Introduction to the German Tax System - A Review of Case Law and Literature Relating to Real Estate Including Real Estate Valuation [1]

The German tax system is complex and far-reaching. Germany has the highest tax burden together with social security contributions. For the pure tax burden, Finland leads with approx. 57%. The European average for income tax is about 36%. In Germany there is a top taxation of 45%, according to § 32a EStG.
The basis for taxation is always the legal transaction. Prerequisite for the evaluation of a fiscal procedure is therefore the knowledge of the civil - legal bases. These are to be found decisively in the BGB. Although this is not always strictly adhered to (cf. § 20 EStG), it is decisive in the majority of all transactions. For the assessment of the German tax law with regard to real estate, it is necessary to deal first of all with the business assets. After that, a look is to be taken at property parts of subordinate value. Significant cost factor in the business sense. Is also the land transfer tax and. The property tax connected with the property. This should also be briefly considered, although the system of land tax is currently being significantly revised in all countries. In the end, the taxation of the sale of real estate will be briefly discussed. Finally, a case on real estate valuation will be considered.

Operating assets

Necessary business assets (Sec. 4 (1), Sec. 5 of the German Income Tax Act (Einkommensteuergesetz --EStG)) include assets that are used exclusively and directly for the taxpayer's own business purposes (cf. e.g. rulings of the German Federal Fiscal Court (Bundesfinanzhof --BFH--) of December 8, 1993 XI R 18/93, BFHE 173, 137, BStBl II 1994, 296, under II.1. . and of 20 September 1995 X R 46/94, BFH/NV 1996, 393, under 1.a, in each case with further references). This can also apply to the shareholding in a GmbH, irrespective of its amount (cf. e.g. BFH rulings of 22 January 1981 IV R 107/77, BFHE 133, 168, BStBl II 1981, 564, and - with regard to the special business assets of a co-entrepreneur - of 23 January 1992 XI R 36/88, BFHE 167, 491, BStBl II 1992, 721). In principle, it is not sufficient to maintain business relationships of the kind that usually also exist with other companies (cf. BFH rulings of 31 January 1991 IV R 2/90, BFHE 164, 309, BStBl II 1991, 786; BFHE 167, 491, BStBl II 1992, 721). However, such an investment is used directly for the taxpayer's own business purposes if it is intended to decisively promote the taxpayer's business activities or if it serves to ensure the sale of the taxpayer's products (established case law, e.g. BFH rulings, BFHE 164, 49, 49, BFTA II 1992, p. 21). e.g. BFH rulings of September 9, 1986 VIII R 159/85, BFHE 148, 246, BStBl II 1987, 257; of October 3, 1989 VIII R 328/84, BFH/NV 1990, 361; in BFHE 173, 137, BStBl II 1994, 296; in BFH/NV 1996, 393; of October 15, 2003 XI R 39/01, BFH/NV 2004, 622, with further references to case law).[2]

Property tax

The property tax is an object tax and is linked to the existing real property. It is divided into three different categories:

The so-called property tax A: All farms and forestry operations fall under the property tax A.
So-called property tax B: Property tax B covers both developed and undeveloped land that is not used for agriculture and forestry. They are referred to as real property.

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[2] Cf. Federal Fiscal Court, ruling of April 20, 2005 - X R 2/03.

The so-called property tax C: With the property tax C, cities and municipalities can impose a higher burden on undeveloped land ready for construction by means of a separate municipal assessment rate. Individual state models exclude land tax C. Property tax C was newly introduced by the Act Amending the Property Tax Act to mobilize land ready for construction for development.

The prerequisite for the taxation of real estate is the valuation of precisely that land. The standard valuation of real property is based on the fundamental right to equal treatment (Article 3 (1) of the Basic Law). The main issue here is the link to the value ratios at the beginning of 1964 in the old federal states. The original aim of this general valuation was to base several types of tax, such as property tax, inheritance tax, trade capital tax and land tax, on uniform values for real property - standard values. Now that some of these taxes are no longer levied and special regulations have been inserted into the Valuation Act for others, the standard valuation as such has been retained, but is now only of central importance for the land tax. The real estate tax is calculated in a multi-stage procedure. The binding basis is the unit value, which is determined separately by the tax authorities for the respective property (§§ 19, 20 BewG). It is multiplied by a legally determined tax rate (§ 13, para. 1 GrStG). Finally, the tax assessment rate determined by the municipality is applied to the tax assessment amount calculated in this way (§ 25 par. 1 GrStG). According to § 21, Subsection 1, BewG, standard values are to be generally determined at intervals of six years in the course of a so-called main determination. After a main assessment had been carried out on the basis of the Assessment Act of 1934 initially on 1 January 1935, but further assessments were then suspended, the legislator decided after the end of the Second World War to return to the system of regular periodic revaluation and to bring the previous unit values into line with the new value conditions.

On the basis of Art. 2 (1) Sentence 1 of the Act Amending the Valuation Act of August 13, 1965 - BewÄndG 1965 - (Federal Law Gazette I p. 851), a complete revaluation of real property in the Federal Republic of Germany took place as of the main assessment date of January 1, 1964. According to the explanatory memorandum to the government bill, the main aim of the new regulations at that time was to create legal norms suitable for finding uniform standard values that approximate the market value as a basis for fair taxation (cf. BTDrucks IV/1488, p. 31). However, the extensive valuation work for the 1964 main assessment could not be completed until the beginning of the 1970s. The new standard values were applied for the first time as of January 1, 1974. For this reason, the legislator envisaged in Art. 2 of the Law on the Amendment and Supplementation of Valuation Regulations and the Income Tax Law of July 22, 1970 (BGBl I p. 1118) that the date of the next main assessment would be reserved for a special law to be passed at a later date. To date, however, this has not occurred; there is therefore currently no legal basis for a new main assessment of the standard values.[3]

Real estate transfer tax

The real estate transfer tax is a transfer tax to which the Länder are entitled within the meaning of Article 106 (2) No. 3 of the Basic Law. In Section 11 (1) of the German Real Estate Transfer Tax Act (GrEStG), the federal legislature set the tax rate for the real estate transfer tax at 3.5%. Since September 2006, the power to determine the tax rate has been transferred to the federal states (Art. 105 Para. 2a Sentence 2 GG). Apart from the Free States of Bavaria and Saxony, all the Länder have made use of this power. The tax rates in these states ranged from 4.5% to 6.5% as of January 1, 2015.

Pursuant to Section 8 (1) of the German Real Estate Transfer Tax Act (GrEStG), the real estate transfer tax is generally calculated on the basis of the value of the consideration

[3] BVerfG, judgment of April 10, 2018 - 1 BvL 11/14.

(standard assessment basis). The consideration is defined in Section 9 GrEStG. In the case of a purchase, this is the purchase price (Sec. 9 (1) No. 1 GrEStG). The substitute assessment basis pursuant to Sec. 8 (2) GrEStG is to be used in the absence of consideration (sentence 1 No. 1), in the case of conversions, contributions and other acquisitions on the basis of a partnership agreement (sentence 1 No. 2) and in the case of a transfer of at least 95% of the shares in partnerships and corporations (sentence 1 No. 3). If the substitute basis of assessment applies, the real estate transfer tax is calculated on the basis of the values within the meaning of Section 138 of the German Valuation Act (BewG), according to which the real estate values for agricultural and forestry assets and for real property are to be determined in accordance with Sections 139 to 150 of the German Valuation Act (BewG).
Originally, the standard assessment basis for land transfer tax under § 11 GrEStG 1919 was the fair market value of the real property. If the sale price was higher, this was the decisive factor pursuant to Sec. 12 GrEStG 1919. Section 10 (1) GrEStG 1940 stipulated that the tax was to be calculated on the basis of the value of the consideration. According to the explanatory memorandum to the law (cf. RStBl 1940, p. 387 <404>), the calculation of the tax on the basis of the fair market value had led to considerable additional work for the tax authorities and, in particular, to numerous appeal proceedings due to differences of opinion with the tax debtors. The substitute assessment basis pursuant to Sec. 10 (2) GrEStG 1940 was the value of the real property as defined in Sec. 12 GrEStG 1940.

