

Official committees of valuation experts and taxation in Germany

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Valuation of real estate

SUMMARY

The German federal building code in 2009 amended the responsibilities of the Official Committees of Valuation experts in Germany have been significantly extended. On the one hand it was intended to increase the market transparency due to the subprime-crisis in order to forestall such trends. On the other hand - still unnoticed by many Official Committees of Valuation Experts - a basis for a fairer taxation was established. After the judgements of the German Federal Finance Court and the German Federal Constitutional Court in future the underlying values of taxation of real estate must be measured by market values.

As laid down in § 193, section 5 Official Committees of Valuation Experts are obliged to calculate various data for the purposes of tax valuation of real estate and to inform the tax offices.

As of 2009 Official Committees must calculate standard land values nationwide and provide them to the tax offices as well.

SUMMARY (German language)

Mit der Änderung des Baugesetzbuches im Jahr 2009 wurden die Aufgaben der Gutachterausschüsse in Deutschland erheblich erweitert. Zum einen sollte die Markttransparenz infolge der Subprime-Krise gesteigert werden, um derartigen Entwicklungen vorzubeugen. Zum anderen wurden aber- von vielen noch unbemerkte Grundlagen für eine gerechtere Besteuerung geschaffen. Nach den Urteilen des Bundesfinanzhofes und des Bundesverfassungsgerichtes müssen künftig die zugrunde liegenden Besteuerungswerte von Immobilien nach den Verkehrswerten bemessen werden. Die Gutachterausschüsse haben gemäß § 193, Absatz 5 verschiedenste Daten für Zwecke der steuerlichen Wertermittlung abzuleiten und den Finanzbehörden mitzuteilen. Darüber hinaus müssen die Gutachterausschüsse seit 2009 flächendeckend für Deutschland Bodenrichtwerte ableiten und ebenfalls an die Finanzbehörden zu übermitteln.

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1. OFFICIAL COMMITTEES OF VALUATION EXPERTS AND DATA

In Germany official committees of valuation experts have existed since 1960. They were established legislatively to ensure transparency and to prevent speculation in real estate after the lapse of price maintenance in that sector.

In 2013 alone about 1,000,000 transactions were registered nationally by the Committees. This equals a total volume of approximately 160 Billion Euro. Comprehensive data are derived from sales contracts. These data organise the real estate sector in a transparent way and also serve as important tools for appropriate valuation of real estate. The Committees calculate standard land values, including particularly property yields, conversion factors, index series and units of comparison. Those data relevant to valuation of real estate are especially required by the financial administration to guarantee fair taxation of German citizens.

As taxation by the tax offices is conducted constantly using appropriate and generalizing methods for mass appraisal of values, data provided by the committees of valuation experts have to be suited to the valuation of real estate. That's where fundamental problems emerge since official committees of valuation experts are on the one hand independent and not bound by instructions and on the other hand they consider their main duty establishing market transparency and market valuation that reflect the local market. As local real estate markets frequently differ significantly, various methods and different models are applied when calculating relevant valuation of real estate data. Difficults arise in bringing the tax offices' legislative requirements – using preferably nationwide, or at least statewide, identical models – in line with the own duty of the official committees of evaluation: establishing market transparency.

2. TAX VALUATION OF REAL ESTATE

Valuation of real estate is crucial particular in three sectors:

- Capital transfer tax and gift tax
- Real estate tax and real estate transfer tax
- Profit and surplus assessment

2.1 Capital transfer tax and gift tax

In relation to capital tax of standard land value various kinds of development status as well as their features and the plot ratio, must be considered. Built-up properties are generally calculated in a comparison-, asset value- and income approach to valuation method.

Again the relevant data of the committees of valuation experts in relation to valuation of real

estate are essential as only by these values (factors of asset value, property yields, etc.) reference to the real estate sector can be established. In particular factors of asset value, conversion factors and property yields are of fundamental importance.

