

## **Local Tax Court rules on tax authorities interpretation of RETT intragroup restructuring exemption**

The [Local Tax Court of Nuremberg](#) (4 V 1742/12) has issued a decision in which it expressed doubts that the German tax authorities' view that the real estate transfer tax (RETT) intragroup restructuring exemption is not applicable where the mandatory five-year holding period was not met because the relevant subsidiary was established during that period. The decision was issued in the context of a "suspension of payment" application and cannot be considered an official verdict, but it may indicate that the tax authorities' restrictive interpretation may not be upheld by the tax courts.

RETT with respect to real estate owned by a corporation or partnership generally is triggered if one party either acquires or for the first time unifies a direct or indirect interest of at least 95% in the real estate-owning corporation/partnership. RETT also is triggered by intragroup share transfers/restructurings.

Certain intragroup restructurings can benefit from an intragroup restructuring exemption if the following conditions are satisfied:

- The transaction is carried out under specific provisions in Germany's Reorganization Tax Code (e.g. merger, de-merger, spin-off) or comparable rules in other EU/EEA countries or where the transaction is based on company law (e.g. a contribution of shares). Other transactions (e.g. a straightforward intragroup sale of shares) do not qualify;
- The reorganization involves a controlling entity (entrepreneur) and subsidiaries in which the former holds directly or indirectly at least a 95% interest; and
- At the time the reorganization is carried out, the direct or indirect 95% shareholding has been held for the past five years and will continue to be held for five years after the reorganization.

As a result of the five-year pre- and post-reorganization holding periods and the tax authorities' restrictive interpretation of the applicability of the intragroup exemption, the exemption is only rarely applied.

The case before the tax court involved the five-year pre-reorganization holding period. In the case, the relevant subsidiary was established by the controlling entity during the five year pre-reorganization holding period so that - taken literally - the holding period requirement could not be fulfilled. The tax authorities, therefore, denied the application of the exemption.

Although the local tax court did not issue a final decision on whether the exemption would apply in such cases, the court stated that the tax authorities' restrictive position is doubtful, considering the broad spirit of the exemption. Because the taxpayer in the case only applied for a suspension of payment of the RETT until a final decision on the appeal, the statement of the court cannot be considered a final decision on the issue. The court's statement could however be an indication that the tax authorities' interpretation of the exemption is too restrictive.

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