Even after the reform of the real estate transfer tax in 1983, the tax is assessed on the basis of the value of the consideration pursuant to Sec. 8 (1) GrEStG 1983. This formulation of the standard assessment basis has remained unchanged to this day.

The standard valuation used for the substitute assessment basis of the real estate transfer tax until the end of 1996 was replaced by the occasion-related real estate valuation pursuant to §§ 138 et seq. BewG. These valuation regulations were created in response to the decisions of the Federal Constitutional Court on the unconstitutionality of the uniform valuation for purposes of wealth tax and inheritance tax of June 22, 1995 (BVerfGE 93, 121 and 165).
In the explanatory memorandum to the government draft of the 1997 Annual Tax Act, the view was expressed that the real property values within the meaning of § 138 (2) and (3) of the Valuation Law were outside the actual values, to which, however, they largely approximated - in contrast to the previous standard values. The consideration of the new real property values under valuation law as the basis of assessment in the case of transfers of real property on a contractual basis appears to be sufficient and justified. This applied all the more so because the purchase prices agreed in land transactions, which were normally to form the basis for calculating the land transfer tax, frequently did not correspond to the actual land values (cf. BTDrucks 13/4839, p. 74).
Sections 138 et seq. BewG have remained authoritative for land transfer tax as a substitute assessment basis to this day. The amendments made as a result of the ruling of the Federal Constitutional Court of November 7, 2006 on inheritance tax (BVerfGE 117, 1) by the Law on the Reform of Inheritance Tax and Valuation Law (Inheritance Tax Reform Law) of December 24, 2008 (BGBl I p. 3018) with effect from January 1, 2009, only apply to inheritance tax (cf. BTDrucks 16/7918, p. 39 ff.).
§ Sec. 138 BewG, to which Sec. 8 (2) sentence 1 GrEStG refers (previously to paras. 2 and 3, now to paras. 2 to 4), is, in addition to the rounding-off provision of Sec. 139 BewG, the general provision for the determination of real property values for land transfer tax.
Sections 140 to 144 BewG are special provisions for agricultural and forestry assets. According to § 144 BewG, the farm value (§ 142 BewG), the value of the farm dwellings and

the value of the residential part (§ 143 BewG) together form the agricultural and forestry real estate value.

§ Section 145 BewG regulates the valuation of undeveloped land. Pursuant to § 145 (3) sentence 1 BewG, the taxable value of undeveloped land is 80% of the standard land value (cf. § 196 Baugesetzbuch <BauGB>). Until the end of 2006, the value ratios as of January 1, 1996 remained decisive (cf. sec. 138 (1) sentence 2, (4), sec. 145 (3) sentence 2 BewG old version).

The general regulation for the valuation of developed land is § 146 BewG; the valuation of special cases is regulated in §§ 147 ff. BewG. The real estate value of developed land is determined with the help of a lump-sum capitalized earnings value method, namely with 12.5 times the actual or, alternatively, the usual annual cold rent (§ 146 para. 2, para. 3 BewG). An amount for the age-related reduction in value of the building is to be deducted (§ 146, para. 4, BewG). For one- and two-family houses, a surcharge of 20 % applies (§ 146, para. 5, BewG). At least the tax value in accordance with section 145 (3) BewG must be applied to the respective land (minimum value in accordance with section 146 (6) BewG).

The Annual Tax Act 2007 (JStG 2007) of December 13, 2006 (Federal Law Gazette I p. 2878) amended Sec. 138 (1) of the German Land Assessment Act (BewG) with effect from 2007 to the effect that the land values are now also determined taking into account the value ratios at the time of taxation (no longer at January 1, 1996). In the case of undeveloped land, the previous authoritative value ratios as of January 1, 1996 have also been discontinued; since January 1, 2007, the standard land value last determined by the appraisal committee has been used in accordance with § 145 (3) sentence 3 BewG.[4]

Income tax on the sale of real estate

Pursuant to Sec. 22 No. 2, Sec. 23 (1) Sentence 1 No. 1 EStG, income from private disposal transactions also includes income from disposal transactions for real estate for which the period between acquisition and disposal does not exceed ten years. Pursuant to Sec. 23 (3) Sentence 1 EStG, profit or loss from private disposal transactions is the difference between the disposal price on the one hand and the acquisition or production costs and the income-related expenses on the other. The acquisition or production costs are reduced by deductions for wear and tear, increased deductions and special depreciation insofar as they have been deducted in the determination of income within the meaning of Section 2 (1) sentence 1 nos. 4 to 6 EStG (Section 23 (3) sentence 4 EStG). Pursuant to § 23, Subsection 1, Sentence 1, No. 1a, EStG, in the version valid until December 31, 1998, sales transactions involving real property were taxable only if the period between acquisition and sale did not exceed two years. As a result of the StEntlG 1999/2000/2002, Sec. 23 (1) Sentence 1 No. 1 EStG has been amended to the effect that a ten-year period now applies. The new provision applies to all sales transactions where the obligatory contract was legally concluded after December 31, 1998 (Sec. 52 (39) Sentence 1 EStG as amended by StEntlG 1999/2000/2002). According to the decision of the BVerfG in BVerfGE 127, 1, BStBl II 2011, 76, the retroactive extension of the speculation period from two to ten years is unconstitutional and therefore null and void due to the infringement of the constitutional principles of the protection of legitimate expectations to the extent that increases in value are recognized for tax purposes in a capital gain which arose before the promulgation of the StEntlG 1999/2000/2002 on March 31, 1999 and which were recognized for tax purposes after the promulgation of the StEntlG 1999/2000/2002. This is unconstitutional insofar as a capital gain includes increases in value that arose before the promulgation of the StEntlG 1999/2000/2002 on March 31, 1999 and were realized tax-free under the previously applicable legal situation

[4] Cf. BVerfG, decision of June 23, 2015 - 1 BvL 13/11.

or could have been realized tax-free because the old speculation period had already expired. In this respect, a concretely solidified asset position had already arisen, which is subsequently devalued by the retroactive extension of the speculation period. According to the BVerfG decision in BVerfGE 127, 1, BStBl II 2011, 76, the taxable capital gain is not to be determined on the basis of the original acquisition or production costs, but on the basis of the value ratios at the time of the promulgation of the StEntlG 1999/2000/2002 on March 31, 1999 (see Lower Saxony Tax Court, ruling of August 21, 2013 9 K 252/11, EFG 2013, 1840, under 1.b bb). In this respect, the market price, i.e. the fair market value at this point in time, is to be taken into account (and not the amortized acquisition or production costs). Due to the difficulty and susceptibility to dispute in determining the correct value at this point in time, this can be determined by way of estimation (BVerfG decision in BVerfGE 127, 1, BStBl II 2011, 76, under C.II.2.b cc (3); cf. also FG Düsseldorf, judgment of April 25, 2013 8 K 3988/11 F, juris, under juris margin no. 24). Like the taxation of business profits, the taxation of private capital gains pursuant to Sec. 23 EStG and the related consideration of the special depreciation and amortization claimed aims at a liquidity-preserving recognition of increases in value of individual assets only at the time of the realization of the profit by sale. This is not because the increase in value or the hidden reserve only arises at this point in time, although both were already available to the taxpayer beforehand and, in the case of the special depreciation, also had a tax effect in his favor. Rather, the taxation of earlier capital gains and thus also the catching up of utilized special depreciation and write-offs is made up for at the time of the sale. In this respect, in the opinion of the BVerfG, the determination of profits in accordance with Section 23 EStG at the time of the sale follows the logic of the general determination of profits for business purposes when the individual items are sold (cf. BVerfG decision in BVerfGE 127, 1, BStBl II 2011, 76, under C.II.2.b bb). This systematic connection of income taxation of profits, which is characterized by the comparison of assets and the realization principle, is breached in the same way by the retroactive recognition of increases in value and the reversal of special depreciation claimed. Insofar as depreciation amounts are included in the determination of the capital gain which had an effect prior to the assessment period 1999 and the reversal of which would not have been taxable until the end of the year 1998, there can therefore be no question of a "catching up" of the taxation. (cf. BVerfG decision in BVerfGE 127, 1, BStBl II 2011, 76, under C.II.2.b bb). Rather, the taxation does not logically include profit components that would not have been subject to income tax until then.[5]

Real estate valuation in Germany[6]

The valuation of real property, which is relevant both for the questions referred and for the constitutional complaints, is regulated in detail in §§ 68-94 BewG. These provisions are supplemented by a detailed set of sub-legal regulations, in particular by the Guidelines for the Valuation of Real Property - BewRGr - of September 19, 1966 (BStBl I, p. 890). According to § 68, Subsection 1, BewG, (private) real property essentially includes land, buildings, heritable building rights, and residential and partial ownership under the German Condominium Act. The Valuation Act values so-called economic units, which are to be determined according to the market view (§ 2 BewG). Pursuant to § 70 (1) of the Valuation Law, each economic unit of real property constitutes a plot of land within the meaning of the Valuation Law, whereby a distinction is made between undeveloped and developed land (§§ 72 to 90 of the Valuation Law); special provisions exist for land in a state of development, hereditary building rights, residential and part-ownership and for buildings on land owned by others (§§ 91 to 94 of the Valuation Law).

