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By PwC Deutschland | 07. Juni 2026

Interest Rate of 5.5% as provided for in the German Valuation Act not unconstitutional

In a most recently published decision, the Supreme Tax Court held that the interest rate of 5.5% applicable under Section 14(1) Sentence 3 of the Valuation Act (regarding lifetime usufructs and annuities) does not violate the principle of equality of Article 3(1) Basic Law when used to value a monthly lifetime annuity of the beneficiary for gift tax purposes.

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Background

In 2019, the plaintiff's uncle (X) conveyed ownership of a piece of land to her. In return, the plaintiff agreed, among others, to pay X a monthly annuity of €1,000 for the remainder of his life, beginning on 1 January 2020. The annuity payments were to be capitalized at an interest rate of 0.5% per year.

The tax office assessed gift tax against the plaintiff which as such was not contested. However, the parties held differing views regarding the calculation of the present value of the annuity promised to X. The encumbrance of the usufruct reduces the beneficiary's enrichment. Therefore, the present value of the usufruct must be deducted when determining the taxable acquisition. The capital value of lifetime usufructs and benefits is to be calculated by multiplying the annual value. The multiplier is to be determined according to the Federal Statistical Office's constantly updated mortality table. In doing so, a standard interest rate of 5.5% is to be assumed. **The plaintiff** objected to this approach taken by the tax office. He argued that the notary-agreed interest rate of 0.5% should be used as basis.

Decision

In the opinion of **the Supreme Tax Court**, the interest rate of 5.5% as applied is constitutional.

There is no violation of the general principle of equality under Article 3(1) of the Basic Law. The decision of the Federal Constitutional Court of 8 July 2021 – 1 BvR 2237/14, 1 BvR 2422/17 (see our **blog post of 18 August 2021**) regarding the unconstitutionality of the statutory interest on overdue tax or tax refunds under Section 233a General Tax Code (GTC) does not apply to the valuation of lifetime benefits and annuities pursuant to Section 14(1) Sentence 3 of the Valuation Act (BewG).

The basis for the unequal treatment to be considered unconstitutional by the Federal Constitutional Court was the fifteen-month grace period provided for in Section 233a(2) first sentence GTC, which, in the Court's view, resulted in constitutionally significant unequal treatment within the group of taxpayers.

Such unequal treatment, which requires justification, does not exist in the valuation of a life annuity payable for the beneficiary's lifetime under Section 14(1) Sentence 3 of the Valuation Act. The interest rate provided there is

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intended to serve as an average derived from historical values that accounts for the usual fluctuations in interest rates. This is meant to prevent the interest rate fluctuations inherent in the capital market from having an unreasonable impact on the valuation of a capital claim covering longer periods of time.

Source:

Supreme Tax Court, judgment of 14 January 2026 (II R 35/23) published on 5 June 2026.

Schlagwörter

Interest rates, valuation