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By PwC Deutschland | 27. März 2026

Retroactive application of Section 13b Inheritance and Gift Tax Act as of 1 July 2016 not unconstitutional

The retroactive application of Section 13b (10) Inheritance and Gift Tax Act to gifts made prior to the publication of the revised version of the law on 9 November 2016 does not raise any constitutional doubts according to a most recently published judgment of the Supreme Tax Court.

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Background

Section 13b (10) of the Inheritance and Gift Tax Act (IGTA) governs the separate determination of, e. g., financial assets and administrative assets for the purposes of inheritance tax on business assets. Its purpose is to distinguish between assets eligible for tax relief and taxable administered assets to correctly apply the tax exemptions under Sections 13a and 13c IGTA.

Retroactive effect of legislation

A distinction must be drawn between laws with a „quasi-retroactive effect“ (*unechte Rückwirkung*) and laws with a real (genuine) retroactive effect (*echte Rückwirkung*). A legal provision has a **real (genuine) retroactive effect** if it retrospectively makes changes to a circumstance that has already come to a conclusion. In other words: A change in a provision of tax law that affects past assessment periods constitutes “true” retroactivity. Those provisions are generally impermissible under constitutional except in cases where there are compelling reasons of public interest or a lack of legitimate expectations. A legal provision has a **quasi-retroactive effect** where it has a future impact on legal situations and circumstances that have not yet come to a conclusion and thereby removes any legal validity of the affected legal position. In principle, provisions that have a quasi-retroactive effect are permissible under constitutional law. However, limits to such permissibility can arise from the perspective of proportionality.

The legal dispute arose about an earlier judgment of the Federal Constitutional Court from 17 December 2014 where the Constitutional Court held that the exemption of business assets from inheritance and gift tax to be unconstitutional as it was too broad-based. The Constitutional Court has allowed the present rules to continue in force provided they are amended by 30 June 2016. Amendment may be retroactive to the date of the present judgment. However, this deadline could not be met: Although the Bundestag (Federal Parliament) passed the reform of the inheritance and gift tax on 24 June 2016, the Bundesrat (Federal Council) called on the Mediation Committee on 8 July 2016. The new regulation of 4 November 2016 was finally published in the Federal Law Gazette on 9 November 2016.

In the present case, the gift was made on 24 July 2016and thus prior to the promulgation of the new regulation. The plaintiff objected to the application of Section 13b (10) of the Inheritance Tax Act and argued that the retroactive effect of the new regulation was impermissible and that the new regulation was in violation of the prohibition of retroactivity and therefore unconstitutional.

Decision

The Supreme Tax Court saw no unequal treatment and rejected the appeal brought by the plaintiff. This is what the court had to say (in brief):

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The retroactive application of Section 13b (10) IGTA, as amended by the German Inheritance and Gift Tax Reform Act to the Case Law of the Federal Constitutional Court, to gifts made prior to the publication of the amended version constitutes a constitutionally permissible genuine retroactive application.

While the principles of legal certainty and the protection of legitimate expectations - which are part of the rule of law and fundamental rights - preclude laws with genuine (real) retroactive effects, there are exceptions to the general prohibition on retroactive laws. Such prohibition does not extend to situations where no legitimate expectation regarding the continued validity of the existing law could have been established, or where a legitimate expectation regarding a specific legal situation was not worthy of protection.

This is the case when those affected had reason to expect a change in the law. In the case at hand, the Bundestag’s resolution of 24 June 2016 eliminated any legitimate expectation that the old law would remain in effect beyond 30 June 2016. Convening the Mediation Committee did not make any difference because the provisions in Section 13b (10) IGTA were not affected by the Mediation Committee’s ultimate recommendation of 22 September 2016.

Source:

Supreme Tax Court decision (II R 7/23) of 20 November 2025, published on 26 March 2026.

Schlagwörter

retroactive, retrospective application