[5] Cf. BFH, judgment of May 6, 2014, IX R 39/13.

[6] Summarized by Prof. Dr. Katrin Schmallowsky, NBS Hamburg.

aa) Undeveloped land within the meaning of § 72 FL is valued at the fair market value in the absence of special valuation regulations in accordance with § 17 (3) and § 9 FL. This results from the multiplication of the number of square meters with the respective standard land value determined by the administration as of January 1, 1964, which is intended to reflect the average land value of a defined area (cf. sec. 7 (2) BewRGr).

bb) The valuation of developed land relevant to the present proceedings is carried out, depending on the type of land (§ 75 Valuation Law), in accordance with § 76 Valuation Law, as a rule using the capitalized earnings value method, and in exceptional cases using the asset value method and the comparative value method.

(1) Pursuant to section 76(1) of the Valuation Law, the income capitalization method shall apply to residential rental property, commercial property, mixed-use property, single-family houses and two-family houses. The amount of the standard value is based on the land value, which also includes the land value, the building value and the value of the outdoor facilities, in accordance with § 78 sentence 1 BewG. According to § 78 sentence 2 BewG, the land value is determined by applying a multiplier contained in the appendix to the valuation law to the annual gross rent to be achieved, which is determined according to the value ratios of 1964, taking into account certain lump-sum reductions and increases (§§ 81 and 82 BewG). The purpose of this valuation method is to determine the land value and the building value in a simplified, standardized procedure in a single calculation step and thus to approximate the fair market value of the respective property.

(a) The annual gross rent shall primarily be the rent achieved in 1964, modi-fied in accordance with Sec. 79 (1) BewG. If this cannot be determined, the usual rent shall be estimated in accordance with § 79, para. 2, BewG on the basis of the annual gross rent regularly paid for rooms of the same or similar type, location and equipment. Even in the case of updates and subsequent determinations, the value ratios at the time of the main determination in 1964 shall always be decisive for the amount of the rent (§ 79, para. 5, BewG). In order to determine the usual rent, the tax authorities mainly use rent tables which regularly show rents per square meter as of January 1, 1964, broken down according to year of construction, rental price conditions, equipment groups and municipality sizes. With regard to the equipment groups, the Mietspiegel usually subdivide into simple, medium, good and very good equipment and determine for this framework rates for the rental values to be applied.

(b) Pursuant to § 80 BewG, a multiplier is to be applied to the gross annual rent determined in this way in order to determine the capitalized net income of the property. In detail, the multipliers distinguish between residential rental properties, mixed-use properties, commercial properties, single-family houses and two-family houses. Further classification is made according to year of construction; old buildings are buildings up to 31.3.1924, new buildings are buildings up to 20.6.1948 and post-war buildings are all buildings after 20.6.1948. No further age differentiation is provided for in the multipliers. Furthermore, the multipliers are divided into three groups according to the construction of the buildings (solid buildings, timber-framed buildings with brick lining, timber-framed buildings) as well as into eight municipality size classes, starting with municipalities with up to 2,000 inhabitants and ending with municipalities with more than 500,000 inhabitants. These differentiations, like all the factors used to determine the individual multipliers, are based on the building and value conditions of 1964. Thus, in accordance with § 80 (1) sentence 4 BewG, in the case of re-municipalizations after the main assessment date, the population figures which were decisive for the municipalities or parts of municipalities concerned at the main assessment date, i.e. 1964, are still to be taken as a basis.

(2) Pursuant to Section 76 (2) and (3) of the Land Value Act (BewG), the real value method shall essentially be applied to those properties for which it is not possible to determine an accurate rental value, but also to specially designed or equipped single-family and two-family houses. In determining the value of the land, the initial value pursuant to § 83 sentence 1 BewG must first be taken as a basis. This consists of the land value, the building value and the value of the outdoor facilities, each of which must be determined separately. Subsequently, the initial value is to be modified by applying a value figure and is thereby to be adjusted to the fair market value (§ 83 sentence 2, § 90 BewG).
Pursuant to § 84 BewG, the land is to be assessed at the value that would result if the land were undeveloped. In determining the value of the buildings and the value of the outdoor facilities, the average construction costs according to the construction price ratios of the year 1958 are decisive, converted again to the main assessment date of January 1, 1964 (§§ 85 and 89 BewG). The amount of the actual production costs in the individual case is not relevant. The guidelines for the valuation of real property set average empirical values for the room meter prices to be used as a basis for determining the relevant production costs. The building standard production value determined in this way is to be reduced in accordance with § 85 sentence 3 BewG on account of the age of the building at the time of the main assessment in accordance with the provisions of § 86 BewG. However, only the age of the building on January 1, 1964 is decisive for this; no reduction in value due to age can be deducted for buildings built in more recent years. Otherwise, value-reducing or value-increasing circumstances can be taken into account in accordance with the provisions of Sections 87 and 88 of the Valuation Law.
The income capitalization method, which is to be used as the standard valuation method, is based, in accordance with § 78 sentence 2 BewG, on the multiplication of the rental income relevant for the property to be valued (hereinafter 1) by a specific multiplier (hereinafter 2). According to their legal form, both factors are linked to the value ratios at the time of the main assessment. Measured against the respective market values of the properties, this inevitably and with increasing duration typically leads to ever greater distortions of the standard values.

(1) Pursuant to Sec. 79 (1) of the German Land Appraisal Act (BewG), the relevant annual gross rent shall be based primarily on the actual rent paid for the property on the basis of contractual agreements at the principal assessment date. This provision is directly applicable only to real estate which was already rented out at the time of the main assessment on January 1, 1964. Otherwise, the annual gross rent is determined in accordance with § 79 (2) of the German Valuation Law (BewG) on the basis of the usual rent. The further back the main assessment date is, the fewer buildings will be found for which rents paid in 1964 can be determined. The rent actually agreed within the meaning of Section 79 (1) BewG is of correspondingly less importance. Instead, the rent customary in 1964 pursuant to § 79 (2) BewG is increasingly to be taken into account (Gürsching/Stenger, Bewertungsrecht, status October 2017, § 79 BewG marginal no. 2.1; Kreutziger/Schaffner/Stephany, Bewertungsgesetz, 3rd edition 2013, § 79 BewG marginal no. 23). This applies a fortiori to updates and subsequent determinations on current reference dates, for which the value conditions at the time of the main determination are also decisive (§§ 27, 79 (5) BewG). According to the findings of the Federal Fiscal Court, in 2011 more than half of the total number of dwellings available in Germany were built after the main assessment date of January 1, 1964 (see submissions II R 16/13, juris, marginal no. 70 in the proceedings 1 BvL 11/14 and II R 37/14, juris, marginal no. 68 in the proceedings 1 BvL 12/14). For buildings that were erected or actually changed after January 1, 1964, based on their actual condition at the time of the subsequent determination or update, the value ratios at the main determination date of January 1, 1964 are also decisive for the amount of the rent in

accordance with Sec. 79 (5) BewG. Thus, also in these cases, the rent customary at that time is to be regularly used (Gürsching/Stenger, loc.cit., § 79 BewG marginal no. 51; Rössler/Troll, Bewertungsgesetz, status Ok-tober 2017, § 79 BewG marginal no. 101). This is in line with the regulatory concept of the uniform valuation to base the valuation on a constant rent and price level within a current main assessment period - admittedly limited to six years according to the original idea - in order to ensure uniform taxation (according to the explanatory memorandum of the government draft to the Valuation Amendment Act of 1965 on § 27 BewG, BTDrucks IV/1488, p. 39).

