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By PwC Deutschland | 30 November 2025

Real estate transfer tax upon acquisition of real estate by a person affiliated to the seller

When purchasing a property for which the buyer and seller have agreed to split the real estate transfer tax equally the tax office requires a verifiable justification when claiming the full amount from the buyer. In its decision the Supreme Tax Court also discussed the question as to whether and when an so called “single (uniform) chargeable transfer” may be assumed.

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The concept of “uniform single chargeable transfer” or the “uniform contract”

If a buyer concludes a construction contract for a building on an undeveloped plot of land in addition to the purchase contract for the plot, real estate transfer tax (RETT) may be levied not only on the purchase price for the land but also on the construction costs. In individual cases, this can lead to a considerable additional tax burden.

If the buyer and seller have agreed to each bear half of the RETT due, and if this was known to the tax office at the time the tax assessment was issued, the buyer can only be held liable for the entire tax amount if the tax office provides a justification of its relevant discretionary considerations. Furthermore, when purchasing a plot of land that is still to be developed, the construction costs are not to be included in the assessment basis for real estate transfer tax if the land is purchased by a person who is related to the sellers' side and has a decisive influence on whether and in which way the land should be developed.

Case in dispute and decision of the Supreme Tax Court

According to the recently published decision of the Supreme Tax Court, the latter scenario also applies if the property is acquired by a company controlled by such person. The plaintiff, a limited partnership (KG) who became liable for tax after acquiring co-ownership in real estate belonging to a limited liability company (GmbH) was not solely responsible for the tax in the case in dispute as the real estate transfer tax was split equally between the buyer and the seller (GmbH).

In an amended tax assessment, the tax office had also included the construction costs when calculating the RETT due even though the property had also been purchased from a person belonging to the seller's side. The appeal before the lower tax court was not successful.

However, theSupreme Tax Court explained that in such cases (i. e. when purchasing a plot of land that is yet to be developed), the construction costs should not be included in the assessment basis if the land is purchased by a person belonging to the seller's side who has a decisive influence on whether and how the land is developed. This also applies if the land is purchased by a company controlled by this person. The Supreme Tax Court overturned the former court decision and granted the appeal of the plaintiff.

Although the lower tax court was correct in assuming that KG was no longer free to decide on the “if” and “how” of the development when the purchase agreement for the co-ownership of land was concluded, it failed to take into account that KG was also acting for the seller (GmbH) and should be treated as one of the developers of the land. This is because of the decisive influence which the majority shareholder A could exert on the development. The majority limited partner in KG (A) had also a controlling interest in GmbH and thus also took part on the seller's side.

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Supreme Tax Court, decision of 2 July 2025 (II R 19/22), published on 27 November 2025.

Keywords

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