In 2012 the German Federal Ministry of Transport, Construction and Housing issued a guideline (guideline for asset values) that – based on operating numbers of the BKI (Baukosteninformationszentrum Deutscher Architektenkammern -Center of building-costs of the chamber of German architects) – contains new and more current standard building costs (NHK). The method of depreciation has been adjusted to the method of taxation and also shifted to a linear depreciation of real estate. Additionally the total economic life of buildings has been reformulated. The factors of asset value up to now derived by the official committees of valuation experts have to be recalculated in all of the federal states of Germany and to be provided to the tax offices. With the tax law 2014 the tax offices will for the first time change from the present regular building costs - that are published in the enclosure to the law German tax valuation act - to the NHK 2010 of the guideline for asset values to be able to define fair market values in the process of taxation. The factors of asset value calculated by the official committees of evaluation experts will be used. The coherent calculation of factors of asset value according to the model as specified in the guideline for asset values, is proving to be difficult for the official committees of evaluation experts. Some federal states try to calculate the new factors of asset value automatically from the data in the purchase price collections. In so doing however, in calculations the total economic life of buildings is partially used differing from the guideline for asset values in order to depict the local markets and therefore to meet the legal duty of local market transparency. Equally, when calculating using automated methods, fit-out standards have to be averaged since the required huge amount of buildings of a random sample would render a detailed individual consideration impossible in terms of the amount of work. As the tax offices use a nation- or at least statewide uniform software for the calculation of values of taxation, that exactly depicts the guidelines for asset values, inconsistencies that arise because the differing data used by the official committees of evaluation experts would result in faulty taxable values which would not correspond with the actual market value. In such cases the financial administration would be forced to draw on nationwide average factors of asset value - which would also result in faulty values.

In 2014, after almost 2 years of development, the new Guideline of Comparison Method will obtain legal force. The guideline of comparison method covers the parameters and models to calculate the factors of comparison and conversion. On behalf of the German federal ministry for transport, construction and housing (BMVBS) the State Valuation Committee (AKOGA) has calculated nationwide conversion factors for those sectors that lack sufficient data for evaluation making use of the complete data available in Germany. In particular the conversion factors for plot ratio relevant for valuation of real estate but also for different soil qualities of agricultural real estate are worth mentioning. In addition, models for the calculation of comparison factors have been described. In that sector the official committees of evaluation

experts will be challenged to calculate the different coefficients and factors in line with the models, in order to ensure their use for financial administration. Sometime in 2014 or 2015 the last guideline for the different methods of calculating market value - the guideline of income approach to valuation - will obtain legal force. It should be noted that parameters that are applied in various models are also determined by the identical input variables. Especially the total economic life of buildings must by no means differ from the one that has been specified for identical building types in the guideline for asset values. Furthermore the model for calculating property yields will be of particular importance. Even minor differences notoriously cause huge deviations in the results calculated. Thus property yields to be submitted to the financial administration have to be described and calculated based on a uniform model. Here again the fall back on average rates of interest should be avoided, because of different models for calculating rates of interest, as the results of tax valuation would partially turn out faulty and therefore hardly contribute to fair taxation as originally intended.

2.2 Real estate tax and real estate transfer tax

In Germany the German federal constitutional court considered that the former way of property taxation was not 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 being discussed. 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, but only the version that bases on the value of the property seems to be in accordance with the constitution. As to land tax which represents a crucial part of the communal fiscal revenue for the most part the taxable values are taken account of. To establish fair taxation for these outdated values currently a reform of land taxation currently is being discussed. This in turn will draw on property values (derived from standard land values) and generalised building costs. Here again data (standard land values, property yields, factors of asset value, etc.) of the official committees of valuation experts are required. Transfer tax is based on the respective purchase prices which are matched by the market values of real estate.

