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By PwC Deutschland | 29. Mai 2013

Real estate transfer tax basis reduced if conveyancing costs borne by seller

The Supreme Tax Court has held that an agreement that the seller bear the legal costs of concluding and registering the conveyance leads to a corresponding reduction in the basis for charging real estate transfer tax. However, this does not apply in respect of the tax itself.

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The buyer and the seller of a property agreed that the latter would bear the costs of concluding and registering the contract (conveyance) as well as the charge to real estate transfer tax on the consideration paid. The Supreme Tax Court has now held that this implies a charge on the seller reducing his net proceeds from the sale. Accordingly, the basis of assessment to real estate transfer tax should be reduced by the amount borne in respect of the conveyancing costs. This does not apply, though, to the real estate transfer tax itself in the face of a provision in the Real Estate Transfer Tax Act specifically excluding the tax from adjustments to the assessment basis. (Note: legally, real estate transfer tax is the joint liability of both parties to a conveyance, notwithstanding the common custom that it is borne by the buyer.)

Supreme Tax Court judgment II R 1/12 of April 17, 2013, published on May 29

Schlagwörter

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