

Immediate tax deducts for accrued property transfer taxes - Tax Law

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GRP Rainer Lawyers and Tax Advisors, Cologne, Berlin, Bonn, Düsseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London www.grprainer.com/en explain: Until recently, it was not decided from a tax law perspective whether accrued property transfer tax constitutes incidental acquisition costs or an expense that is immediately tax deductible when there is a change to the composition of partners.

In the case of a prior possession, property transfer tax can sometimes be regarded as immediately tax deductible operating costs, at least in the view of the Münster Finance Court in their ruling of 14 February 2013 (Az.: 2 K 2838/10).

The Court had to rule on a case in which the claimant had gained the entirety of the limited partnership interests in a limited partnership. Because of this, property transfer tax appeared to accrue with respect to the real estate transferred to the claimant, whose competent tax office seemingly declared it to be incidental acquisition costs. After the end of the limited partnership, the claimant was subsequently asked to pay these costs as its legal successor.

The judges regarded this as illicit, as they did not start from the presumption that the real estate had been newly acquired. The judges seemed rather to place importance on there being no new acquisition of real estate in the current case. The judges also highlighted that no purchase transaction had in fact occurred. Such a transaction is pretended merely for property transfer tax purposes.

Consequently, the claimant was entirely absolved of paying the incidental acquisition costs. In the view of the Court, the assignment of the real estate had not in fact been altered from a civil law point of view, since they formed part of the assets of the limited partnership both before and after the change to the composition of partners.

Legal advice from a lawyer versed in tax law is essential where there are insecurities. Partners who are similarly soon to be faced with a change to the composition of a partnership should therefore act cautiously.

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Anlage: Bild

