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By PwC Deutschland | 19. Oktober 2017

Standard actuarial interest rate for pension provisions of 6 %: unconstitutional?

The Cologne Tax Court considers the standard actuarial interest rate of 6 % applied for the calculation of pension provisions under Section 6a of the Income Tax Act in 2015 to be unconstitutional. It has suspended the appeal and referred the matter to the Constitutional Court for that Court to consider the constitutionality of the standard rate.

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No written document of the referral decision is currently available.

At present only a limited amount of information is available about the tax court's reasoning, namely:

Whilst parliament is entitled to set a standard actuarial interest rate, it must, at regular intervals, review whether the standard rate is still realistic. The actuarial interest rate has remained unchanged since 1982. The statutory interest rate is so unrealistic in the current interest rate environment that parliament must be obliged to review it. The judges took the view that the failure to review and adjust amounted to a constitutional breach. All available parameters, such as bond yields or corporate bond returns, would have shown that, over the years, there was an ongoing downward tendency and that the interest rates lay well below 6%.

The higher the standard actuarial interest rate is, the less a business is entitled to allocate to its pension provision. This results in a much higher tax burden.

Note: Affected tax assessments should be kept open until the Constitutional Court decides.

Source:

Cologne Tax Court, Decision of 12 October 2017 (Reference: 10 K 977/17) and Press report of16 October 2017

Schlagwörter

Actuarial interest rate, Interest rates, pension provision