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Real estate transfer tax: Payments to third party as taxable value of consideration

Payments made by the purchaser of a parcel of real estate to a third party constitute consideration within the meaning of Section 9 (2) Number 3 of the Real Estate Transfer Tax Act only if the third party is in such a powerful legal position to prevent the purchaser from acquiring the property, and the purchaser is aware of these circumstances when making the payment.

Background: Anyone who purchases a piece of real estate and, in doing so, makes payments to independent third parties must, under certain circumstances, expect that these amounts may increase the tax base for real estate transfer tax (RETT). In a recent judgment, the Supreme Tax Court – once again - outlined the specific conditions under which such payments are to be considered as value of consideration for RETT. The decision is of significance in practice because payments to third parties are not uncommon, particularly in complex real estate transactions.

Pursuant to Section 9 (2) Number 3 of the Real Estate Transfer Tax Act (RETTA), the taxable value of consideration also includes benefits that the purchaser of the real property grants to persons other than the seller in exchange for their agreement to refrain from acquiring the real property.

The subject matter of the third party's waiver is the acquisition of real property. Only those considerations that are granted in exchange for the third party's own waiver of the acquisition of the real property and which, through this waiver, (effectively) enable the purchaser to acquire the real property are covered.

According to a most recent decision of **the Supreme Tax Court**, these principles apply mutatis mutandis to **the case of dispute** where the seller and the original purchaser agreed on a right of the seller to repurchase and the seller transfers the property to a third party after exercising his right to repurchase, whereupon the new acquirer makes a monetary payment to the original purchaser. The monetary payment will only constitute part of the taxable consideration if the original purchaser, as a third party, is able and willing to prevent the new purchaser from acquiring the property despite the seller's exercise of the right of repurchase.

The Supreme Tax Court went on to say that tax courts of first instance must evaluate this independently and may not rely solely on the findings of civil courts. In the case of dispute, the lower tax court relied heavily on the records of the civil proceedings in its assessment. While this is generally permissible, the court must nevertheless make its own discernible evaluation of evidence and may not mechanically adopt the findings from the civil proceedings. The lower tax court in the case at hand had not made it sufficiently clear that it had formed its own independent conclusion based on the entire course of the proceedings.

Source: Supreme Tax Court, judgment of 17 June 2026 (II R 1/24) published on 27 August 2026.

Schlagwörter

Taxation of real estate, consideration