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ANALYSIS

Tax

Family-owned businesses: Subsidiaries engaged in real estate leasing are not required to hire an employee if structurally part of a corporate group's business activity

The Supreme Court rules that the requirement of having at least one full-time employee for an undertaking engaged in real estate leasing to be regarded as carrying on business may be deemed fulfilled by way of an associated company when such is functionally part and parcel of the business activity of the group of companies as a whole.

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1. The Supreme Court's test

The Supreme Court, in its judgments of 17 and 19 February 2026 (cases no. 1196/2024 and no. 1326/2024) and for the purpose of determining the applicability of the deduction provided for *inter vivos* family business share transfers under Article 20(6) of the Inheritance and Gift Tax Act, analysed whether the requirement to have at least one full-time employee—which is imposed on undertakings engaged in real estate leasing in order to be regarded as carrying on business—may be deemed fulfilled by way of a company that, though not that undertaking whose shares are being gifted, belongs to the same corporate group.

The centralised employee within the group does not preclude the carrying on of business in the leasing subsidiary

In the cases examined in those judgments, two spouses gifted to their children various shares in a family holding company that, among other things, held an interest in company X. X, which is at the centre of the dispute, is engaged in real estate leasing, although it does not individually meet the requirement set out in Article 27(2) of Act 35/2006 to qualify as business activity, that is, without directly employing a full-time person to manage the leases, a human resource it could rely on within the group, but not directly.

In this scenario, the giftees fully applied the deduction provided for in the aforementioned Article 20(6) of Act 29/1987, on the understanding that the holding company's stake in X was attached to its business, since they considered that the centralized human resources within the group did not constitute a breach of the requirement set out in Article 27(2) of Act 35/2006. This, therefore, led them to rule out the application of the proportionality rule in the last paragraph of Article 4(8)(2) of the Wealth Tax Act (LIP), which applies only when part of the asset is not attached to the business.

For its part, the tax authority regularized the tax situation of the giftees on the grounds that X did not carry on business, as it did not directly employ a full-time employee to manage such business. It thus considered that the shares in X were not attached to the holding company's business, which in turn determined the application of the aforementioned proportionality rule and, therefore, that a certain percentage of the deduction applied by the giftees was not applicable.

In this context, and after analysing the arguments of the appellant giftees and the respondent tax authority, the Supreme Court addresses the issue of interest for the formation of case law raised. We highlight the following aspects of its reasoning:

— It thus notes that, although it is true that Article 4(8)(2) of Act 19/1991 refers to the personal income tax legislation to

determine when business is being carried on and when an asset is attached to such business, and that, in the case of real estate leasing, Article 27(2) of Act 35/2006 requires that there be at least one full-time employee to manage the business, nevertheless, that reference must not be limited to a mechanical, isolated, and formalistic application of the aforementioned Article 27, because what the wealth tax provision seeks is the conduct of real estate leasing business.

— In this light, resolving the issue at the heart of the dispute requires starting from the context in which it has arisen, namely, the case of an undertaking that is part of a group of family-owned companies, taking into account both the purposive interpretation of the family business regime—which precludes mechanically requiring that the employee appear on the subsidiary's payroll—and the fact that the consideration of a group as a unit of "business activity" in which the company engaged in real estate leasing structurally participates must not be divorced from the true characterization of what the leasing company's actual business is.

— In light of the foregoing, the Supreme Court holds that resolving the dispute raised in this case requires, fundamentally, determining whether the business activity of X "is functionally part and parcel of the business activity of the group of companies as a whole". And this is because, the Court insists, the key issue is not whether X is engaged in the leasing of real estate—which it obviously is—but whether its business activity can be analysed exclusively from this perspective—which would justify the application of the specific provision of Article 27(2) of the Personal Income Tax Act (LIRPF)—or whether, on the contrary, it goes beyond the mere leasing of real estate, as it cannot be understood without considering the interrelationship between such leases and the other goods and services provided by the other companies in the family group.

— Applying the foregoing to the case at hand, the Court notes that X is engaged in the leasing of rural properties, a business activity carried on in coordination with other provisions of goods or services by other companies within the group in which the holding company also has a stake. In this regard, an examination of the various lease agreements provided by X reveals that they stipulate complex obligations assumed by the lessees, such as purchasing supplementary services that must necessarily be rendered by other group companies—tasks such as collecting water fees, supplying qualified technical means for irrigation, and so on.

