Downloaded from Blogs on 03.11.2026 05:06

By PwC Deutschland | 14 January 2015

Inheritance and gift tax in part unconstitutional

The Constitutional Court has held the exemption of business assets from inheritance and gift tax to be unconstitutional as it is too broad-based. However, the present rules continue in force for a temporary period.

Downloaded from Blogs on 03.11.2026 05:06

The Inheritance Tax Act seeks to protect family businesses from a potentially devastating inheritance (or gift) tax charge by exempting business assets, including shareholdings of more than 25% in German or EEA companies operating an active business. The object is to preserve jobs dependent upon the personal involvement of the business owner (or his or her family members) and, accordingly, the exemption is conditional upon the total wages bill in the five years after the transfer not falling below 80% of the total paid in the five years before it. However, businesses with no more than 20 employees do not have to meet this condition.

An heir to an estate consisting largely of cash assets claimed that the business asset exemption rules unfairly privileged business successors at his expense. His contention was that there was no constitutionally valid reason for exempting business, but not cash, assets. Accordingly, he should enjoy the same exemption.

The Constitutional Court has now held the apparent discrimination against recipients of cash assets to be constitutionally justified in principle as a legitimate means of achieving a legitimate social object. However, the exemption is too wide and can be claimed for too many businesses that do not protect their employees' jobs. In particular:

- Well over 90% of all German businesses do not employ more than 20 employees and so are free of the continuing wages bill condition. Thus the legitimate object of the tax exemption is largely lost. Demonstrating the wages actually paid should not be too difficult for most businesses, and there is no reason to free businesses with more than "only a few" employees from doing so.
- It is too easy for those wishing to claim an exemption to which they are not truly entitled to abuse the system by splitting businesses over separate companies each with its own 20 employee limit, by holding surplus cash at different levels within a vertical group structure and thus qualifying cash and investments as business assets, or (until June 20013) by forming a GmbH to manage cash assets as an "active business".

The Constitutional Court has allowed the present rules to continue in force provided they are amended by June 30, 2016. Amendment may be retroactive to the date of the present judgment.

The Constitutional Court case reference is 1 BvL 21/12 judgment of December 17, 2014.

Keywords

family business, inheritance tax