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By PwC Deutschland | 12 April 2018

German Constitutional Court ruling on property valuations for real estate tax purposes

On 10 April 2018, the German Constitutional Court pronounced as unconstitutional the provisions on the valuation of property for the purposes of real estate tax and demanded new regulations

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With its decision of 10 April 2018 the Constitutional Court took the view that the provisions in the Valuation Tax Act on the valuation of real estate in the “old” Federal States (i.e. the former West Germany) had violated the general principle of equality at least since 2002. The adherence to the primary valuation reference point of 1964 led to a grave and comprehensive inequality in the treatment of the valuation of real estate, for which there was no sufficient justification. In this decision the First Senate of the Constitutional Court held the provisions to be unconstitutional and gave the legislature until 31 December 2019 to issue a new rule. After the publication of the new law the old provisions may be applied for a further five years from the date of publication but not after 31 December 2024.

Background

The Court was ruling upon three referrals of the Supreme Tax Court and two complaints on the constitutionality of the valuation regulations with regard to real estate tax. In its ruling of 22.10.2014 (II R 16/13) the Supreme Tax Court came to the conclusion that, (at least) since the 1 January 2008 reference point, the authoritative character of these dated valuations (with the valuation reference point set over 45 years previously) no longer met the constitutional requirement that tax legislation be structured in an equitable form.

Valuations for real estate tax purposes are outdated….

The Constitutional Court noted that whilst it is correct that the legislature should have certain room for manoeuvre in deciding the valuation regulations for tax purposes, they are required to provide a valuation system which is realistic in the way it compares different types of assets to each other as well as one which calculates values in an equitable manner. The suspension of a new primary valuation assessment reference point for an extended period of time (i.e. since 1964) had led to systematic and far-reaching unequal treatment because of the unequal valuation results.

The values of real estate applied should be kept as close to reality as possible, taking into account any relevant changes. The legislature had suspended the six year valuation assessment cycle on 1 January 1964 and had not reinstated it since.

….which leads to unequal treatment in the levy of real estate tax

The decision to suspend the fixing of a new primary valuation assessment reference point was made in order to reduce administrative costs. Whilst the legislature does have certain room for manoeuvre here, it also meant the acceptance of an inappropriate valuation system. By failing to issue primary valuation assessments on a regular basis, the legislature had damaged a central element of the valuation system, which was indispensable for the purposes of issuing realistic valuations. If a statutory provision proves to be significantly inequitable, then neither substantial administrative simplifications nor significantly better cost-benefit ratios between the cost of tax collection and the tax revenue raised can justify this in the long run.

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..and is also not justified by the need to standardise

The legislature is entitled to standardise systems in order to simplify administration and thereby disregard the special aspects of each individual case, provided that the advantages arising from the standardisation remain proportionate to the resultant inequalities in the tax burden. Furthermore to justify such standardisation, the legislature must orientate itself towards realistic and typical situations and a reasonable and obvious purpose must exist. However, these reasons do not justify the value distortions arising from the current system. For these distortions are certainly not limited to atypical or special cases or to negligible corrections in marginal areas, but concern the essence of the valuation assessment. These distortions have become the rule and not the exception in many areas and they continue to increase in number and extent with the passage of time.

Existing rules continue to apply until 31 December 2018

The Court ruled that the unconstitutional provisions should continue to apply in two stages. Firstly the old rules should continue to apply for valuations that have been assessed in the past and the related real estate tax paid as well as for assessments made up to 31 December 2019. The legislature should issue a new rule by this date. Once the new rule is agreed, the old provisions should apply for a further five years but no longer than 31 December 2024.

Source

Constitutional Court decision of 10 April 2018: 1 BvL 11/14, 1 BvL 12/14, 1 BvL 1/15, 1 BvR 639/11, 1 BvR 889/12

Keywords

Principle of equality, Taxation of real estate, Valuation Tax Act