Pursuant to § 79, Subsection 2, Sentence 2, BewG, the usual rent is to be estimated on the basis of the annual gross rent. This is regularly done on the basis of rent rolls drawn up by the financial administration as of January 1, 1964, which are recognized in the established case law of the Federal Fiscal Court as a suitable basis for estimating the usual rent for 1964 pursuant to § 79, Subsection 2, Sentence 2, Subsection 5, BewG (BFHE 188, 425 <428> with further references).

Because the main assessment period still runs since 1964, the rents of the rent tables as of January 1, 1964, continue to be authoritative, even if the value ratios have changed in the meantime. Thus, the rent rolls no longer provide a sufficiently objective basis for estimation. The further back the main assessment date lies and the more new buildings are erected in a different construction and with different equipment than in 1964, the more the application of the rent indexes for 1964 leads not only to outdated but also to rent estimates that are not appropriate to the relationship. For example, changes to or in the building can influence the market value (see (a) below), but external, structural circumstances (see (b) below) or tenancy ties (see (c) below) can also determine the value, in each case without being adequately taken into account in the unit value. Depending on the type and extent in each individual case, such changes in value do not merely cause a uniform and general undervaluation of properties. Rather, they lead to increasingly serious distortions in value and thus to unequal treatment within the same type of property.

(a) The assessment of the structural furnishings of properties according to the applicable rent scales (regularly simple/medium/good/very good) has a considerable influence on the amount of the standard value. As the Federal Fiscal Court has determined on the basis of rent scales of the cities of Munich and Berlin and the broad rental price ranges therein, the furnishings of an apartment or a building are of decisive importance for the income value (cf. the submission decisions II R 16/13, juris, marginal no. 69 and II R 37/14, juris, marginal no. 67).

For system-related reasons, the individual equipment groups reflect the situation on January 1, 1964 and are obviously no longer in any way comparable with today's standards. Factors that formed value at that time, such as a central hot water supply or insulating glazing, which justified classification in higher equipment groups, are now considered average standard equipment. From today's point of view, this will regularly lead to a higher classification of dwellings that are only equipped to an average standard when measured against the value standards of 1964. Thus, there is no room for differentiation in the value-forming factors that are relevant today, with the result that properties with highly unequal amenities are valued the same, although according to the logic of the rent index a gradation should actually be made, as is also expressed in the rent price ranges of today's rent indexes. However, the link to the earlier value ratios also has the effect - as the referring court rightly points out - that today's relevant properties and equipment features cannot be reflected in the standard value, or can only be reflected inadequately, because in many cases they are not taken into account, or are not taken into account with an

appropriate weighting, in the rent rolls based on 1964. Thus, a subsequent adjustment to modern equipment standards in the case of older properties that were already well equipped according to 1964 standards improves the actual condition and leads to an increase in the market value. However, due to the system, a higher standard value cannot be determined as a rule because the same equipment class was already achieved with the earlier equipment (see the submission decisions II R 16/13, juris, marginal no. 69 and II R 37/14, juris, marginal no. 67).

According to the current legal situation, the valuation of renovated buildings or even new buildings must therefore also be based on the mirror rents from 1964. This, in turn, also means that a new building with upscale furnishings and fittings is included in the calculation of the annual gross rent in the same way as, for example, an apartment that can already be classified as very good in 1964 according to the furnishings and fittings that were relevant at that time, even though the rent that can be achieved for the new building will be far higher than that for the old building. This lack of recording of today's income factors leads all the more to a widening and deepening of the value distortions the further the main assessment period progresses.

(b) Changes in, for example, the location or the structural connection of the properties can also lead to considerable changes in their market value. This is another reason for value distortions, since this type of change in value is also not taken into account in the current unit valuation. This is because, according to the case law of the Federal Fiscal Court, the general political, economic and infrastructural conditions that were reflected in the general market and price level at the time of the main assessment are also included in the value conditions relating to January 1, 1964 (cf. the submission decisions II R 16/13, juris, marginal nos. 27 et seq., 72 and II R 37/14, juris, marginal nos. 25 et seq., 70, each with further references). Similarly, changed conditions on the housing market - the Federal Fiscal Court cites as examples the increased demand for smaller apartments and for refurbished apartments in old buildings in central inner-city locations - have an impact on the market value of the corresponding properties, but not on the standard value. The same also applies, for example, to a "growing into" an attractive building location after 1964, which may be of considerable importance for the market value of a property, but remains without influence on the assessed value (for the distinction from value-relevant rental changes, see Rössler/Troll, loc.cit., § 79 marginal no. 104 et seq. with further references).
(c) Finally, according to the opinion of the specialized courts, which is generally binding in the proceedings for the review of standards, the value ratios also include rent and occupancy commitments based on public subsidies for housing construction (preliminary ruling of December 17, 2014 - II R 14/13 -, juris, marginal no. 15 in the proceedings 1 BvL 1/15 with reference to the BFH rulings of July 26, 1989 - II R 65/86 -, BFHE 158, 87, and of May 5, 1993 - II R 71/90 -). The income value-reducing effects of rent control based on subsidy measures introduced after the main assessment date must accordingly remain unconsidered under the system of unit valuation. This leads to distortions in the amount of the unit values because the same unit value is to be determined for publicly subsidized and freely financed but otherwise equivalent residential units although they have a completely different market value due to the earmarking.

(2) The multipliers to be applied to the annual gross rent in the capitalized earnings method pursuant to § 80 of the Valuation Law and which can be seen from Annexes 3-8 of the Valuation Law were also determined on the basis of the conditions prevailing in 1964 (cf. Rössler/Troll, loc.cit., § 78, margin no. 9 et seq. and BFHE 114, 108). The conception of the multipliers is based on net income, which has been determined by taking into account flat-rate management costs and land yield shares, broken down by types of

property, year of construction groups and municipality size classes. Accordingly, the multipliers can be applied directly to the gross income and, at the same time, are intended to capture the age-related differences between land and buildings. However, the application of the multipliers leads to far-reaching, structurally unavoidable distortions in value with increasing duration of the main assessment period due to the reference back to the main assessment date (cf. expert opinion of the Scientific Advisory Council at the Federal Ministry of Finance from 1989, Die Einheitsbewertung in der Bundesrepublik Deutschland - Mängel und Alternativen -, p. 9). The outdated multipliers, for example, neither adequately reflect progressive urban development (a) nor the age of buildings of different construction years (b).

(a) Thus, the provision of § 80 (1) sentence 4 BewG, according to which relocations after the date of the main assessment are in principle disregarded, leads to evident value distortions in view of the graduation of the multipliers according to the size of the municipality. Accordingly, even in the case of relocations and incorporations after the main determination date, the original population figures as of January 1, 1964 continue to be decisive (Gürsching/Stenger, loc. cit., § 80 marginal no. 8). Moreover, the size of municipalities has changed considerably in recent decades, for example as a result of migration from rural areas, the emergence of new conurbations or the addition of industrial estates. For example, different multipliers are applied to two comparable parcels of land that are now located in the same value and belong to the same larger city, if one of them was still part of an independent small municipality in 1964 that has since been incorporated. Such changes - which are not taken into account - affect both the conditions within existing municipal districts, but also extend beyond the municipal boundaries and thus influence comparability with other municipalities.

(b) The system of uniform valuation also leads to substantially diverging valuations from the point of view of the age of a building in the capitalized earnings value method. This is because the aging of a building, which reduces the income value, is essentially not taken into account. All buildings to be valued under the capitalized earnings method that were built ready for occupancy after June 20, 1948 are to be assigned to the most recent construction year group as post-war buildings. This means, for example, that a building constructed in 2017 is to be valued at the same multiplier as a building constructed in 1950 under otherwise comparable circumstances.

bb) Similarly, in the valuation in kind procedure in accordance with the provisions of §§ 83-90 BewG, as a result of the overlong main assessment period, a uniform value level within the real property cannot be approximately achieved. This can be seen, in particular, in the determination of the value of buildings in accordance with § 85, sentences 1 and 2, BewG (1) and the lack of consideration of a reduction in value due to age after the main assessment date in accordance with § 85, sentence 3, in conjunction with § 86, BewG (2). § 86 BewG (2).

