

Breaking Tax News Tackling taxes



VfGH abrogates tax value as base for fees regarding entries in land register

Current legal position. According to the current legal position, entries of property rights in the land register are subject to a fee of 1.1 per cent. The relevant tax bases comply with those foreseen in the real estate transfer tax act (Sec. 26 para. 1 and 1a Public Fees Act, GGG). Consequently, in case of an acquisition against payment the purchase price respectively the consideration serve as **tax base**. In case of gratuitous acquisitions, the registration fee is calculated by the **tax value** ("Einheitswert") or a multiple of the tax value.

Decision of the VfGH. In its decision of September 21, 2011 the Constitutional Court (VfGH 21.2.2011, G 34, 35/11-10) ruled that using the tax value as base for registration fees regarding entries in the land register is **unconstitutional**. The court argued that the tax value does not represent the fair market value of the real estate. Therefore it is not objective to use the actual consideration as tax base for acquisitions against payment whereas the tax value, a mere "random variable", is taken as a basis for gratuitous acquisitions.

Consequences of the decision. Sec. 26 para. 1 and 1a GGG were **abrogated** and **will not be applicable any more after December 31, 2012**. Until then, the legislator may enact a new provision. Otherwise, the base of registration fees for gratuitous acquisitions from January 1, 2013 onwards will be the fair market value of the real estate (Sec. 10 BewG).

Impacts on Real Estate Tax and Real Estate Transfer Tax. 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. A reassessment of the far higher **real estate transfer tax (RETT) has not been conducted yet**. It remains to be seen whether the Constitutional Court would rule accordingly on RETT or whether the legislator would forestall a court decision by amending the law.

We will keep you up to date on the further procedure of enactment!

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