domestic partner, or if a piece of real property belonging to the estate is transferred to him or her as a set-off against a claim for equalization of the deceased spouse's or domestic partner's increase in value (accrued gain).

Section 6 (2) RETTA

If a plot of land is transferred from joint-ownership to the sole ownership of another member of the joint-ownership, the tax is not levied on the portion corresponding to the acquirer's share in the joint-ownership's assets.

Case of dispute

The plaintiff, along with his two siblings, was a limited partner in a limited partnership (KG) that owned real estate. The general partners were the father, who held more than 98% of KG's fixed capital, and a limited liability company (GmbH) with no interest in the capital.

Following their father's death, the estate was inherited in equal shares by his three children, who, pursuant to a provision in the partnership agreement, became personally liable partners through extraordinary succession (singular succession). As a result, the legal form of the KG was changed to a general partnership (OHG).

As part of the agreement on the division of the estate, the three siblings agreed that the plaintiff would receive all shares in the OHG as well as the shares in the former general partner (the GmbH).

The tax office issued a notice of assessment and treated the settlement agreement as a taxable concentration of at least 90% of the OHG shares in the hands of the plaintiff pursuant to Section 1 (3) No. 1 RETTA. It granted a tax exemption of 33.33% pursuant to Section 6 (2) RETTA.

In his appeal, the plaintiff claimed full tax exemption under Section 3 No. 3

RETTA because the transfer took place as part of the settlement of an estate.

Decision

The Münster Tax Court dismissed the appeal.

It is beyond dispute that the agreement for settlement of the estate is initially subject to tax under Section 1 (3) No. 1 RETTA because all shares in the OHG were - partly directly and partly indirectly through the GmbH – concentrated in a single ownership (the plaintiff). However, apart from the tax exemption under Section 6 (2) RETTA which covers the 33.33% share in the OHG already held by the plaintiff prior to the consolidation of shares no further tax exemption is available.

The individual provisions for exemption - including Section 3 (3) RETTA applicable to the settlement of estates - generally apply to partnerships. According to the case law of the Supreme Tax Court, an asset is only part of the estate if it is held by the heirs in joint ownership. In the case at hand, however, the OHG shares were not part of the estate held in joint ownership since the heirs had already become direct partners by way of singular succession pursuant to the provisions of the partnership agreement.

Source:

Tax Court of Münster, decision of 21 May 2026 (8 K 1592/24 GrE); officially published in June 2026. - No information is currently available concerning the filing of an appeal.

Keywords

RETT exemption, heir, unification of shares