(1) The determination of the construction costs as at 1 January 1964, which form the basis of the value of the building (§ 85 FL) and the value of the external facilities (§ 89 FL), shall, in accordance with § 85, sentences 1 and 2 FL, initially be based on the average construction costs in accordance with the construction price ratios of 1958; the value thus obtained shall then be converted in accordance with the construction price ratios at the time of the main assessment. This is done with the aid of the Guidelines for the Valuation of Real Estate. Appendices 14-16 (to Section 38 of the Guidelines) show the relevant building class divisions and prices per room meter of the year 1958, converted to January 1, 1964. In view of the manifold changes and further developments in the building industry, to which the

referring court refers, the standards of the year 1958 for the valuation of newer and partly also renovated buildings can neither form a sufficient basis for valuation nor represent the typical case in a manner satisfying the constitutional requirements.

The same applies to the characteristics for assessing the structural equipment of a building (simple to elaborate) on the basis of Annex 13 of the Guidelines for the Valuation of Real Estate; according to No. 12 of Annex 13, for example, a thermostatically controlled hot-water heating system with liquid fuels or gas is already considered to be very good equipment, while an air-conditioning system fulfills the criteria of elaborate equipment. Annex 16 contains a more detailed calculation sheet for determining the rent for single-family houses and two-family houses. Comparable to the rent indexes in the capitalized earnings method, the tables represent outdated furnishing standards and cannot do justice to today's conditions (cf. the submission decisions, ju-ris, marginal no. 68 in II R 16/13 and juris, marginal no. 66 in II R 37/14). This is also supported by the differentiated description of the individual features, which are neither able to reflect the further developments in construction and equipment features that have occurred over decades nor the change in the appreciation.

(2) The value distortions resulting from the provision of § 86 BewG on depreciation due to age are evident. This is because the age discount to be applied is determined by the age of the building at the time of the main assessment. The consideration of age reductions occurring later is excluded both for buildings existing on January 1, 1964 and for buildings constructed thereafter.

3) The distortions of value in the standard valuation of real property resulting from the over-extension of the main assessment period lead to corresponding unequal treatment in the levying of the real property tax; the compatibility of this unequal treatment with Article 3 (1) of the Basic Law is based on strict equality requirements (a). There is no sufficient justification for these unequal treatments either in general from the goal of avoiding too much administrative effort (b) or for reasons of typification and generalization (c). The argument of the insignificance of the real estate tax, which has been put forward in many cases, is just as unfounded (d) as the reference to a possible compensation through subsequent assessments and value updates (e).

a) The distortions of value in the standard valuation occur nationwide, in large numbers and also, in their respective individual extent, in many cases considerably. This follows inevitably from the fact that a periodic revaluation has not taken place for decades. The considerable valuation distortions do not only occur in individual special cases and not only in specific groups of cases, but tend to cover the whole area and to an increasing extent, the more the actual conditions and the related valuations of land and buildings develop in a way that can no longer be reflected by the valuation parameters related to the main valuation date of 1964, as a result of the extension of the main valuation period, which abandoned the original valuation concept. These unequal treatments are inherent in the normative structure of the uniform valuation in its current handling and are of such magnitude that they require a strict examination of their compatibility with Article 3 (1) of the Basic Law.

b) The waiver of new main determinations serves to avoid a special administrative burden (aa). To this end, the legislature has considerable leeway (bb). However, this does not cover the acceptance of a dysfunctional assessment system (cc).

aa) By abolishing the next assessment fixed at the beginning of the calendar year 1971 by the Act Amending and Supplementing Valuation Law Provisions and the Income Tax Act 1970 and by failing to fix a new main assessment date since then, the legislator has indeed set the cause for the subsequently increasing value distortions in the unitary assessment. However, in doing so, it did not reveal any differentiation purpose that could be examined for its viability to justify the unequal treatment. However, the legislator's decision to postpone the new main assessment, originally scheduled six years after the main assessment of January 1, 1964, at first for a short period of time and then to permanently suspend it until today, was and is obviously motivated by the desire to avoid the renewed enormous administrative effort that had already become apparent during the main assessment for 1964 carried out in the 1960s and 1970s. This has been confirmed by the Federal Government and the Länder in the present proceedings (cf. draft bill to amend the Valuation Act of September 2016, BRDrucks 515/16, p. 36; cf. also BVerfGE 74, 182 <190>; also Dickertmann/Pfeiffer, Einheitsbewertung - die verdrängte Reform -, StuW 1987, p. 259 <265>; Scientific Advisory Council at the Federal Ministry of Finance from 2010, Reform der Grundsteuer, p. 6; similarly already Scientific Advisory Council at the Federal Ministry of Finance, Die Einheitsbewertung in der Bundesrepublik Deutschland - Mängel und Alternativen -, op. cit, 1989, S. 23). However, the objective of simplifying administration, which is legitimate in principle and, in the case of the uniform valuation, obviously also weighty, does not prove to be sufficiently viable to justify postponing a new main assessment for decades.

bb) The legislature has a wide margin of discretion when drafting regulations for determining the basis of assessment of a tax. In doing so, it may also be guided to a considerable extent by considerations of practicability with the aim of simplifying the assessment and collection of taxes. This applies in particular to mass taxation procedures. When designing the system for determining the basis of assessment, the legislator may give priority to practicality considerations over aspects of accuracy of determination and, in so doing, also accept considerable uncertainties in valuation and determination in order to keep the assessment and levying of the tax manageable (in general, on the spread of the determination of the value of real property, cf. BVerfGE 93, 121 <136>; 93, 165 <172 f.>; 117, 1 <33>; 139, 285 <310 marginal no. 73> respectively with further references as well as above IV 1 c).

cc) Measured against this, the objective of administrative simplification does not justify the distortions in value caused by the continued suspension of the date of the main assessment, even if one estimates the relief effect thus achieved to be particularly high. The waiver of regular main assessments at recurring intervals of six years is not the result of a deliberate simplification decision by the legislator, which corrects elements of the unitary assessment in the sense of streamlining and, in doing so, also accepts a loss of detail. With this waiver, the legislator breaks out a central element of the system of uniform valuation, which is indispensable for obtaining valuations that are close to reality in their relationship (IV 2 above). Simplification considerations cannot justify this.

If a statutory regulation proves to be fundamentally contrary to equality to a substantial extent, neither a maximum of administrative simplification nor the far better cost/benefit ratio between collection effort and tax revenue resulting from such simplification can justify this in the long run (on the particularly unfavorable cost/benefit ratio of the unit valuation, cf. Opinion of the Scientific Advisory Council to the Federal Ministry of Finance from 2010, Reformation of the Real Estate Tax, p. 6, as well as e.g. Bavarian Supreme Audit Office, Annual Report 2010, p. 102 et seq, 105). The realization that an unequal treatment

structurally laid down in a tax law cannot be eliminated with a justifiable administrative effort must not lead to the toleration of the unconstitutional state of affairs.

It is irrelevant whether the legislator consciously accepted this deficit by suspending the main assessment or whether it merely failed to recognize it. What is decisive is the objective dysfunctionality of the remaining regulation. Accordingly, it is also irrelevant whether the failure to determine a new main assessment date is to be understood merely as a permanent wait within the system of periodic main assessments or as an implied expression of a final waiver of further main assessments altogether. Even if one were to follow the second interpretation, represented here by the Federal Government, the reinterpretation of the system of periodically updated unitary valuation into one entirely without periodic main determinations could not support the unequal treatment identified. This is because the legislator would have created an im-perfect valuation system from the outset, which - as shown (above 2 a, b) - in the long run is less and less able to achieve valuation results that are in line with reality in relation to the remaining link to 1964.

c) Reasons of standardization and lump-sum payments also do not justify the suspension of the main assessment and its consequences.

However, the tax legislature may, for reasons of administrative simplification, use standardization and thereby neglect the particularities of the individual case if the advantages resulting therefrom are in the right proportion to the inequality of the tax burden necessarily associated with the standardization, if it is oriented to the typical case in a manner appropriate to reality and if there is a reasonable, plausible reason (see BVerfGE 137, 350 <375 et seq. Rn. 66>; 139, 285 <313 Rn. 77>; BVerfG, Order of the Second Senate of March 29, 2017 - 2 BvL 6/11 -, juris, Rn. 106 et seq.; established case law).

