



## GERMANY – July 2022

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### GERMAN CENSUSES, REAL ESTATE PROPERTY TAX DATA COLLECTION

#### Census concerning real property and buildings

This deals with real property and buildings (“Befragung zur Gebäude- und Wohnungszählung”). It applies to ALL owners of such property. Persons who own real estate in Germany are obligated to comply. The census questionnaire can be completed online at [https://www.zensus2022.de/DE/Home/\\_inhalt.html](https://www.zensus2022.de/DE/Home/_inhalt.html). After entering the access code contained in the letter requesting your participation, you can switch the language on the website from German to English. In the alternative, you can talk to the interviewer directly. Failure to comply can ultimately trigger a fine.

#### Data collection for property tax reassessment

You are also required to comply with a data collection effort related to property tax. The German States have been required to implement a property tax reform (“Feststellung des Grundsteuerwerts”). Therefore, they enacted new real estate property tax laws. While property tax continues to be assessed on an annual basis at the level of the German municipality in which the real estate is located, the calculation will now change.

Independent of the above-stated census concerning real property and buildings and in addition to it, ALL real estate owners have to submit a data collection return during the period July<sup>1</sup> through October 31.

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In order to allow for a proper assessment real estate owners have to submit electronically a tax return schedule with information on the location of the real estate, its size, the standard land value, the type of building, living space size, and the year of construction... The new schedule from will be released on July 1, and needs to be summited no later than October 31.

Compliance requires registration on the ELSTER.de online tax platform. That triggers a tax number. Moreover, the schedule is only available in German and needs to be completed when logged on. Consequently, you may want to consider engaging a German tax consultant to carry out this task on your behalf as these professionals have special access rights to Elster.de.

Based on that information, the finance office will calculate the real estate value and property tax assessment basis to be used by the municipalities in setting the new annual property tax.

The new rules will enter into effect as from Jan. 1, 2025, onwards and be based on the valuation date for the property set at Jan. Additional information can be obtained from the following websites (all in German): <https://www.elster.de/eportal/login/softpse> and <https://grundsteuer.de/steuererklaerung/formulare>

## **GERMANY OVERHAULS PROPERTY TAX SYSTEM: WHAT HOMEOWNERS NEED TO KNOW**

Anyone who owns property in Germany pays an annual property tax (Grundsteuer) on its assessed value. However, with the system criticised in recent years as hopelessly outdated, the property tax is undergoing a major reform from 2022. Here's what homeowners and renters need to know.

What is the property tax (Grundsteuer) in Germany?

If you own one of the 36 million properties in Germany, you have to pay taxes on it each year to your local tax office. This property tax (Grundsteuer) is calculated according to the value of the property and the buildings or business operations that stand on it. This value is multiplied by the local tax rate to provide the total tax amount.

If you buy a house in Germany, you as the homeowner are liable to pay property taxes on it. If you rent as a tenant, your landlord may pass the property tax onto you via your utility bills. The tax is an important source of income for municipalities in Germany, bringing in around 15 billion euros each year.

Why is the property tax being reformed?

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The reform has been a long time coming: the property values currently used to calculate the tax date from 1964 in the western federal states and as far back as 1935 in the eastern states. Back then, property tax was based on so-called unit values that only took into account the size of the property, and not its location.

Understandably, there has been plenty of criticism that this data no longer has any real bearing on the current state of the real estate market, since prices have developed very differently in different areas over the past few decades. Despite this, property taxes have so far remained the same.

Then, in 2018, the Federal Constitutional Court ruled that the current system used for assessing property tax rates treats similar properties differently and therefore violates the principle of equal treatment enshrined in the Basic Law. The court, therefore, called for the tax to be reformed.

In a major overhaul, property values are now set to be recalculated between 2022 and 2025, before the new tax rate comes into effect on January 1, 2025.

How will the new real estate tax be calculated?

The new property tax will take multiple different factors into account to determine a property's value, including the value of the land and the (theoretical) net cold rent, as well as the area of the property, the type of property, and the age of any buildings on the property. The figure will then be multiplied first by a tax index and then by the local tax rate to calculate the overall property tax.

It's not clear yet how high your property tax will be after January 1, 2025. This will only be decided when property valuations have been completed and the assessment rates calculated. The Federal Finance Ministry doesn't expect this to happen before autumn 2024.

What do homeowners need to do?

To make these calculations, the tax offices need quite a bit of up-to-date information about properties all across Germany. Between July 1 and October 31, 2022, all property owners in Germany are therefore required to submit a tax return for their properties and land in Germany. Most federal states have already informed property owners in writing about this requirement.

In general, owners need to provide information about their property's:

- Location
- Property area in square metres
- Land value

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- Building type
- Living / useable area
- Year of construction

In the states of Baden-Württemberg, Bavaria, Hamburg, Hesse and Lower Saxony, the exact information requirements are slightly different, but the same general principles apply.

You will be able to find information about your property in the extract from the land register, the tax notice you usually receive from the municipality, the construction documents, or even the purchase contract concluded when you bought the property. The average land value will be made available via the BORIS portal.

From July 1, 2022, it will be possible to submit this information to the tax office via ELSTER. You need to do this by October 31, 2022 to avoid facing a fine.

