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Real estate transfer tax on share transfers unconstitutional

The Constitutional Court has held the set calculation of the value of the land held by a company when assessing the transfer of the company's shares to real estate transfer tax to be unconstitutional. The government has been given until June 30, 2016 to enact a different formula, to be applied retroactively to January 1, 2009.

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Real estate transfer tax is levied on the sales price of property conveyances. However, if the transfer of ownership is indirect – the sale of shares in a property-owning company leading to a shareholding of at least 95% - the tax is based on a statutory formula of basically 12.5 times the annual rentable value of the site. However, this formula has no particular connection to the current market value of the land and was held in 2007 to be unconstitutional as a basis for inheritance tax valuations. The Inheritance Tax Act was changed accordingly, although the Real Estate Transfer Tax Act was allowed to remain as it stood. The Constitutional Court has now held this valuation formula to be unconstitutional as a basis for assessment to real estate transfer tax, too, and has given the legislative until June 30, 2016 to enact an alternative formula that closely reflects the actual market value of the land. That alternative shall be retroactively applicable from January 1, 2009, the date by which the unconstitutional formula could no longer be applied for inheritance (gift) tax assessments.

Constitutional Court resolution 1 BvL 13/11 of June 23, 2005 published on July 17

Schlagwörter

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