



REAL ESTATE M&A

RECENT SUPREME COURT RULING IN TEST CASE REG. REGISTRATION FEE IN THE RESTRUCTURING OF COMPANIES

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In a recent ruling, the Danish Supreme Court established that partnerships are only liable to pay the fixed registration fee of DKK 1,750 to the Land Registry and not additionally the variable registration fee of 0.6% of the sum of transfer of ownership in cases of changes of title in connection with “asset inflow”. This ruling confirms that partnerships and limited liability partnerships may utilize the Danish Registration Fee Act’s rule on fee reduction.

The Case in Brief

A partnership transferred a property by way of a non-cash contribution in the form of buildings and lease agreements in a partnership against remuneration solely in shares in the partnership. The notification of the deed of transfer stated that the transfer was covered by the Danish Registration Fee Act's Section 6(a), meaning that only the registration fee according to the Danish Registration Fee Act's Section 7 was to be calculated and not also the variable registration fee according to the Danish Registration Fee Act's Section 4.

The Land Registration Court registered the deed of transfer and, in pursuance of the Danish Registration Fee Act's Section 19, submitted the question regarding calculation of the fee to the Central Tax Administration ("SKAT"). SKAT then made the decision to charge a variable registration fee in pursuance of the Danish Registration Fee Act's Section 4. This decision was brought before the National Tax Tribunal, and the National Tax Tribunal agreed with SKAT's decision.

Following this decision, the partnership took civil action against the Danish Ministry of Taxation, claiming that the variable registration fee calculated in accordance with the Danish Registration Fee Act's Section 4 was to be refunded.

Hence, the legal question in the case centered on whether the transaction was covered by the exemption clause in the Danish Registration Fee Act's Section 6(a) on exemption from the obligation to pay a variable registration fee of 0.6% of the sum of transfer of ownership in cases of changes of title in connection with asset inflow.

The Ministry of Taxation argued that a partnership could not be regarded as being covered by the exemption clause in the Danish Registration Fee Act's Section 6(a), referring to the fact that the transaction could not be carried through on a tax-free basis as an "asset inflow" according to the Danish Merger Tax Act, seeing as partnerships are transparent in the context of tax.

The partnership argued that a partnership is a "company" and thus covered by the wording of the Danish Registration Fee Act's Section 6(a) and that the partnership in its capacity as an independent legal entity as regards civil and tax law had made a non-cash contribution, the contents of which were consistent with the definition of the transaction which is described as "asset inflow" in the Danish Registration Fee Act's Section 6(a). The partnership argued that the fact that a partnership is not an independent tax entity, but that it is transparent in the context of tax, was thus not of any significance in the context of the fees.

The Supreme Court remarked that the legal basis, including the preliminary work on the Danish Registration Fee Act's Section 6(a), does not provide with sufficient clarity that it is a requirement that companies may carry transactions through on a tax-free basis according to the Danish Merger Tax Act. In this light, and because the Court in this case took the view that the non-cash

contribution met the 2 material conditions in the Danish Registration Fee Act's Section 6(a) on asset inflow in that the remuneration consisted solely of shares in the receiving company, and that the assets contributed constituted an independent branch of the business of the partnership, the Supreme Court found that the transaction was covered by the exemption clause in the Danish Registration Fee Act's Section 6(a).

The Implications of the Ruling

The ruling is a fundamental issue and highly significant to the real estate industry and real estate M&A.

The ruling establishes that a partnership or a limited liability partnership may utilize the exemption clause in the Danish Registration Fee Act's Section 6(a) in transfers by way of "asset inflow".

The ruling also implies that similar cases may involve the option of action for recovery of a variable registration fee that has already been paid.

If you have any questions or require further information regarding any of the above, please do not hesitate to contact our Real Estate M&A team:



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