Estate management: can management be outsourced without losing tax benefits?

When a person passes away and leaves a set of rental properties as part of an inheritance, the heirs often wonder how to manage those assets without losing the tax benefits. In particular, a frequent question arises: can management be outsourced to a company or consultancy without losing the status of "economic activity"?

The answer, according to the criteria of the Directorate-General for Taxes (DGT), is clear: only in exceptional cases.

WHY IT IS KEY TO PROVE ECONOMIC ACTIVITY IN INHERITANCE TAX

Within the scope of Inheritance and Gift Tax, as well as Personal Income Tax (IRPF) and Wealth Tax, the law distinguishes between two very different situations:

- Asset management: when the owner simply receives income from their properties.
- Economic activity: when there is an organization of personal and material resources aimed at the professional management of those leases.

Only in the second case —that is, when the existence of an economic activity is proven— can relevant tax benefits be applied, such as the 95% reduction of the net value of the affected assets in Inheritance Tax.

And for that activity to be considered economic, the regulations (Article 27.2 of the Personal Income Tax Law and its implementing regulations) require having at least one employee with a full-time employment contract dedicated to managing the leases.

CAN RENTAL MANAGEMENT BE OUTSOURCED WITHOUT LOSING TAX BENEFITS?

In some cases, heirs prefer not to directly hire an employee and choose instead to entrust the management to a specialized company, such as a consultancy, a real estate agency, or a property management firm.

However, the Directorate-General for Taxes (the body of the Ministry of Finance responsible for officially interpreting tax regulations) does not consider that this outsourcing meets the employee requirement in most cases.

The Directorate-General for Taxes understands that outsourcing management is equivalent to fully delegating the organization of the activity, which breaks the link of "own organization of means of production or human resources" that characterizes an economic activity.

WHEN THE DIRECTORATE-GENERAL FOR TAXES ACCEPTS OUTSOURCED MANAGEMENT

Despite its restrictive approach, the DGT has acknowledged in some rulings that external management may be considered valid only when the real estate portfolio is of significant size and complexity.

These are situations where the scale of the assets justifies subcontracting the management, while an organized business structure still exists behind it. Some examples recognized by the Directorate-General for Taxes include:

- Ruling V1604-17 (21/06/2017): a jointly owned entity holding a shopping center of more than 28,000 m² and another building of 27,000 m².
- Ruling V3859-16 (16/09/2016): a company owning several industrial warehouses with a total surface area exceeding 10,000 m² and annual rental income above €250,000.
- Ruling V0063-17 (17/01/2017): a company holding 50% ownership of more than 90 retail units in a shopping center.
- Ruling V0090-24 (15/02/2024): an entity with more than €720 million in real estate assets, whose complexity made outsourced management reasonable.

In all these cases, the Directorate-General for Taxes concluded that the outsourcing of management was justified by the scale and business nature of the activity and, therefore, the status of economic activity was not lost.

WHEN THE TAX AUTHORITIES REJECT OUTSOURCING IN REAL ESTATE INHERITANCES

On the contrary, the Directorate-General for Taxes has expressly rejected the existence of an economic activity when outsourcing is applied to family-owned or small-scale assets, where there is no own business structure nor a significant volume of activity.

For example, in a Binding Ruling, the Directorate-General for Taxes analyzed the case of a taxpayer with nine apartments, nine storage units, and thirteen garages, and concluded that it did not constitute an economic activity, precisely because there was no directly hired full-time employee and all management had been outsourced to a company.

In the words of the Directorate-General for Taxes, outsourcing in these cases does not replace the requirement of a full-time employee, since the owner does not participate in the organization of material or human resources, but merely receives passive income.

REQUIREMENTS TO MAINTAIN THE 95% REDUCTION IN AN INHERITANCE OF RENTED PROPERTIES

In the context of an inheritance, this issue is particularly relevant. If the heirs wish to apply the 95% reduction in Inheritance Tax to rented properties, they must maintain the economic activity that was carried out by the deceased.

Therefore, if the deceased had a full-time employee hired, the heirs must continue with that structure in order not to lose the reduction. If they decide to outsource management, they may only do so without tax risk if the inherited estate is of very large size and complexity.

In family inheritances with only a few rental properties, outsourcing is generally not sufficient: the Directorate-General for Taxes requires that there be at least one employee directly hired by the heirs.

CONCLUSION

The outsourcing of property management does not, as a general rule, replace the requirement of having a full-time employee. It is only accepted in very exceptional cases, when the real estate portfolio has a clearly business-oriented scale and requires a complex organizational structure.

This means that inheritances involving family-owned or medium-sized estates must maintain their own structure, with at least one full-time employee hired, if they wish to preserve the tax benefits linked to the economic activity.

In short, outsourcing only allows the maintenance of the status of economic activity in exceptional cases involving large-scale real estate portfolios. In family or medium-sized inheritances, it will be necessary to have at least one full-time employee hired.

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