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Real estate transfer tax levied on each transaction in a series

The Supreme Tax Court has held that real estate transfer tax is to be levied separately on each transaction in a series even if the transactions are interrelated, serving a single common object.

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A single partner held the entire capital in two partnerships. These each held half the capital in a company owning property. The ultimate owner then transferred his holding in the second partnership to the first. Real estate transfer tax was due on the taxable value of the property by virtue of the “unification of ownership rights in a single hand”. Four days later, the now sole shareholder in the subsidiary sold its entire investment to a single buyer. Real estate transfer tax was due for the second time as at least 95% of the shares in a property-owning company had been acquired by a single purchaser. The seller applied for relief from this double charge, claiming that the first transaction was the prerequisite for the second, but without its own substance or purpose. There had been, in effect, a single taxable event, the sale of the property owner to a third party. The tax office did not accept this argument, relying instead on the letter of the law.

The Supreme Tax Court has now confirmed the tax office in its view. Real estate transfer tax was a tax on the legal events listed in the statute and was due in respect of each as and when it occurred. There was no offset of one charge against another merely because two events were interrelated, as the legal transaction was the taxable event, and not the economic substance. Each event was to be seen and taxed in isolation, even if the one would not have occurred without the other.

Some property owners may be able to take advantage of a change in the Real Estate Transfer Tax Act with effect from January 1, 2010. Transactions under the laws of an EU/EEA member state involving the transfer of equity or partnership shares within a group are exempt provided the ultimate parent holds directly or indirectly at least 95% of the shares in all parties involved throughout the five years before and after the transaction. This new exemption thus facilitates group reorganisations other than those post-acquisition, but not the sale of a subsidiary. It could not have been claimed in the circumstances before the court.

Supreme Tax Court judgment II R 45/08 of December 15, 2010 published on February 16, 2011

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