The Fiscal Reform of Land Tax in Germany: Still a Report for the Time Being? Same Old, Same Old...

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Key words: Land Taxation in Germany: an Old Problem, Several Solutions, Now a Draft Bill

Summary

Nearly about 10 years the legislation of land taxation has been discussed. Several decisions of the German Supreme Court and the Fiscal-Court have invited the legislator to change the currently unfair taxation in a constitutional way. All models so far discussed for a new taxation have been abolished during the last two years. A new model was designed by the federal states of Germany and at the end of 2016 submitted as a draft bill to the German Parliament.

Summary (German)

Nahezu 10 Jahre steht nun die Grundsteuergesetzgebung in der Diskussion. Mehrere Gerichtsurteile haben den Gesetzgeber dazu aufgefordert, die derzeit ungerechte Besteuerungsbasis verfassungskonform zu ändern. Die bisher diskutierten Modelle einer neuen Besteuerung wurden wähernd der letzten beiden Jahre verworfen. Ein neues Modell wurde von den Bundesländern Deutschlands entwickelt und Ende 2016 dem Bundestag zur Beschlussfassung vorgelegt.

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Good things come to those who wait as they say. Albeit hoping for it to be put through during the process of writing this paper so far the existing model for land tax collection has only been passed preliminarily by the federal states of Germany and been handed over as a draft bill to the German Parliament. This draft bill is designed to amend the tax valuation act that is binding on the fiscal authorities. For a better understanding of land taxation, let's take a look back:

1. HISTORY OF LAND TAX

First records of land taxation date back to ancient times when it was introduced by the Egyptians and Romans as a tool for financing public spending. As early as 1000 BC the Romans set up measurements of properties to ensure fair taxation. In the Middle Ages this eventually resulted in the first tax collections that could be compared to the ones we have today. However, those early tax collections were still rather tilted in favour of more privileged individuals and this wasn't about to change until the French Revolution. It was only in 1861 when the land tax was finally established in Prussia and to that end a first tax land register was implemented by Friedrich Gustav Gauß. From 1891 on dividend taxation was introduced for developed sites. This modified land tax was then transferred to the cities and municipalities.

2. PROBLEM ANALYSIS

With over 13 billion Euros the land tax represents one of the most important and constant sources of revenue to German municipalities. In fact, it accounts for around 20 - 25 % of the total municipal tax revenue. Yet this doesn't change the fact that the German per capita revenue generated by land tax (133 € per capita) ranks bottom compared to all other EU member states. The United Kingdom by contrast is leading the pack with over 933 € per capita. The collection of land tax in Germany is based on so called assessed values. In the federal states of former West Germany these values are based on the relative values of 1964 and in the federal states that once constituted the GDR on the relative values of 1935. The German tax valuation act may have originally allowed for a regular update of the assessed values but this has never been put into practice. The term “assessed value” itself strikingly shows that what we're dealing with here are values related to the time of assessment. According to a projection by the Federal Ministry of Finance at this point these outdated values only account for short of one twentieth of the current market value of properties. For that reason it is more than overdue to update the assessed values. Currently multiple proceedings are pending at the Federal Constitutional Court challenging the constitutionality of the assessed valuation. As a result of the ruling from June 30th, 2010 the Federal Fiscal Court may have affirmed the constitutionality of the tax collection up to January 1st, 2007 but not for the time after that: ten years and counting. For that reason the federal states had to renegotiate the right, just and constitutional way of taxation. The right approach, however, has been highly contested by the federal states for years.

3. SOLUTION APPROACHES UNTIL 2015

It was clear that for the remodelling of the land tax just taxation had to be top priority. Right at the very beginning of negotiations the Deutsche Städtetag which acts as a representation of German municipalities called for the remodelled taxation of real property neither to result in lower nor higher tax revenue for the municipalities. In addition the Städtetag claimed the right for municipalities to implement their own rate of assessment. Until 2015 predominately three models were being discussed:

a) Land tax based on market values
b) Land tax based on the principle of equivalence, simplified and value-independent
c) Land tax based on a combined model, independent of building value

a) Market value model

This model is composed of the market value of property (land value and building value) which is in line with the recommendations by the OECD.
The data of the taxed property is derived from comparative data of the boards of expert valuers. Undeveloped sites are taxed using the standard land value whereas developed sites are taxed using the asset value method or the the comparison approach. Agricultural land is divided into developed and undeveloped areas.
land tax collection = market value x rate of assessment (local, revenue-neutral)
Verdict: In conformity with the constitution but very complex and barely manageable using mass appraisal systems

b) Value-independent model

This model is composed of the site area and the gross floor space of the building. Both are then multiplied by equivalent numbers.
land tax collection = area numbers x rate of assessment (local, revenue-neutral)
Verdict: Constitutionally disputable but little effort required and manageable using automated systems

c) Combined model

The property is assessed by its value (area x standard land value) other than the building which is only assessed by the gross floor space and equivalent number, thus value-independent.
land tax collection = (land value + gross floor area) x rate of assessment (local, revenue-neutral)
Verdict: Constitutionally disputable but little effort required and manageable using mass appraisal systems

