

## **Supreme Court: 2% real estate transfer tax more likely on offices converted to apartments**

On November 29, 2019 the Supreme Court rendered judgment on the application of the reduced real estate transfer tax rate of 2% to the acquisition of an apartment right in a converted building intended for residential use. The case concerned the conversion of an office building into apartments. However, the renovation had not yet been completed at the time the apartment right was acquired. In dispute was whether the designated use of the converted building at the time the apartment right was acquired had already changed to residential apartments and thus whether the reduced 2% real estate transfer tax rate applied. The Supreme Court ruled that this was the case.

This is a favorable outcome for the real estate market. The acquisition of (an apartment right in) a converted building intended for residential use is more likely to be subject to 2% rather than 6% real estate transfer tax.

### **1. Supreme Court judgment**

In the case at hand, the taxpayer had acquired an apartment right in a building that was at that time being converted into apartments. The building was originally built as offices. At the time the apartment right was acquired, the interior of the office building had already been gutted and renovation work had started. An environmental permit had also been obtained to convert the building from offices into apartments. Work to ensure the building was habitable still had to be carried out after the transfer. For example, the space transferred to the taxpayer still had to be reinforced with steel girders for the balcony, and the box room, the interior walls and window/door frames still had to be installed in the private area. In addition, electricity and central heating had to be installed, and walls had to be plastered and tiles fitted.

The taxpayer and the Deputy Minister of Finance had a difference of opinion about whether the above acquisition was subject to 2% real estate transfer tax or the standard 6% rate.

The Supreme Court ruled that for real estate transfer tax purposes there was an acquisition of an apartment that was subject to 2% real estate transfer tax. The Supreme Court noted that if the renovation work already carried out on a converted building at the time an apartment right is acquired is indisputably intended for the purposes of the completion and transfer of an apartment, then the building qualifies as such for real estate transfer tax. According to the Supreme Court, this work could still be ongoing. This would only be otherwise if no more than minor changes are required to return the building to its original purpose (office use).

According to the Supreme Court, to assess this requires that all the circumstances be taken into account, including,

- the type of work performed and what it entailed;
- the purchase and building contract;
- the subdivision of the building into apartment rights so that parts of the building are independently transferable.

If the structural condition and features of the building do not provide a definite answer, significance can also be attached to public-law regulations, such as an environmental permit.

The Supreme Court ultimately ruled that there was an apartment, because:

- the renovation was undertaken to make the building suitable for residential use;
- the transferred apartment right was intended for this purpose;
- the building required more than minor changes to return it to its original office use;
- an environmental permit had been issued.

## **2. Practical consequences**

Projects converting non-residential properties into apartments are common in practice and (apartment rights to) residential accommodation are/is regularly transferred before the renovation is completed. The question that then arises is whether at the time of acquisition there is residential accommodation for real estate transfer tax purposes, i.e. is 2% or 6% real estate transfer tax payable? The intention is to increase the 6% rate to 7% as of January 1, 2022.

The judgment by the Supreme Court will make it easier to acquire (an apartment right to) residential accommodation in a conversion project that is subject to 2% real estate transfer tax. According to this judgment, a building does not, in principle, have to be habitable at the time the (apartment right to) residential accommodation is acquired; all that is required is that the renovation work is undertaken for the purposes of the completion and transfer of a residential dwelling. The above does not apply if at the time the (apartment right to) residential accommodation was acquired only minor changes are needed to return the building to its non-residential use.

The tax advisors of Meijburg & Co's Real Estate Indirect Tax Group would be pleased to help you identify the potential tax implications of this judgment. Feel free to contact one of them or your regular advisor for more information.

Meijburg & Co  
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