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SEVEN QUESTIONS TO STEFAN BACH

»Inheritance Tax Privileges Must Be Restricted for Ownership Transfers of Large Corporations«

1. Dr. Bach, in December 2014, the German Federal Constitutional Court declared tax breaks on the transfer of business assets in Germany's inheritance law as partly unconstitutional. What exactly is being criticized? According to the most recent reform of the law, the transfer of corporate assets, regardless of value, is completely exempt from inheritance tax. In practice, this means that company shares worth millions or even billions can be inherited or received as a gift without the successor having to pay any taxes at all. The Federal Constitutional Court has ruled that the tax privileges on business assets are disproportionate, at least in the case of large companies, and a new regulation has to be drafted.
2. What is the total value of inherited business assets in recent years? The use of these inheritance tax exemptions for corporate successions has increased dramatically in recent years. In 2012 and 2013, companies worth up to 40 billion euros per year were transferred, to a large extent tax free.
3. How much revenue was the German tax authorities deprived of during this period? Since these corporate successions involve significant business assets, tax losses have totaled up to ten billion euros per year. This means that inheritance tax revenue, currently at approximately five billion euros per year, could have been two and half times higher.
4. Legislators have until mid-2016 to revise the regulation. What will the new legislation consist of? The Federal Constitutional Court primarily criticized the tax-free ownership transfers of large companies. There are no objections to the tax privileges granted to SMEs. However, this should not stop legislators from restricting tax breaks here too.
5. In the past it has been argued that inheritance tax made corporate succession more difficult and created liquidity problems. Is this no longer the case? Of course, large companies may also face liquidity problems if they have to pay out significant sums in inheritance tax since they don't usually have access to such large amounts of cash. This means that company heirs may even be forced to sell the company which is certainly something we would want to avoid. Although we want to scale back the current level of tax privileges awarded to companies, we do not want to prevent the generational succession of family-owned companies. The solution would be legislation that allows for tax payments to be deferred, over extended periods if necessary, to enable companies to pay off their tax debts incrementally from current profits.
6. Where will future tax exemptions be granted and where will they not? In the case of company ownership transfers, it would be worth considering whether small businesses might be awarded tax allowances or exemptions on taxable assets. However, this would need to be capped at one or two million euros, for example, because it still represents a considerable privilege compared to the amount of taxes that must be paid on other assets of this magnitude. Exemptions applied to the inheritance of the family home, particularly if children are living there, is something that needs to be examined. The level of exemptions currently awarded here is certainly excessive. Restrictions could also be applied to privileges for real estate leased for residential purposes or donations and contributions to non-profit foundations, for example, which are currently completely tax exempt.
1. What would be the impact of a new inheritance tax regulation on additional tax receipts? Due to pull-forward effects, revenue will probably initially decline after the reform. In the longer term, however, we can expect transfers of business assets worth interview the region of 25 to 30 billion euros per year. At current tax rates, this would generate additional revenues of up to eight billion euros a year.

Interview by Erich Wittenberg



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