— In the Court's view, circumstances such as those described above demonstrate the existence of a business structure organised around a business activity that goes beyond the mere leasing of real estate, such that the element provided by X—the rural land—cannot be considered in isolation. That is, although it constitutes an essential element for the conduct of the business activity of the group of companies

as a whole, it cannot be understood without taking into account the rest of the goods and services provided by other companies within the group that make up the entirety of the group's business activity.

— Consequently, the Supreme Court adds, if it is to be understood that X's activity cannot be classified for business purposes without taking into account its contribution to the group as a whole, then, by the same token, all the elements of the group—including its human resources—must be taken into account in classifying the company's business activity. Therefore, the fact that full-time employees provide services to other companies within this conglomerate, of which X is a part, becomes secondary, because what is truly relevant is that its business activity cannot be analysed solely from the perspective of its position as a lessor, but rather as a provider of a service that is part of a broader range of goods and services rendered by the interrelated companies within the group. From this perspective, the Court concludes, there is no doubt that the group's human resources are indeed involved in the carrying on of business that includes the leasing of real estate.

In short, in the case analysed, the Supreme Court moves away from a purely formalistic and isolated interpretation of Article 27 of Act 35/2006, establishing the following legal doctrine:

> When the lessor company belongs to a group of companies engaged in business activity under the terms of Article 42 of the Code of Commerce and Article 5(1) of the Corporate Income Tax Act (LIS), and the lease is managed using the group's human and material resources—even if these are centralised in other group companies—the requirement for a full-time employee under Article 27(2) of the Personal Income Tax Act (LIRPF) must be considered met, provided that the decisive test is passed, namely that the economic and functional reality of the group of companies allows for the conclusion that there is a unity of resources and activity at the group level and that the leasing company is functionally integrated into that activity; that is, that it serves the business activity of the group or of the companies whose human resources support it, and not that it merely uses their resources.
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> [...]
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> If the foregoing is met, the holding company's shares in the subsidiary are classified as attached assets and are not counted as non-attached assets for the purposes of the proportionality rule in the last paragraph of Article 4(8)(2) of the Wealth Tax Act (LIP).

> [...]
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> Conversely, this legal test does not apply if there is only formal membership in the group, without functional and economic coordination and integration of the leasing activity with that of the rest of the group's companies; in that case, the requirements of Article 27(2) LIRPF must be demonstrated separately within the leasing company itself.

2. Final remarks

The Supreme Court's conclusions in the discussed rulings have a significant impact on the application of tax advantages designed for family businesses, both for purposes of inheritance and gift tax and in the area of wealth tax, thereby clarifying the administrative doctrine regarding this matter.

> *What matters is the business and functional integration of the leasing activity into the activity of the group of companies as a whole*

Thus, for example, the Directorate-General for Taxation, in its formal binding answer V1184-25 of 1 July, addressing whether the exemption set out in Article 4(8)(2) of Act 19/1991 would apply, concluded that, for a family holding company to consider its shares in undertakings engaged in real estate leasing to be exempt, "it is necessary for each of these undertakings to in turn meet this requirement and carry on a business activity," and they must "independently meet the requirement of having a full-time employee with an employment contract, as provided for in Article 27(2) of the Personal Income Tax Act".

However, in light of the Supreme Court's doctrine, this will be the case unless it can be established that the activity of the undertaking in question "is functionally part and parcel of the business activity of the group of companies as a whole".

Therefore, the test established by the Supreme Court is very positive and represents a significant relaxation regarding compliance with the requirements for applying the family business regime. Indeed, the ruling adopts a purposive approach that directly aligns with the *ratio legis* of the tax advantages provided for family businesses, which aim to facilitate business continuity.

It is particularly noteworthy that the Supreme Court integrates its analysis with the business reality of groups, avoiding excessive formalism in verifying the requirements. In this regard, the requirement that the leasing company be "functionally part and parcel" of the group's business activity constitutes a reasonable standard that allows for distinguishing cases deserving

of the tax advantage from those in which there is merely formal membership in the group without true business unity.

Furthermore, this line of case law is not isolated. Previously, the Supreme Court, in its Judgment of 14 July 2025 (case no. 2197/2023), had established that, to apply the family business deduction in relation to leasing activities, it was sufficient to demonstrate compliance with the objective requirements (i.e., a full-time employee), without requiring an additional assessment of the business necessity of such hiring.

This merely confirms a clear trend in the Supreme Court toward an interpretation favourable to taxpayers in matters involving family businesses. This approach is in line with business realities and moves away from overly formalistic interpretations that undermine the protective purpose of these tax advantages. In short, it sets an important precedent that will undoubtedly have a positive impact on family businesses.