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RETT exemption and allocation of prior holding period following split-up

In a recent judgment, the Supreme Tax Court held that, regarding the tax exemption for certain corporate group reorganizations under Section 6a of the Real Estate Transfer Tax Act and following a split-up in accordance with the Reorganization Act, a stake held by the split-off company in a subsidiary of the acquiring company for more than five years must be attributed to the acquiring company as partial universal successor if the shareholding in the subsidiary was the subject matter of the relevant acquisition agreement.

Legal background

According to Section 6a of the Real Estate Transfer Tax Act (RETTA), the real estate transfer tax is not levied on certain legal group transactions resulting from a restructuring under the Reorganization Act. A controlling company (and one or more of its subsidiaries) must be involved in the restructuring. A company is dependent if the controlling company has held at least 95 percent of its capital or assets directly or indirectly, or partly directly and partly indirectly, without interruption for a period of five years prior to the legal transaction and five years after the legal transaction.

Decision

In its recently published judgment, the Supreme Tax Court decided that, for purposes of the group provision under Section 6a of the Real Estate Transfer Tax Act (RETTA), the 5-year pre-transaction holding period to be observed by the split-off company is transferred to the acquiring company if the shareholding in the subsidiary was the subject matter of the split-off and the acquisition agreement. Therefore, the five-year pre-transaction holding period of the split-off company does not have to be run again from the start but is instead attributed to the acquiring company as its partial universal successor.

In the case of dispute, a limited partnership (KG) had been the sole shareholder of a real estate-owning limited liability company (GmbH) since 1993. In 2010, the two limited partners each founded the plaintiff and another GmbH as sole shareholders and initially contributed their respective 50 percent of their partnership interests to the two companies. In the same year, the KG was split up. As part of this transaction, a transfer of a business segment- including the shareholding in the real estate-owning GmbH - was transferred to the plaintiff. In 2013, the GmbH was merged into the plaintiff.

The tax office refused to apply tax exemption under Section 6a RETTA because the plaintiff had not held a share in the real estate-owning GmbH for five years prior to the time of the merger. The Supreme Tax Court rejected the tax office's position for the above reasons.

Source:

Supreme Tax Court judgment, of 29 July 2026 (II R 5/23) published on 8

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Keywords

RETT exemption, real estate transfer tax, restructuring