The current system of unit valuation does not meet these requirements. By foregoing further main determinations, it is not realistically oriented to the typical case. The value distortions are by no means limited to atypical special cases or negligible corrections in marginal areas. Rather, they affect the core of the valuation, have become the norm in many areas and increase in number and extent as the main valuation period progresses (see 2 above).

d) Neither a general undervaluation of the real property in relation to the market value nor the allegedly absolutely low burdening effect of the real property tax can justify the value distortions.

aa) It is undisputed that the valuation rules of the standard valuation of developed real estate lead to a general undervaluation of the real property in relation to the market value, both according to the capitalized earnings value method and - although regularly to a lesser extent - according to the asset value method (BVerfGE 93, 121 <146>; Jakob, Möglichkeiten einer Vereinfachung der Bewertung des Grundbesitzes sowie Unter-suchung einer befristeten Anwendung von differenzierten Zuschlägen zu den Ein-heitswerten, BMF-Schriftenreihe Heft 48 (1992), p. 62 ff. 62 et seq.; Opinion of the Scientific Advisory Council to the Federal Ministry of Finance, Reform der Grundsteuer, 2010, p. 1). However, it is not important here in what order of magnitude and in which areas these undervaluations occur, because they have no direct causal connection with the value distortions between the properties to be taxed resulting from the suspension of the periodic reassessments. The unequal treatment requiring justification under these circumstances does not relate to the general undervaluation of real property, which in any case could not lead to any

disadvantages in the real property tax burden. Rather, the valuation of the real property shifts this internally because the changes in the value conditions since the main assessment in 1964, which lead to different deviations from the target value, cannot be reflected in the existing valuation system.

bb) In the present proceedings, the Federal Government has relied on the fact that the distortions of value could be expected of the persons concerned in view of the fact that the property tax has only a minor impact on the burden. In this regard, it referred to the earlier case law of the Federal Fiscal Court, which, in its rulings of June 30, 2010 for valuation periods up to 2007, used, among other things, the low tax burden effect of the real estate tax as justification for the fact that the standard valuation could still be constitutionally valid despite value distortions (see, for example, BFH - II R 60/08 -, juris, marginal no. 40).

It may be that in the case of an absolutely low tax burden, breaks and unequal treatment in the marginal areas in the determination of the assessment basis with corresponding consequences for the assessment of the tax are more justifiable and acceptable than in the case of taxes with a high burdening effect. However, the principle of equal tax treatment under Article 3 (1) of the Basic Law must also be observed in the case of low tax burdens. It is not necessary to make a final decision here on the extent to which such arguments of insignificance are at all constitutionally viable. In any case, considerations of insignificance cannot justify substantial and far-reaching unequal treatment, as in the case of the distortions of value in the core area of a tax levy identified here. For the constitutional assessment of violations of equality in the uniform valuation, it is therefore in principle irrelevant that it has in the meantime lost much of its general significance due to its far-reaching limitation to the law of land tax.

Moreover, the real estate tax is not a tax of negligible size. The total revenue from the property tax, which has risen continuously in recent years from €12 billion to almost €14 billion, and its considerable importance for the municipalities speak against this. Above all, the property tax is by no means insignificant for taxpayers in view of the current level of municipal assessment rates, especially since it is incurred for an unlimited period of time. Moreover, it can be passed on to tenants, at least according to the current legal situation, so that the costs are largely incurred by persons who are not themselves liable for the property tax.

e) Contrary to the view of the Federal Government and some representatives of the Länder, the value distortions cannot be constitutionally compensated by subsequent assessments or value updates (aa) or by adjustments to the amount of the real property tax via the assessment rates (bb).

aa) By means of subsequent assessments (§ 23 BewG) or revaluations (§ 22 BewG), the tax offices can take into account changes in the actual circumstances relevant to the valuation that have occurred after the main assessment date. In this way, they can counteract the danger of an enforcement deficit (see 4 below). However, the problem of value distortions resulting from the reference of the value ratios to the long ago main assessment date of the beginning of 1964 cannot be countered by value updates and subsequent assessments, because the value ratios of 1964 are also to be taken as a basis for this (§ 27 BewG).

bb) In the existing system of property tax, the legislature can influence its overall level by setting the tax assessment amount (§§ 13 et seq. GrStG); the municipalities have a corresponding influence through the right to set the assessment rate for property tax (Art. 106 (6) sentence 2 GG; §§ 25 et seq. GrStG). Both instruments help to determine the overall

level of the property tax. However, with their linear and flat-rate approach, they are not suitable from the outset to compensate for the diverging value distortions, which are not graduated according to specific types of real property, or to compensate for them otherwise.[7]

The comparative value method differs from this. § Section 194 BewG contains two methods in a graduated relationship. Pursuant to § 194 (1) BewG, the value of the hereditary building plot is to be determined primarily by the comparative value method pursuant to § 183 BewG, either on the basis of comparative purchase prices pursuant to § 183 (1) BewG, which are communicated by the appraisal committees within the meaning of §§ 192 ff. BauGB, or with the aid of comparative factors derived from purchase prices, which are determined and communicated by the expert committees. If neither comparative purchase prices nor comparative factors are available, the value is composed of the land value portion pursuant to § 194 para. 3 BewG and, if applicable, a building value portion pursuant to § 194 para. 4 BewG in accordance with the fi-nancial mathematical method of § 194 para. 2 BewG so designated by the tax authorities (cf. R B 194 para. 2 sentence 1 of the Inheritance Tax Guidelines of 01.09.2013 - ErbStR 2013--). Pursuant to § 14 (1) ImmoWertV, market adjustment factors serve to record the general value conditions on the real estate market. Pursuant to Sec. 14 (2) No. 2 ImmoWertV, this also includes factors for the adjustment of values of hereditary building rights or hereditary building plots calculated on the basis of financial mathematics. Although this provision does not itself open up a valuation method based on financial mathematics, it presupposes it. Otherwise, it would be empty for lack of a connecting factor for the market adjustment factor. The substantive valuation principles of Section 8 ImmoWertV also show that the financial mathematical method is possible in principle as a combination of different types of valuation. According to § 8 para. 1 sentence 1 ImmoWertV, the comparative value method (§ 15 ImmoWertV) including the land value method (§ 16 ImmoWertV), the capitalized earnings method (§§ 17 to 20 ImmoWertV), the asset value method (§§ 21 to 23 ImmoWertV) or several of these methods are to be used to determine the market value. The choice of method shall be made in accordance with § 8 (1) sentence 2 ImmoWertV. Pursuant to Sec. 8 (1) sentence 3 ImmoWertV, the market value is to be determined from the result of the procedure or procedures used, taking into account its or their informative value. This provision clarifies in two respects that, when determining the value of a certain property, not necessarily one of the three valuation methods has to be chosen, but that two or three of these methods can also be used, on the one hand with the words "or several of these methods", on the other hand with the phrase "the method or methods used". The use of more than one procedure is conceivable on the one hand as an average, on the other hand as a synthesis of components of different valuation methods, as long as this complies with the requirements of § 8 para. 1 sentence 2 ImmoWertV. All value components are to be determined in accordance with the ImmoWertV. The standardizations and lump sum calculations of the BewG do not apply. The property interest rates are to be determined in accordance with Section 14 (3) ImmoWertV (cf. in this respect BFH judgment of 18.09.2019 - II R 13/16, BFHE 266, 51, BFH/NV 2020, 118, para. 18). The valuation must be aimed at the fair market value. Pursuant to Sec. 9 (2) Sentence 1 of the German Valuation Act (BewG), this is determined by the price that would be obtained in the ordinary course of business in accordance with the nature of the asset in the event of a sale. Ordinary business dealings within the meaning of § 9, Subsection 2, Sentence 1, FL, are dealings which take place in accordance with the market economy principles of supply and demand and in which the contracting parties are able to act without coercion and not out of necessity, but voluntarily in safeguarding their own interests (cf. BFH judgments of 15.03.2017 - II R 10/15,

[7] BVerfG, judgment of April 10, 2018 - 1 BvL 11/14.

