

THE FISCAL REFORM OF LAND TAX IN GERMANY

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SUMMARY

In Germany the German federal constitutional court considered, that the former way of property taxation will not be furthermore in accordance with the German constitution. Therefore the German ministry of finances and the ministries of finances of the federal states are attempting themselves to find a new way of property taxation, which is in accordance with the constitution. At this time there are still three versions of taxation in discussion. One of them bases on the value of the property, one without any influence of value and one with only particular influence of value. All three versions are currently in validation.

Der Bundesgerichtshof hat in Deutschland entschieden, dass die derzeitige Art der Erhebung von Grundsteuern nicht mehr länger als verfassungskonform angesehen werden darf. Aus diesem Grund bemühen sich seit 2010 das Bundesfinanzministerium und die Finanzministerien der Bundesländer darum, eine neue Art der Grundsteuererhebung zu finden, die verfassungskonform ist. Derzeit sind noch drei Modelle in der Diskussion, eines auf Basis von Grundstückswerten, eines, das teilweise Wert bezogen ist und eines ohne jeden Bezug zu den Grundstückswerten. Alle drei Modelle befinden sich derzeit in der Verprobung.

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1. THE HISTORY OF LAND TAX

The history of the land tax traces back to the antiquity. Already the Egyptians and Romans introduced a precursor of the land tax to finance their public tasks. Therefore, the Romans induced already 1000 BC first measurements to determine the sizes of sites. These measurements can be considered as the precursors of the later cadastre of tax.

In the Middle Ages first comparable taxes were finally introduced. These, however, have been characterized by many privileges in favour of certain classes of the population but were removed later on in the course of the French Revolution. The modern German land tax thus has been introduced by 1861 in the territory of the Prussian state. It was particularly created in order to finance the governmental reform of the army. Under Friedrich Gustav Gauß a cadastre of tax which implied the area and ownership of the land was introduced. Because of difficulties in the execution the areas of developed land were not determined any more. Instead, an revenue-based tax was planned to be imposed. This was finally realized in 1891 when as well the actual land tax was assigned to the municipalities.

2. LAND TAX REVENUE IN THE EUROPEAN UNION

When looking at the land tax revenues in some EU-countries (for example Germany, England, Denmark, Belgium, France, Sweden, Spain, Italy), Germany, with a absolute value of about 10.9 billion Euro, is to rank third when it comes to the total income but is at the tail-end when converted to per capita income (Germany: revenues = 133 Euro per inhabitant, Great Britain: revenues= 986 Euro per inhabitant).

Country	Revenues (in Mrd. Euro)	per capita
Germany	10,9*	133
Great Britain	49,7*	986
Denmark	2,6**	472
Belgium	4,0**	384
France	23,6*	367
Sweden	2,5**	277
Spain	7,5**	185
Italy	9,9**	170

* 2009

** 2008

3. CURRENT SITUATION IN GERMANY

In Germany the land tax as a real tax with about 20-25 % of the municipal tax revenue is one of the most important sources of income of the municipalities. Besides the tax revenues of the municipalities are significantly supplemented by the trade tax and a share of the income-tax. The land tax therefore plays a big role in financing municipal tasks such as road construction, fire-protection, schools, kindergartens, cultural issues etc.

In Germany, the census of the land tax is based on the value of the real estate, including

buildings, in terms of the basis of assessment of the taxable values of 1964 or 1935. These taxable values (based on the date of 01/01/1964 in the former German federal states and 01/01/1935 in the new federal states of former East Germany) have been diverging notably since the German reunification. A periodical update of the taxable values as formulated in the German tax valuation act has never occurred so far. For that reason, according to projections of the German federal financial court, today's taxable values based on the taxable values in 1964, account only about to 5% of the current market values.

In terms of jurisdiction, the German federal constitutional court considered in its decisions of 1995, 2002, 2006, 2007 and 2008 the "principle of equity", as stated in article 3 section 1 of the German constitution, as violated, since the tax burden is supposed to follow the principles of efficiency and consistence.

By its verdict of June 03 2010 the German federal finance court has considered the tax as constitutional up till January 01, 2007. Since then, the rearrangement of the land tax is indicated, but the "Obersten Bundesgerichte" (federal courts) allow for a transitional period to reorganize the issue.

4. THE LAND TAX REFORM IN GERMANY: AIMS, CRITICS, CLAIMS

The most important aim of the impending land tax reform is, to achieve justice of taxes to the greatest possible extent in terms of the verdict of the German federal constitutional court and its orientation on efficiency and consistence concerning the tax burden. The German "Städtetag" (association of city/municipalities) arrogates the compliance of revenue neutrality which means that the land tax reform should all in all not cause higher tax revenues and in no case lower tax revenues takes for the municipalities. Moreover, the German "Städtetag" arrogates a land tax implying a component of value and land use which is reflected by a zoning "Hebesatzrecht" (municipal rate law).