Are renters affected by the changes?

Tenants will not have to do anything themselves, but from 2025 onwards they may see their ancillary costs increase, as landlords are permitted by law to pass the new property tax onto their tenants.

## **A GENERAL INTRODUCTION TO REAL ESTATE INVESTMENT TAXATION IN GERMANY**

### **i Investment vehicles in real estate**

Investments in German real estate can be made either directly or indirectly. As regards indirect investments, various investment vehicles may be used. The most common German vehicles are:

- German limited partnerships (GmbH & Co KGs);
- German limited companies (GmbHs); and
- regulated German investment funds.

Real estate investment trusts (REITs) do exist but are not very common in Germany. Instead of a German vehicle, foreign investors frequently use foreign limited companies (e.g., Luxembourg S.à r.l.s), the rental income of which is usually not subject to German trade tax.

### **ii Property taxes**

Real estate investments in Germany may be subject to various taxes.

#### **Corporate income tax and trade tax**

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Income from real estate (in particular, rental income and capital gains) is subject to income tax (at a rate of up to 45 per cent, where applicable to individuals) or to corporate income tax (at a rate of 15 per cent, where applicable to corporations); in both cases, a solidarity surcharge is imposed (5.5 per cent on the income tax liability). In addition, trade tax at a rate set by the relevant municipality (the mean average in 2021 was 15.23 per cent)<sup>2</sup> becomes due if the relevant real estate income is attributable to the German permanent establishment (PE) of a (domestic or foreign) business enterprise, unless the extended trade tax reduction applies. Trade tax is not deductible for corporate income tax purposes but may be credited (up to a certain limit) against individual income tax.

### Value added tax

Although the selling as well as the letting of real estate is, as a matter of principle, exempt from value added tax (VAT), the VAT exemption may be waived, subject to certain requirements (and is typically waived if the requirements are fulfilled), to facilitate the deduction of input VAT. As a general rule, the VAT rate applicable to the selling and letting of real estate is 19 per cent. Under certain circumstances, the sale of real estate may qualify as a transfer of a going concern, in which case it is outside the scope of VAT.

### Real estate transfer tax

Whereas the direct acquisition of real estate is generally subject to real estate transfer tax (RETT), the acquisition or transfer of shares or interests in a real estate holding corporation or partnership triggers RETT, in particular if (1) 90 per cent (or more) of the shares or partnership interests are, within a time period of 10 years, directly or indirectly transferred to new shareholders or partners; or (2) a transaction results in 90 per cent (or more) of the shares or partnership interests being (directly or indirectly) held by the same acquirer (or a group formed by the acquirer and affiliated entities). The law provides for certain (rather narrow) exemptions, in particular for certain transactions between related parties and for publicly traded corporations.

The RETT rates are set by the state in which the relevant piece of real estate is located and vary between 3.5 per cent (in the states of Bavaria and Saxony) and 6.5 per cent (in the states of Brandenburg, North Rhine-Westphalia, Saarland, Schleswig-Holstein and Thuringia).

### Regulated investment funds

The acquisition or transfer of shares in a real estate holding German-regulated investment fund is typically not subject to RETT. The reason for this is that the real estate assets are, from a legal perspective, typically held not by the fund investors but rather in trust by the investment management company (i.e., the transfer or acquisition of 90 per cent or more of the shares in the investment management company triggers RETT instead).

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## RETT reforms

The German legislator has, with effect from 1 July 2021, adopted a reform of the RETT Act, which led to the above-mentioned 90 per cent threshold (previously 95 per cent) and the above-mentioned 10-year period (previously five years). Further, the above-mentioned provision pursuant to which not only the transfer of 90 per cent of the interests in a real estate holding partnership but also the transfer of 90 per cent of the shares in a real estate holding corporation within a 10-year period to several acquirers trigger RETT is new. This new provision has been designed to tackle split deals where two acquirers together acquire 100 per cent of the shares in a real estate holding corporation without one of them reaching the threshold of 90 per cent (previously 95 per cent). Such transactions had been described as 'abusive' by politicians from almost all political camps.

## Land tax

Land tax has to be paid by the owners of German real estate (and by holders of hereditary building rights). Liability is based on the assessed value of the relevant piece of real estate, the applicable measure factor (which depends on the type of real estate, e.g., farmland, residential properties or business properties) and a multiplier that is set by the relevant municipality.

On 10 April 2018, the Federal Constitutional Court ruled that the provisions dealing with the valuation of real estate for land tax purposes are unconstitutional. As a consequence, the legislator has adopted a reform that will come into force as of 1 January 2025 and that provides for a valuation of real property based on fair market value, which is then multiplied by a uniform factor (known as the basic federal rate) and a multiplier determined by the municipalities. Further, the federal states will be entitled – and several federal states have announced their intention – to opt out of the federal system and to adopt their own land tax systems instead.

## Inheritance and donation tax

As a matter of principle, the transfer and acquisition of assets mortis causa or by way of donation is subject to German inheritance or donation tax if the transferor or the acquirer is resident in Germany or if the asset subject to the transfer and acquisition qualifies as a domestic asset. The latter is the case in respect of real estate located in Germany but not necessarily for shares in an entity that holds German real estate.

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