BFH/NV 2017, 1153, para 22, and of 15.03.2018 - VI R 8/16, BFHE 261, 122, BStBl II 2018, 550, para 34, in each case with further references). Thus, the ordinary course of business is basically the entire market. While Sec. 194 BewG establishes a statutory priority of the comparative value method, this is not the case for the valuation pursuant to Sec. 8 ImmoWertV.[8]

In addition, **the residual method** should be mentioned. The residual method is a valuation method commonly used in the real estate industry in the course of investment decisions, which primarily serves to determine the land value. According to the OVG Lüneburg (ruling of January 25, 2001 1 L 5010/96, Baurecht 2011, 1798), the residual value method determines the land value from the difference between the income value and the actual building value (residual); the residual value method is intended to represent a combination of the income value and asset value methods of the WertV (OVG Lüneburg, ruling of January 25, 2001 1 L 5010/96, Baurecht 2011, 1798). According to this, the residual value method is intended to serve the investor in examining a purchase price for a plot of land that is still to be developed that is just about sustainable in the individual case. For this purpose, the capitalized earnings value or project capitalized earnings value (without taking into account the land value) is first determined after completion of the development, i.e. taking into account the property interest rate and the multiplier within the meaning of Section 16 (3) WertV. Subsequently, the project expenses (demolition costs, production costs, costs of the first letting, risk lump sum for unforeseen expenses as well as the entrepreneurial profit) are deducted from this. The acquisition costs (land transfer tax, notary fees, brokerage fees) are then deducted from the resulting interim value and the remaining sum is discounted by a present value factor, taking into account the expected construction period and development duration. The resulting residual amount is the residual for the (undeveloped) property (cf. Vogel, Grundstücks-markt und Grundstückswert - GuG - 1994, 347). The residual value method is justified, among other things, by the fact that standard land values do not sufficiently take into account urban development trends because standard land values are not future-oriented but are derived from sales in the past (Vogel, GuG 1994, 347, 348). In the opinion of the Senate, the residual value method thus anticipates the hoped-for future (positive) development of the property. The value resulting from the residual value method thus does not reflect the current market value, but anticipates the future development of value based on the project planning of the property.[9]

The Ellwood method is another valuation method. On the basis of debt financing and equity risk is used to arrive at the market value. The development of the value/return ratio over a ten-year period shows possible misestimates of the market value. Nothing more. There is no speculation future, no forecast of value change is made.

Ellwood developed an analysis tool, which links necessary value changes with yield considerations.

The interpretation is left to the expert, whether he is a valuer or an investor.[10] However, the procedure can also be reversed in order to derive the market value directly from the assumptions on debt and equity and the forecast development of value. ¨ At this point, it is again clearly emphasized that such a method of determining the market value is problematic and not without danger. Nevertheless, the direct determination of the market value by means of Ellwood's method is practiced.

[8] Cf. BFH, judgment of October 14, 2020, II R 7/18.

[9] Cf. FG Berlin-Brandenburg, ruling dated February 26, 2013 - 6 K 6228/08.

[10] Cf. Simon, Plausibilisierung von Verkehrswerten (Marktwerten), Hannover 2006.

The discounted cash flow method is another way to determine the value of real estate. In principle, in the hypothetical arm's length comparison, a valuation method (capital value-oriented method, e.g. according to IDW S 1 or IDW S 5) is to be applied, which determines the respective cash value on the basis of the respective expected "net profit after taxes" (Section 1 (4) FVerlV, marginal no. 31). The basis for this is the assumption that the value of a transferred function is derived from its ability to generate future profit contributions in the form of revenue surpluses.

Based on this, the area of agreement is to be determined (Sec. 7 FVerlV) and the relevant value in the area of agreement is to be determined. The use of a discounted cash flow method based on business management principles to determine the relevant present value is permissible, as both the income capitalization approach and the discounted cash flow method are fundamentally based on the same conceptual foundation and lead to the same valuation results if the same valuation assumptions or simplifications are made (para. 101 IDW S 1).

Whether a valuation method is to be applied that corresponds to IDW S 1 or IDW S 5 (points 22 to 47) or another method recognized by business management and is to be recognized for tax purposes for the case in question depends on the character and significance of the transfer of function. If the transfer of function mainly affects intangible assets, the application of a valuation method corresponding to IDW S 5 is obvious. If, in the individual case, the relocation of a function is a relocation of a company or a part of a company that has its own viability, a valuation method that corresponds to IDW S 1 is appropriate. From a business point of view, the value of a function is determined by the expected future financial benefit that can or can no longer be derived from the function. The essential starting point for the valuation is the identification of the specific income and expenses attributable to the function to be valued (in accordance with paragraph 24 IDW S 5). The documents on the basis of which the company as a whole has decided on the transfer of functions (Section 3 (2) sentence 2 FVerlV) form the decisive starting point for this.

From these documents it is to be derived which assumptions have been made, in particular which income and expenses are expected to be lost by the transferring company due to the transfer of functions on the one hand and which income and expenses are expected to be incurred by the acquiring company due to the transfer of functions on the other hand. As a rule, it is in line with business principles to prepare detailed forecasts for the first few years and to extrapolate these values on a flat-rate basis for the subsequent years.[11]

Monte Carlo simulation

Annex: The fundamental value of a property is the amount of money that can be considered as a certain equivalent to the future uncertain cash flows of the asset. The market price, on the other hand, is the result of a sales transaction and, in the case of real estate, always the result of a negotiation process. Prices can be observed, values cannot: values can only be approximated with the help of models that capture the information status, action alternatives and preferences of the valuator (buyer or seller). In practice, the term "real estate valuation" is used to try to estimate possible purchase or sales prices. Also the valuation methods, as they are codified in §194 BewG (valuation law), can be understood (approximately) as "price estimation methods". The so-called "market value", as defined in the Building Code (§194 BauGB), is ultimately also an estimated sales price. Only in a perfect market do prices and values coincide. However, because real estate markets have numerous imperfections-the traded goods are inhomogeneous, information is asymmetrically distributed, and there are significant transaction costs-prices and values in real

[11] Cf. BMF, letter dated 13.10.2010 - IV B 5 - S 1341/08/10003.

estate markets can diverge (see, among others, Just and Uttich 2015 for the specifics of real estate markets). This can be seen in unexpected, sharp price corrections such as those in the U.S.A., Spain or Ireland after 2007. The adjustment processes caused considerable losses for real estate investors as well as credit institutions if they aligned their lending limits with realized prices rather than fundamental values. A bubble is said to exist when prices are very far from the fundamentally justified "values". But if one does not know the values, it is difficult to recognize a bubble ex ante in the dictum of Milton Friedman (1953). The better one succeeds in mapping fundamental values, the more likely one is to reduce violent corrections of mispricing. This paper deals with the determination of such a risk-adjusted value by means of simulation models and how these values can help real estate market players to identify mispricing and thus to design investment strategies. Since the pioneering work of Hertz (1968), Wofford (1978) and later Hughes (1995), simulation models have also been used in real estate valuation to reflect uncertainty about the development of value determinants. Pfnür (2002) shows that this uncertainty is very high, especially in view of insufficient market transparency for real estate transactions. There is still a lack of methodological standards on how to take such risk into account for the real estate industry. In the field of business valuation, the valuation standard of the German auditors (IDW S 1) is basically more advanced, although in practice, risk is still often measured using the capital asset pricing model (CAPM). In IDW S 10 on real estate valuation, the move away from the CAPM has largely been completed (cf. Pohl 2013 as well as Creutzmann 2013). The valuation methods of IDW S 10 are aimed more at estimating transaction prices and less at mapping an intrinsic value that appropriately discounts all future risks in the future (IDW 2013). For such risk estimates, the Monte Carlo simulation has established itself as a method in recent decades. In contrast to previous literature, however, the Mon-te-Carlo simulation is not used in this paper to illustrate uncertainty (or bandwidths) of the estimated price. Here, the results of the Mon-te Carlo simulation serve as input to a risk-value model, i.e., the simulation and the valuation theory are linked, and this allows for a full uncertainty transformation. This can be interpreted as a safe value for an uncertain future cash flow of a property.[12]

An estimate of land values is also used to arrive at a tractable value determination.
Both kernel regression and adaptive weight smoothing with AWS estimate land values by averaging over the prices of undeveloped land, thus working exclusively with the most direct and "clean" market information about the value of land in a given location. However, such infor-mation is generally not available for the center of a city, where virtually all traded land is developed. Transaction data on developed land contain information on the bundle of land and buildings. Therefore, to estimate land values in such inner-city locations, the observed prices of houses or condominiums must be split into their land and building components. Again, this can be accomplished through regression analysis.[13]

Digitization

Germany has an internationally competitive tax law and a well-functioning tax enforcement system. However, tax law and tax enforcement are undergoing changes in the social and economic environment.

