

## Breaking Tax News Tackling taxes



### VfGH: Tax Value as Basis for Real Estate Transfer Tax is Unconstitutional

The transfer of Austrian real estate is subject to real estate transfer tax (RETT). The basis for calculating RETT is basically the consideration, however in cases without consideration (e.g. donation, inheritance) only the triple of the tax value ("Einheitswert"). Twice the tax value is calculated in certain cases of reorganizations under the Reorganization Tax Act (UmgrStG).

**Decision of the VfGH.** In its press release of December 18, 2012 the Constitutional Court (VfGH 27.11.2012, G 77/12-6) ruled that using the tax value as base for calculating RETT is **unconstitutional**. The court argued that the tax value did not represent the fair market value of the real estate. Objective reasons for a different tax basis, with a known consideration and cases without considerations could not be found.

**Consequences of the decision.** Sec. 6 of the RETT Act (GrEStG) will be **abrogated** and will **not be applicable any more after May 31, 2014** which leaves the legislator enough time to amend the tax basis for RETT calculation.

This Constitutional Court decision follows the prior decision of the court concerning **tax value as basis for fees regarding entries in land register** (VfGH 21.9.2011, G 34, 35/11-10). Please see [Breaking Tax News dated No. 26/2011 November 4, 2011](#) and [No. 19/2012 September 25, 2012](#).

Taking tax values as a basis for calculating real estate tax has already been reassessed by the Constitutional Court. Due to the minor consequences on taxes the constitutionality of the provision was confirmed (VfGH 6.10.2010, B 298/10-7).

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