

The Court of Justice of the European Union (CJEU) ruling on indirect taxes on capital raising (Case C-837/24)

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1. The Judgment at a Glance

On 4 June 2026, the CJEU in Case C-837/24 (*Nova Iberomoldes*) ruled that Council Directive 2008/7/EC prohibits national indirect taxes on corporate restructurings where capital is paid up via shareholdings in property-owning companies.



2. Background and Facts of the Case

- **Transaction:** A Portuguese company was formed via non-cash contributions of shares, including holdings in companies with real estate.
- **Tax Issue:** Portuguese authorities imposed a real estate transfer tax (IMT) because the share acquisition was legally treated as a transfer of the underlying property. 
- **Court's Assessment:** The CJEU ruled that this is a restructuring operation under Directive 2008/7/EC, meaning it is exempt from indirect taxes. The exception for direct property transfers does not apply, and anti-abuse provisions cannot justify taxing this transaction.

3. Impact on the Legal Situation in Austria

The ruling binds all EU Member States, directly impacting the Austrian Real Estate Transfer Tax Act (*Gründerwerbsteuergesetz* – GrEStG).

3.1 The Austrian RETT regime



Under the "new" Austrian RETT regime (since 1 July 2025), share transfer transactions may trigger Austrian real estate transfer tax if at least 75% of the shares in a corporation owning Austrian real estate

- are directly transferred to new shareholders within 7 years (change of direct shareholder structure) or
- are directly or indirectly concentrated in one hand (so called acquisition of unified shares or share unification).

In these cases, Austrian RETT amounts to 0.5% of a specific RETT tax base (or 3.5% of the fair market value in certain situations).

3.2 Consequences of Case C-837/24

- 1. Directive Precedence:** The CJEU's broad interpretation indicates that share-based restructurings cannot be burdened by Austrian RETT via "economic transfer" theories (if relevant, this could be backed by a ruling to be obtained from the Austrian tax authorities).
- 2. Defensive Strategy:** Taxpayers can leverage this ruling to contest Austrian RETT assessments on qualified restructurings.
- 3. Appeals:** Recent Austrian assessments regarding qualifying restructuring contributions should be reviewed for appeal opportunities.

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