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By PwC Deutschland | 07 March 2025

Special requests after conclusion of agreement for purchase of property may be subject to real estate transfer tax

In two similar decisions the Supreme Tax Court held that amounts charged for subsequent special requests for a property yet to be built are subject to real estate transfer tax if there is a legal relationship to the original property purchase agreement. These costs are then assessed in a subsequent separate tax notice. However, this does not apply to house connection costs if the property buyer has already agreed to assume these costs in the (original) property purchase agreement.

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Background

In the one case (reference number:II R 15/22), the plaintiff and his wife purchased a property on which condominiums were to be built; in the other case II R 18/22, the plaintiff purchased a property on which a semi-detached house was planned. In the purchase contracts, the respective seller also undertook to build the properties that had not yet been constructed. After the start of the structural work on the respective buildings, the plaintiffs expressed their wishes for changes to the seller during the construction (as “subsequent special requests”). For such cases the purchase contracts stated that the buyers had to bear the additional costs for such special requests and that only the seller was allowed to implement them. The tax office considered the payments for the additional works to be subject to real estate transfer tax and issued corresponding tax assessments to the respective plaintiffs. Appeals to the tax court of first instance were not successful.

Decision

The Supreme Tax Court also predominantly agreed with the tax office. According to Section 9 (2) number 1 of the Real Estate Transfer Tax Act (RETT Act), services that the purchaser of the property grants the seller in addition to the consideration agreed in the purchase transaction are also part of the consideration for real estate transfer tax purposes. However, the provision only covers additional payments that are granted retrospectively; additional services that the buyer agrees to when concluding a property purchase contract are already subject to tax as part of the purchase price in accordance with Section 9 (1) no. 1 RETT Act.

Subsequently agreed special requests are only subject to tax if they are in a legal context with the property purchase contract. In the case II R 15/22 the Supreme Tax Court held that this legal connection existed because the plaintiff was obliged to bear the additional costs for subsequent special requests and, according to the contractual provisions, that only the seller was allowed to carry these works out.

The situation was somewhat different in the case II R 18/22. There, the legal connection with the property purchase agreement was established as regards the additional payment for the subsequent special requests for interior doors, for roller shutter systems, work and materials for floor coverings because the purchase agreement itself already provided for deviations from the construction work based on appropriate agreement. On the other hand, the Supreme Tax Court did not consider the “house connection costs” to be subsequently agreed special requests in the aforementioned sense. The assumption of these costs by the plaintiff was not agreed subsequently because it was already apparent from the property purchase agreement itself.

Source:

Supreme Tax Court judgments of 5 December 2024 (II R 15/22 and II R 18/22) – published on 6 March 2025.

Keywords

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