[12] Cf. Werner Gleißner, Tobias Just, Endre Kamarás, Der Immobilienbewerter - Zeitschrift für die Bewertungspraxis, Archive 2018, Issue 3, WertermittlungSimulationsbasierter Ertragswert als Ergänzung zum Verkehrswert.

[13] Cf. Jens Kolbe - Rainer Schulz - Martin Wersing - Axel Werwatz, Bodenwertermittlung mit statistischen Methoden, https://doi.org/10.1365/s41056-019-00038-9.

The advancing mechanization and digitalization of all areas of life, increasing global economic integration and the demographic trend toward an aging society and a declining population also pose major challenges for tax law and tax enforcement.
Measures for technical, organizational and legal modernization are therefore necessary in order to maintain a taxation system that continues to be up-to-date and efficient in fulfilling its tasks. The law on modernizing the taxation process ensures the uniformity of taxation and the rule-of-law requirements of tax enforcement under the given conditions. It reduces bureaucratic burdens and takes appropriate account of the interests of all parties involved.
The envisaged measures relate to three areas of action:

1. increasing cost-effectiveness and efficiency through greater use of information technology and more targeted use of resources,
2. simplifying and making easier to use the taxation procedure
through greater service orientation and more user-friendly processes,
3. redesigning the legal framework, in particular the German Fiscal Code (AO), to meet the challenges and to provide solutions.[14]

Sustainability

Fiscal policy is fundamental to the sustainability goals because it sets the economic framework for investment, employment, and innovation while providing the government with resources to finance its public spending. Better policy alignment and credibility measures would contribute significantly to increasing private investment and closing the global investment gap by incentivizing capital flows from wealthy countries to developing countries in need of investment.
Businesses provide or deliver valuable goods and services and thus significantly stimulate investment, productivity, broad-based economic growth, and job creation. They are also one of the most important sources of expertise, creativity, and innovation due to their diversity and scale, ranging from small and medium-sized enterprises (SMEs) to multinationals. These, in turn, help to address many of the challenges of sustainable development.
A high share of the shadow economy leads to low tax bases, which further reduces potential tax revenues and increases distortions. However, the tax base should be as broad as possible in order to avoid distorting tax rates as much as possible.
The EESC stresses that successful domestic resource mobilization requires that 1. tax rulings are open and transparent, 2. systems are in place to ensure accountability of civil society organizations and parliamentarians, 3. governments are transparent about taxes and spending, and 4. taxes are visible.
The private sector plays an important role in promoting gender equality. Wage policies and on-the-job training and development are important in promoting gender equality, career advancement and professional development. Women's participation in the global economy holds tremendous opportunities and should serve as a stimulus for broad-based economic growth, innovation and productivity.
Policies for taxing the digitized economy should be designed to promote, rather than hinder, economic growth and cross-border trade and investment. Given the increasing importance of digitized businesses, the development of a new methodology for tax nexus and profit allocation is needed. This should be used to determine taxation rights between the countries where digital companies are based and the countries where they are sold.

In the EESC's view, any new rules for the intergovernmental allocation of taxing rights must be fair both between small and large consumer countries and between developed

[14] Cf. German Bundestag, Resolution Recommendation and Report of the Finance Committee (7th Committee) of May 11, 2016, Printed Paper 18/8434 and Printed Paper 19/29109 with further references.

and developing countries. Contributions in the form of innovation, entrepreneurship, etc. must be properly rewarded. Corporate tax revenues may seem small in relation to total tax revenues, but they play an important role in mobilizing resources and financing necessary infrastructure, research and development, education and health care, etc.
The EESC notes that EU Member States are among the leaders in implementing the Sustainable Development Goals. However, it stresses that the EU and its Member States need to take action and ensure sustainable financial and fiscal systems in order to achieve the Sustainable Development Goals. The involvement of civil society organizations at all levels is crucial to achieving the Sustainable Development Goals, as civil society is the main stakeholder in the implementation of the 2030 Agenda and much of the investment required will come from the private sector.
The EESC welcomes the Platform for Tax Cooperation jointly established by the United Nations, the Organization for Economic Cooperation and Development (OECD), the International Monetary Fund (IMF) and the World Bank Group (WBG), as it will help to facilitate interactions in standardization, capacity building and technical assistance in the field of international taxation. The EESC believes that the European Union should also participate in the platform.

The EESC believes that the work of the United Nations Committee of Experts on International Cooperation in Tax Matters on taxation/private investment and sustainability goals is of the utmost importance in advancing global dialogue. They also make an important contribution to peer learning and the exchange of best practices. The EESC stresses that eu-European civil society must play an active role in this important international debate. (...) Some climate change sustainability goals could be better achieved with a coherent framework and implementation plan for taxing the consumption of natural resources. Greening taxes could serve both climate change mitigation (Goal 13) (5) and the protection of terrestrial and marine ecosystems (Goals 14 and 15 (6)). By changing the pricing structure for commodities, tax policy can help promote affordable and clean energy (Goal 7) (7) and create incentives for responsible use of shared natural resources (Goal 12) (8).

In economic terms, environmental taxes serve to compensate for negative externalities, i.e., in cases where polluters can pass on the costs arising from environmental damage to society, such as greenhouse gas emissions. In designing this type of tax, the involvement of civil society and businesses would be of great advantage. This is because it would ensure that policies to strengthen the regulatory framework align incentives for the private sector with public objectives (9).

An example of combining different policy measures in the fiscal area would be to phase out subsidies for inefficient fossil fuels (target 12.c) (10). Governments could thus achieve significant budgetary savings, while such fuels would become less attractive to businesses and consumers. If these savings were then used to increase the share of renewable energy sources in global energy supply (target 7.2) (11), universal access to clean energy can be promoted (target 7.1) (12). Additional policies to incentivize investment in clean energy infrastructure (Target 7.b) (13) would also facilitate the decoupling of economic growth and environmental degradation (Target 8.4) (14).

Aligning business incentives with public goals is consistent with the Addis Ababa Action Agenda (15), which encourages companies to consider the environmental, social, and governance implications of their actions in their core business operations. Businesses provide valuable goods and services and thus play a key role in stimulating investment, productivity, broad-based economic growth and job creation. Because of their diversity and scale, from small and medium-sized enterprises (SMEs) to large multinationals, they are also a

major source of expertise, creativity and innovation, which in turn help to address many of the challenges of sustainable development. To achieve the sustainability goals to combat climate change, the private sector should adhere to a code of conduct to significantly increase green investments and reduce or eliminate investments with negative environmental impacts.

Given the interconnectedness of sustainability goals, civil society participation is crucial to ensure that the three dimensions of sustainable development (economic, social and environmental) are taken into account in the design and implementation of policies. Environment-related taxes are usually regressive in nature, meaning that they primarily burden low-income households. As a result, it is also important to continue to ensure the social sustainability of policies.

The EESC opposes arbitrary taxation, which would have a negative and disproportionate impact on the poor and the less well-off in society and would also thwart various sustainability goals. For example, significantly increasing the taxation of goods and services for which there are no viable alternatives would simply be a burden without achieving the goals.

The EESC highlights the role of civil society organizations in monitoring the implementation of the sustainability goals, ensuring that measures are socially acceptable and highlighting the need to revise the indicators (16).

In the EESC's view, appropriate conditions must be created to ensure that both private and public funds are channelled into sustainable long-term investments, which are necessary for a sustainable economy.[15]

[15] Cf. Opinion of the European Economic and Social Committee on "Taxation, private investment and sustainability goals - working with the United Nations Committee of Experts on International Cooperation in Tax Matters" (own-initiative opinion) EESC 2019/01193.