



## **PROPOSED AMENDMENTS TO THE REAL ESTATE TRANSFER TAX ACT**

The most recent draft of the Austrian Budget Accompanying Act of 2014 (*Budgetbegleitgesetz, BudBG 2014*) provides for, inter alia, a calculation basis for the Real Estate Transfer Tax (RETT) in compliance with the Austrian federal constitution as from 1 June 2014. The main issues of the intended new regulation are presented in the following:

### **Background**

Austrian RETT is basically based on the consideration paid to acquire real property. In case of gratuitous transfers, the tax basis currently amounts to the value of the real property. The value of a real property is therefore essential especially in connection with donations, inheritances or in the case of sale of shares in real property companies. The value of a real property in the meaning of the provisions of the Austrian Real Estate Transfer Tax Act (*Gründerwerbsteuergesetz, GrEStG*) is yet not the market value, but the - one fold or threefold - so-called standard tax value (*Einheitswert*) which is usually much lower than the fair market value (usually between 0.1% and 10% of the fair market value).

The Austrian Constitutional Supreme Court (*Verfassungsgerichtshof, VfGH*) set aside the hitherto applicable regulation regarding the valuation of real property with effect from 1 June 2014 due to unconstitutionality. If the old regulation is not replaced by a new one before this date, the fair market value will

be considered for the calculation of the value of a real property thereafter.

### **Aim of the new regulation**

According to the draft of the Austrian Budget Accompanying Act of 2014, the value of a real property shall be taken as basis for the calculation of the RETT in the future if real property is transferred between families or relatives. Hence, the issue whether such acquisition is effected against payment or gratuitously would no longer be relevant; therefore both gratuitous as well as acquisitions against payment shall be "granted tax benefits" if effected between family members or relatives.

The Real Estate Transfer Tax Act shall therefore be adapted to a large extent to the already existing provisions regarding registration fees laid down in the Act on Court Fees (*Gerichtsgebührengesetz, GGG*). This will have an administrative relieve effect, because the calculation basis for the RETT and the registration fee will be "synchronised".

### **Threefold standard value**

In the future the RETT shall be calculated from the threefold standard tax value, but not more than of 30% of the fair market value, namely in the following cases:

- a) at acquisition of real property to a spouse or registered partner during continued marriage (civil partnership) or in connection with the dissolution of a marriage (partnership), to a partner

provided both individuals share or had shared the same main residence, to relatives or individuals related by marriage in direct line, to step children, to adoptive children or foster children or their children, spouses or registered partner, or to brothers or sisters, nieces or nephews of the transferor;

- b) in case of acquisition by accrued inheritance, by testamentary gift or as part of the right to compulsory portion, if such consideration is agreed in lieu of performance before the administration of the estate is finished, by the persons listed in item a);
- c) if all shares in a company are consolidated or all shares in a company are transferred; the same applies to corresponding legal transactions governed by the law of obligations.

If real property used for agriculture and forestry is acquired in a form described in points a) to c), real property acquisition tax is calculated from the one fold standard tax value only.

### **Substantial raise for other gratuitous acquisitions**

For all acquisitions not mentioned above the fair market value shall be serve as calculation basis for the RETT, unless the calculation basis is not regulated by another law (e.g. the Corporate Restructuring Tax Act, *Umgründungssteuergesetz*). Such acquisitions, according to the present draft bill, for example gratuitous transfers to non-profit corporations, transfer of real property to foundations, but also donations to individuals not mentioned in above item a).

### **Acquisition against payment by individuals not eligible to benefits**

If real property is transferred between persons who are not eligible to benefits as described in item a) above RETT will be calculated, as it is already done, one the basis of the consideration. If the consideration amounts to less than the fair market value, the latter shall apply. The fair market value is to be argued before the tax authorities and evidence regarding the calculation of it are to be presented, e.g. appraisal (*Schätzunggutachten*).

### **Taking effect**

The new regulation shall already fully apply as from 1 June 2014. If the transaction is subject to a condition precedent and if such condition only occurs after 31 May 2014, tax liability only incurs on the point in time such condition is met.

### **Considerations regarding constitutional law**

Serious concerns with respect to Austrian federal constitutional law are raised against the intended new regulation. Since the corresponding regulation laid down in the Act on Court Fees relating to the registration fee for entries in the land register are currently subject of constitutional proceedings before the Austrian Constitutional Supreme Court, the court will possibly yet in 2014 rule on whether both regulations are consistent with the Austrian federal constitution.

### **Other intended amendments provided for in the draft bill**

Besides the intended amendment to the Real Estate Transfer Tax Act the draft bill especially provides for amendments to the Value Added Tax Act (*Umsatzsteuergesetz, UStG*), the Federal Fiscal Code (*Bundesabgabenordnung, BAO*) and to the Legal Assistance Enforcement Act (*Amtshilfe-Durchführungsgesetz*).

### **FOR FURTHER INFORMATION PLEASE CONTACT:**



**Franz Althuber**  
Partner  
T +43 1 53178 1124  
[franz.althuber@dlapiper.com](mailto:franz.althuber@dlapiper.com)



**Daniel Varro**  
Senior Associate  
T +43 1 53178 1033  
[daniel.varro@dlapiper.com](mailto:daniel.varro@dlapiper.com)

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