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By PwC Deutschland | 14 November 2012

Retrospective application of tax changes

The Constitutional Court has allowed a tax change retrospective to the date on which the suggestion for its enactment was announced.

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The tax statutes cannot be altered in retrospect to the disadvantage of a taxpayer. The Constitutional Court, however, distinguishes between changes affecting a tax debt that has already arisen (prohibited “truly” retroactive legislation) and those applicable to the current period of assessment where the tax debt does not arise until the end of the last day of that period (“apparently” retroactive legislation). Apparently retroactive legislation is not prohibited in all circumstances, but only where the taxpayer relied on a reasonable expectation that the law would remain unchanged when committing himself to a course of action. In July 2010, the Constitutional Court held that a change substantially reducing a tax privilege for redundancy payments could not be applied to payments made before promulgation of the new rule. The same Court has now allowed a change to the trade tax liability on income from trade investments held by natural persons to apply to dividends declared and paid from the day after the resolution of the parliamentary mediation committee suggesting it. The court explained its different date of reference in the two cases with the greater relative importance of a redundancy payment to an employee and with the greater degree of certainty of enactment attaching to a parliamentary mediation committee proposal (the committee formed to resolve disputes between the two chambers of parliament, usually at the last minute). In neither case, however, was new-rule taxation of specific transactions occurring prior to any authoritative announcement of the change permitted.

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