

By PwC Deutschland | 08 October 2014

Future obligation not chargeable to real estate transfer tax

The Supreme Tax Court has held that the acceptance by the acquirer of a plot of building land of an obligation to contribute towards the cost of building a kindergarten is not part of the consideration subject to real estate transfer tax if the obligation was not due at the time of the conveyance.

An acquirer of a plot of building land accepted as a condition of sale an obligation on the seller to make a lump sum payment to the local authority as a contribution towards the cost of building a new kindergarten. This payment would become due on grant of planning permission to the owner of the site to build a house. The tax office claimed the payment to be part of the consideration paid to acquire the site and included it in the total amount chargeable to real estate transfer tax. The acquirer considered the obligation to arise from a future event and thus not to be part of the consideration paid to the seller.

The Supreme Tax Court has now sided with the acquirer. At the date of sale, the seller had no concrete obligation to make any payment to the local authority towards the cost of a kindergarten. Rather, this payment would only become due on grant of planning permission for a concrete building project. The acquirer, not the seller, was to apply for this permission and thus entered into the obligation in his own name. The mention of the obligation in the contract of sale was intended to put the acquirer on notice that an obligation would arise, not to transfer an existing obligation.

Supreme Tax Court judgment II R 12/13 of June 18, 2014 published on October 8

Keywords

building land, planning permission, plot, real estate transfer tax