The German federal ministry for environment wants the land tax to control the limitation of urban sprawl and to limitate the speculation of building land. In this case, a component of land use via a zoning municipal rate law could contribute on a high level to fairness of taxes. The component of land value ought to revitalize urban waste land and mobilize empty sites of less used lands.

However, the German association of tenants ("Mieterbund") criticizes the development of the land tax in terms of the catalogue which is part of the operating expenses that can be allocated to the tenant. It therefore requests to cut the land tax out of the allocatable operation expenses and thus not charging the tenants of the buildings.

5. PROCEDURAL MODELS

On January 28, 2010 the Conference of the German secretaries of finance of the federal states of Germany imposed a task force to evaluate different models of land tax and to submit proposals on this issue.

The task force offered three models to the conference.

- a) Land tax, based on market value
- b) Land tax, based on the principle of equivalence, simplified, independent of value (WUM)
- c) Land tax, based on a combined model which is independent of a building's value (KOM)

About the models:

a) Model of marked value

- The scale is determined by the market value of the land (shared grounds and building(s)), together with the recommendation of the OECD.
- The data of the object of taxation are deduced from the comparative dates of the boards of expert valuers.
- Factors of adaptation to the comparable property are determined by the boards of expert valuers.

Model:

- Undeveloped lands: land area [m²] x standard land value [€/m²]
- Developed lands:
- Individual housing =
usable area [m²] x comparable factor for buildings + land value [€]
- Investment property = market rent per year [€] x gross margin factor
- Where appropriate: valuation by cost approach
- Agricultural and forestry areas: divided into developed and undeveloped area

Condition:

- Inclusion of the cadastre-administration and of the boards of expert valuers
- Available data
- Trained staff

Charge of land tax = market value x rate of assessment (municipal, revenue neutral)

Realization of the proceeding:

Data collection on the “Länderfinanzverwaltungen” (fiscal authorities of the German federal states) or communities

Valuation:

- Consistent with the constitution
- Laborious
- Lacking transparency because of statistical models
- Insufficient situation of data
- Positive synergetic effects with other proceedings of taxation
- Periodical revaluation with high cost

b) value-independent model

Scale: floor space of the land and building(s)

Model:

- Floor space (land) x equivalence scale (“Äquivalenzzahl”) + building(s) x equivalence

- scale (usage-dependent)
- Land = land area [m²]
- Building(s) = gross floor space of the building(s) [m²] (floor space of the building(s) x number of floors)
- Äquivalenzzahl (“equivalence scale”):
 - Land: 2 ct/m²
 - Residential building(s): 20 ct/m²
 - Remaining buildings: 40 ct/m²
- Agricultural/forestry areas: hectare – equivalence scale (usage-dependent x 0.3)

Condition:

- floor spaces taken from ALKIS (official data pool)
- municipal rate law at the communities

Proceeding:

- exclusively at the municipalities (“Konnexitätsprinzip” (principle of connexity) concerning the bearing of the costs is to be respected)

Valuation:

- Constitutionally not yet examined
- Simple, no controversies
- Unfairness concerning the illustration of equivalence scales (e.g. age of buildings, differences in locations are not to be respected)
- Transparent, because value-independent
- Potential of revaluation = minimal
- Automatable

c) Model of combination

Scale:

- Element of land with value
- Element of building not value dependent (see model b))

Model:

- Undeveloped lands: floor space [m²] x standard land value [€/m²] x 0.005
- Developed lands: property space [m²] x standard land value [€/m²] x 0.05 plus
- Residential buildings = gross floor space x 20 ct/m²
- Not residential buildings = gross floor space x 40 ct/m²
- Agricultural and forestry areas are negligible, farmsteads are to be treated like developed lands

Condition:

- Floor spaces are to be taken from ALKIS
- Standard land values are to be taken from the boards of expert valuers
- municipal rate law by the municipalities

Proceeding:

- Land value is to be determined by the “Länderfinanzverwaltungen” (fiscal authorities of the German federal states) or municipality
- The tax payer himself determines the remaining data
- Declaration of tax-data at the municipalities or “Länderfinanzverwaltungen” (fiscal authorities of the German federal states)

Valuation:

- Constitutionally not verified and arguable (e.g. difference of value concerning special localisations, age of the building(s))
- Barely controversies
- Requires intensive communication with the citizens

6. VALIDATION

Since March 2012 the validation of the three models has been carried out in the German federal states. About 10.000 cases with a large variety in usage have been examined, using all of the three models on each of them. The results have been analyzed and the staff effort has been displayed. The validation is supported by the federal office for statistics and data handling (“Destatis”) and by the taxation authority in collaboration with the municipalities, the administration of measurement and the boards of expert valuers. First results can be expected till the middle of the year 2012, the decision for one of the models may be initiated by the end of this year by the federal government.

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Biographical notes:

- 1978-1982 Study of Surveying
1982-1992 Farmland consolidation authority Munich and Landau
1992-2007 Surveyor’s office Landshut/committee of valuation experts
2007-2012 Committee of valuation experts/ Command center of rescue & fire brigade
2011-2014 Leader of AK6, DVW, “valuation of real estate”

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