4. DRAFT BILL BY THE FEDERAL ASSEMBLY

Since the federal states could not agree on a method a new concept had to be developed over the last two years which is planned to be put in place incrementally: At first the German tax valuation act will be changed and adjusted to the redesigned land tax. After that all of the agricultural and forestry tenure and developed and undeveloped sites will be reassessed until January 1st, 2022. The selected valuation method will run largely automated. With those new calculated values the federal states will then define assessment factors. The definite amount resulting from the land tax will be transferred to the municipalities via local rates of assessment. Overall the revenue of the land tax is planned to be cost-neutral so that municipalities will neither profit nor be burdened.

Agricultural and forestry land:
In contrast to all the other developed and undeveloped sites agricultural and forestry companies will be assessed by using the income capitalization approach to valuation. For this the net profit of agricultural buildings and production facilities will be deducted from the overall net profit with an interest rate of 5.5%. The remaining net profit of the company multiplied by the factor 18.6 will then result in the capitalized income value.

Undeveloped sites:
Undeveloped sites will not be assessed by applying the market value but by applying the so called "cost value": For undeveloped sites this value will be calculated by multiplying the site area by the standard land value. The standard land values in turn will be calculated by the appropriate boards of expert valuers.

Developed sites:
As with undeveloped sites developed sites will also be assessed by applying the "cost value" instead of the market value. For developed sites, however, the "cost value" will be composed of the land value (undeveloped land) and the building value. The building value will be calculated by multiplying the gross floor space by the lump construction costs of the particular building type. The result will be the "lump building construction cost". The lump construction costs will be synchronized with the construction cost indices published by the Federal Office of Statistics. The building value on account of age of the "lump building construction cost" will be calculated linearly. The minimum value though will have to be at least 30% of the calculated "lump building construction cost".

5. CLOSER EXAMINATION

With fair and constitutionally sound taxation of real estate being a top priority it was little wonder that the term "Gemeiner Wert" (market value) was ubiquitous in all of the discussions. All other parts of tax legislation are strictly based on the market value for taxation.

Rejecting the market value undeniably amounts to a break with the system and will as it stands not even be made available to external experts for review as is guaranteed in all other parts of tax legislation. Applying the "cost value" won't result in values but merely in costs which at most could be a starting point for the derivation of values. According to the draft bill the lump construction costs are apparently the same for the whole of Germany. As a matter of fact though the construction of buildings in rural areas is significantly more cost-effective than it is in metropolitan areas or major cities. In addition to that no adjustment to market value using the factors calculated by the boards of expert valuers is planned to be implemented. This in turn will lead to increased taxation for rural areas when compared to metropolitan areas.

This is quite the opposite of the defined goal of fair taxation but there's more: The building value on account of age will be limited to at least 30% of the “cost value”. So put simply, the owner of a junk property (technically that is land value less the demolition costs) will be taxed every bit as the owner of a well- preserved building with a remaining life expectancy of at least 30% of the total useful life of the building.

For the derivation of the land values for the taxation of developed and undeveloped sites the area numbers of the cadastral office and the standard land values will be required.

Unlike area numbers, however, standard land values do not represent the value of a specific property but the value of a large quantity of comparable properties within a wider zone. But within a zone there are a significant number of properties that in some cases can considerably differ from the average standard land value. Differences in the way of use of land and land use intensity are left out of consideration just the same as varying property sizes with different building regulations as are differences in location, impairments and value-decreasing restrictions.

All of this can impossibly be corrected neither by assessment factors of the federal states nor by local rates of assessment. Adjustments like these only work on a regional and supra-regional level yet not individually. For that reason also the current draft for land tax collection remains in many parts unfinished and without a doubt considerable corrections will have to be made. It's been a long way to get there but as it stands there's still some way to go.

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BIOGRAPHICAL NOTES

1978-1982 Study of Surveying
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1992-2007 Surveyor’s office Landshut/committee of valuation experts
2007-2014 Committee of valuation experts/ Chairman of the Command center of rescue & fire brigade
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