

## **CJEU limits the levy of real estate transfer tax on contributions and restructurings involving real estate companies**

On 4 June 2026, the Court of Justice of the European Union (CJEU) in the case Nova Iberomoldes – SGPS, S.A. (C-837/24) delivered an important judgment on the scope of Directive 2008/7/EC (the Capital Duties Directive). The CJEU rules that Portugal may not levy real estate transfer tax (RETT) on the contribution in kind of shares in companies owning immovable property upon the formation of a capital company, where that contribution qualifies as a restructuring operation within the meaning of the Directive.

This judgment directly affects Portuguese practice but is also relevant for other Member States with RETT's and look-through rules for real estate companies, including the Netherlands and Germany.

### **Background: Portuguese IMT and internal reorganisation**

In Portugal, IMT, the municipal tax on transfers of immovable property for consideration, is not only levied on a direct transfer of real estate. Certain acquisitions of shares in companies that own immovable property (real estate companies) are also treated as a transfer of immovable property.

In the Nova Iberomoldes case, a Portuguese public limited company was incorporated in 2019. The share capital was fully paid up by means of a contribution in kind of shareholdings in various companies held by the sole shareholder. One of these companies was a real estate company that leased Portuguese immovable property to third parties. Through the contribution, Nova Iberomoldes acquired 100% of its share capital.

The Portuguese tax authorities took the position that the look-through rule applied, as a result of which IMT was levied on the basis of the value of the underlying immovable property. Nova Iberomoldes challenged this levy and argued that the Capital Duties Directive precludes it, as there is a contribution of capital and a restructuring which, under that Directive, must be exempt from indirect taxes.

### **Scope of the Capital Duties Directive**

The Capital Duties Directive harmonises the indirect taxes that Member States may levy on the raising of capital and on restructurings involving capital companies. The Directive aims to remove fiscal obstacles to the free movement of capital and the regrouping/restructuring of undertakings. The Directive provides that Member States may not levy indirect tax on contributions of capital and on restructurings. Article 6 contains an exhaustive list of exceptions (including duties on the transfer of securities and transfer duties upon the contribution of immovable property to a company), which according to settled case-law must be interpreted strictly.

### **Judgment of the CJEU**

The CJEU first establishes that the formation of Nova Iberomoldes, considering how the share capital was paid up, qualifies as a restructuring within the meaning of the Capital Duties Directive. The new capital company acquires majority shareholdings in

other capital companies, while the sole shareholder receives shares in Nova Iberomoldes as consideration. The CJEU also classifies the Portuguese IMT levy in this situation as an indirect tax, because it is not aimed at taxing a person's income or assets but at taxing a transaction. As that tax in substance relates to the contribution of capital, the final condition of the Directive is also satisfied. It is not relevant that the tax is only levied if immovable property is indirectly involved in the transaction.

The CJEU concludes that such a tax is therefore in principle prohibited under the Capital Duties Directive. The Portuguese authorities cannot successfully rely on the exceptions to that prohibition in this case. The exception for transfer duties upon the contribution of immovable property requires a transfer of ownership of immovable property itself; that is not the case, since only the shares in the real estate company are contributed. The CJEU also rejects the argument that there is, in substance, a transfer of the economic ownership of the immovable property. The CJEU rules that this cannot be the case where only an internal group restructuring is intended.

The argument of the Portuguese Government that the measure would be necessary to prevent tax fraud and tax avoidance (real estate transfer tax on transfers would be easy to avoid by structuring real estate via capital companies) is also not accepted by the CJEU. The Portuguese look-through rule is formulated in generic terms, based on a general presumption and without a concrete abuse test. It therefore goes further than necessary and is disproportionate. Moreover, in the specific case there are no indications of fraud or abuse.

The CJEU concludes that the Capital Duties Directive precludes the Portuguese real estate transfer tax levied on the contribution of a real estate company in the context of a restructuring.

### **Possible implications for the Netherlands and other Member States**

Although the judgment directly concerns Portuguese IMT, the underlying reasoning is relevant for other Member States with RETT's and look-through regimes for real estate companies. This includes, among others, the Netherlands and Germany. Although exemption regimes often apply to contributions and transfers in the context of internal reorganisations, in practice it appears that reliance on these regimes is not always possible due to (overly) strict conditions that go beyond merely combating abuse.

The judgment confirms that the Capital Duties Directive generally does not allow such taxes on transfers of shares in real estate companies in the context of contributions and restructurings. This may have considerable positive effects.

If your organisation has recently faced costs due to real estate transfer tax in connection with the contribution or restructuring of real estate companies, we recommend assessing the consequences of this judgment. If you are considering carrying out such a transaction, we also recommend taking the findings of this judgment into account. We would be pleased to assist—please contact your regular real estate adviser at KPMG Meijburg & Co.

KPMG Meijburg & Co  
5 June 2026

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