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Attribution for real estate transfer tax purposes in case of trust agreements

In a recently published judgment, the Supreme Tax Court reaffirmed its strict position that, in the case of a direct change in shareholders, it is irrelevant whether the new shareholder under civil law (in this case: the trustor) previously held an indirect interest in the partnership.

Where a partnership owns a domestic site and where partnership changes over a 5-year (currently: 10-year) period lead to at least 95 per cent (currently: 90 per cent) of the capital falling directly or indirectly to new partners real estate transfer tax is due because the transaction is aimed at transferring ownership of real estate to a new partnership.

In the **case of dispute**, the limited partners of the plaintiff (a GmbH & Co. KG) sold their shares to A and B for a purchase price of €15 million pursuant to a notarized agreement dated 19 November 2013. A acquired 70% of the shares and B acquired 30% of the shares. The transfer of the shares was intended to take economic effect as of 1 January 2013, and the plaintiff's former shareholders were to hold their shares in trust for the purchasers as of that date. The fiduciary relationship was subject to a condition subsequent, namely the entry of the change in ownership in the commercial register.

The **tax office** took the view that both the granting of indirect shareholder status to A and B under the trust agreement and the direct transfer of shareholder status to A and B through their entry in the commercial register on 28 February 2014 to be subject to real estate transfer tax. The **tax court of first instance** held in favor of the plaintiff.

The **Supreme Tax Court** granted the tax office's appeal. A taxable transfer of shares in the partnership's assets to new partners within the meaning of Section 1 (2a) Sentence 1 of the German Real Estate Transfer Tax Act (RETTA) also occurs when a partner in a partnership transfers his or her interest in the partnership to the person for whom he or she has previously held the interest in trust.

By acquiring direct interest, the trustor becomes a partner in the partnership under civil law for the first time. The fact that, from an economic perspective, the trustor previously held the status of an indirect partner in the partnership pursuant to Section 39 of the General Tax Code is irrelevant in the event of a direct change in the partnership's ownership structure. This applies regardless whether the establishment of the trust relationship itself triggered real estate transfer tax under Section 1 (2a) Sentence 1 RETTA.

Also, the execution of the trust agreement in favor of A and B, effective 1 January 2013, did not meet the requirements for a taxable acquisition under Section 1 (2) RETTA. According to that provision, RETT is also levied on transactions enabling another person, legally or in effect, to dispose over a domestic site for his own account, but without establishing a claim for the transfer of ownership. This refers to what is known as the “right of disposal”, which, in the internal relationship between the parties, grants the other party such extensive authority of influence concerning the property that only the other party - and not the owner - can decide of its disposal at his or her own discretion. A and B could assert their rights as trustors only within the internal contractual relationship with the trustees and could not make their own dispositions regarding the plaintiff’s real property.

Source: Supreme Tax Court, judgment of 25 March 2026 (II R 30/25) published on 2 July 2026.

Keywords

change of shareholders, real estate partnership