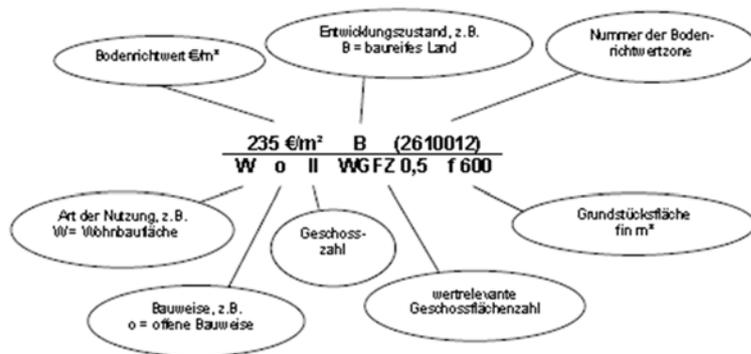
In respect of the collection of land tax another benchmark calculated by the official committees of evaluation experts is of great importance. Since 2009 the German official committees of valuation experts are obliged to calculate and publish standard land values nationwide for all buildings at an interval of one or two years and to submit them to the financial administration. If in 2009 it was only mandatory to calculate standard land values for building land the now demanded comprehensive coverage means that also for potential development land, unserviced building land, agricultural and forestry areas etc. standard land values have to be calculated.

The legal definition of standard land values is as follows:

“The standard land value is an average situation value for a majority of premises within a definite area (zone of standard land values) that according to their property features – especially according to their type and extent of structural usability – substantially match and for that basically identical common economic factors influencing values exist. It is based on the square meter of plot area of a property having the property features (standard plot of land on which analysis is based) as depicted.

Standard land values have been calculated in built-up areas using the value that would result if the areas were undeveloped.”

Also for standard land values a statutory basis has been established: the standard land value from 2011. In this the way of representing has been normalised:



For all the information the official committee of evaluation experts adds to the standard land value for closer definition it also has to calculate respective conversion factors and has to inform the tax offices as well. Again these are in particular conversion factors for the possibility of building use (plot ratio) but also data on the average size of real estate in the zone of standard land values.

In two of the three models of land tax reformation that are up for discussion, besides the property value, the standard land value is central for calculating the taxable value of the building.

Besides the aforementioned factors of asset value, property yields, conversion factors and comparison factors, the standard land values therefore provide an additional highly important parameter for fair, but also market-compliant taxation of real assets.

2.3 Profit and surplus assessment

As to income-based tax the partial value is always calculated. In fact this value is based on the market value as well but also considers the specific advantages and disadvantages of value incurred by businesses because of acquisition or disposal of real estate at business property. Thus the income-based tax proves to be the third backbone for fair taxation where the market values of real estate essentially contribute to fair taxation. Similar to the aforementioned tax collections for the calculation of market value, all of the relevant

valuation of real estate data calculated by the official committees of valuation experts for calculating the market values have to be considered.

3. CONCLUSION

Data of official committees of valuation experts therefore represent one of the most fundamental aspects of tax valuation of real estate which in turn is essential to ensure fair taxation.

As mentioned before, valuation of real estate in taxation is essentially based on uniformly designed mass appraisals of values, where it is vital that all data provided by the official committees of valuation experts are calculated using the same model as set out in the guidelines. The balancing act of the official committees of valuation experts to on one hand accomplish their legal duty and to determine and publish local market parameters for their domain (market transparency), and on the other hand to meet the obligation that exists since 2009 to provide the financial administration with data based on uniform models, is hard to accomplish. For now it's particularly up to the legislation to bindingly regulate the models for calculating the data necessary for valuation of real estate. Guidelines that are advised by the federal state governments for application and therefore tempt to use differing models will only result in tax offices operating with average values from an unreliable database and for this reason, fair taxation as originally intended will be in doubt again beforehand. Market values faultily calculated by the financial administration will again result in costly independent estimations of market values for the tax payers in order to determine the correct market value. Taxation of property values in Germany is on the right track. However: The legislations completely correctly conceived approach to specify the calculation of the data necessary for calculating the value of real estate in guidelines is currently - still - obstructed by the slow standardisation of the models bindingly for all official committees of valuation experts.

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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

2007-2014 Committee of valuation experts/ Chairman of the Command center of rescue & fire brigade

2001-2014 Chairman of the Bavarian committees of valuation experts

2008-2014 Member of the German State Valuation Committee (AKOGA)

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