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By PwC Deutschland | 10. April 2026

RETT: Reversal of property purchase with several acquirers

In a recent judgment, the Supreme Tax Court laid down the criteria for a reversal of a purchase transaction to be recognized from a tax point of view. The decisive factor is whether the original acquisition is in fact completely reversed. If several purchasers have purchased a property as co-owners the withdrawal of just one purchaser from the sales contract cannot effectively eliminate their joint claim to transfer of ownership of the property.

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Background

Pursuant to Section 16 (1) No.1 alt. a of the Real Estate Transfer Tax Act (RETTA), a tax assessment shall be revoked upon request if - prior to the transfer of ownership of the property to the purchaser - a transaction is reversed by agreement between the contracting parties within two years since the tax has been incurred.

By notarized contract signed in April 2020, the plaintiff and her former partner (L) purchased a property with a single-family home and garages “in equal shares” from Mr. and Mrs. N. Considering the half of the purchase price, the tax office assessed real estate transfer tax (RETT) against the plaintiff. The assessment became final.

In the spring of 2021, after a mortgage was granted in favor of the financing bank, L and the plaintiff separated. While the plaintiff sought to be released from her obligations under the purchase agreement and the loan agreement with the bank without any adverse consequences, L and Mr. and Mrs. N. wished to hold on to the real estate transaction. By means of a notarized “Agreement to Reverse the Acquisition of a ½ Co-ownership Share” from July 2021, Mr. and Mrs. N, the plaintiff, and L agreed to revoke the earlier agreement from April 2020 “with respect to the co-ownership share sold to the plaintiff.” The tax office rejected the plaintiff’s request to cancel the tax assessment.

Decision

The Supreme Tax Court agreed and held in favor of the tax office.

A transaction is deemed to have been “cancelled” if, in addition to the civil law annulment of the legal transaction that gave rise to the tax liability, the contracting parties have released themselves from their contractual obligations in such a way that the right to dispose of the property does no longer remain with the purchaser and the seller regains his or her original legal status.

If several purchasers buy a plot of land, they generally have a joint and indivisible claim against the seller for transfer of ownership. The buyers cannot demand the transfer of a co-ownership share of the property but rather, in principle, the transfer of the entire property to all buyers.

The withdrawal of just one buyer from the property purchase agreement does not thereby eliminate the buyers’ right for the property to be transferred to them. Under civil law, a contract for the purchase of a property with multiple buyers can only be cancelled by revoking it in its entirety.

By notarized contract from April 2020, the plaintiff and L acquired the property in question and, as co-ownership (tenancy in common) pursuant to Section 741 of the German Civil Code, a right to transfer of ownership against Mr. and Mrs. N. The wording “each with a ½ share” in the contract does not preclude the assumption of a joint claim to transfer of ownership by the buyers. This is based on Section 47 (1) of the Land Registry Act which

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states that the registration of a right for several persons jointly is to be made either by specifying the shares of the entitled parties in fractions or by identifying the legal relationship governing the partnership.

Source:

Supreme Tax Court, judgment of 14 January 2026 (II R 24/23) published on 2 April 2026.

Schlagwörter

sale of property