



German Taxation of Inherited Reparations Payments

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GERMAN TAXATION OF INHERITED REPARATIONS PAYMENTS

Issue

1. Does the German Federal Law for the Compensation of Victims of National Socialist Persecution provide for reparation payments to a surviving spouse or other surviving relatives of a holocaust victim who dies before payments are made?
2. If, yes, what is the German tax treatment of such survivor's receipts?
3. What is the inheritance tax treatment of payments received by a holocaust victim and later inherited by a relative?

Solution

1. According to the German Federal Law for the Compensation of Victims of National Socialist Persecution (hereafter: Federal Indemnification Law), certain reparation payments to which a holocaust victim is entitled are paid to certain surviving relatives if the victim dies before payments are made.
2. Reparation payments made to surviving relatives of a holocaust victim are not subject to income tax or inheritance tax.
3. Reparation payments received by a holocaust victim and later inherited by a relative are usually subject to inheritance tax. However, such payments are exempted from inheritance tax if the payment was made shortly before the death, is still identifiable in the estate, and has not been reinvested.

Analysis

Indemnification legislation

The Federal Indemnification Law was enacted in 1956.¹ It replaced several compensation laws of the occupation zones and provides a uniform system of rules for granting compensation to victims of national socialist persecution. Benefits are granted for various damages incurred by these victims with regard to their life, health, freedom, property, education, career, etc.² Even though filing deadlines for new claims have long expired,³ some claims may still be pending due to litigation or various unusual circumstances.

¹ Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung (BEG, Bundesentschädigungsgesetz), June 19, 1956, *Bundesgesetzblatt* (BGBl., official law gazette of the Federal Republic of Germany) I, p. 562, as amended.

² BEG, §§ 1 and 2.

³ The time limits for the filing of claims were largely terminated through an Amending Law to the Federal Indemnification Law i.e., BEG-Schlussgesetz, September 14, 1965, BGBl., I, p. 1315.

The Federal Indemnification Law was not the only law by which Germany attempted to make restitution for the atrocities committed during the Nazi regime. Another major piece of legislation was the Federal Restitution Law of 1957.⁴ The latter attempted to undo the wrongs committed through the confiscation of property during the Nazi years. The Federal Restitution Law, which is not further discussed in this report, provided recovery for these confiscations through restitution in kind and, when this was impossible, through monetary payments.

Under the Federal Indemnification Law of 1956, which is at issue in this report, compensation was and is payable in various forms. For the victim, these include recurrent monthly payments, lump-sum payments, and various forms of assistance such as loans, health services, etc. Thus, lump-sum payments are granted as compensation for deprivations of liberty,⁵ whereas a variety of benefits can be granted as compensation for physical injuries.⁶

Surviving spouses and relatives of a victim can become recipients of compensation payments under two or three sets of circumstances. First, a monthly annuity can be awarded to these persons. Under such circumstances, the survivor is a beneficiary in his own right, and these cases are not relevant to the question posed in this report. Second, a surviving spouse or relative can inherit a claim to a compensation payment, usually a lump-sum payment when the holocaust victim died before payment was made to him. The third case, which can only marginally be described as a survivor's receipt of compensation payments, is the receipt of an inheritance from a holocaust victim which includes funds that the decedent had received as compensation during his lifetime.

Whereas the inheritance of an estate from a holocaust victim follows the general rules on testate and intestate succession of the Civil Code, the inheritance of not as yet paid victim's compensation pursuant to the Federal Indemnification Law is governed by specific provisions of this Law. These are very complex, and they limit the right to inherit pending claims in various ways depending on the types of injuries suffered by the victim, the nature of the remedy that is granted, and certain qualifications of the heir. In summary, it can be stated that recurring benefits usually are terminated with the death of the holocaust victim or entitled survivor, whereas unpaid lump-sum payments can at times be inherited only by close relatives and spouses, and under other circumstances by any heir of the victim.⁷

These results are accomplished in the Federal Indemnification Law through the broad general statement of section 13 according to which claims for compensation devolve upon the heirs of the claimant. Yet, very large exceptions from this general rule are not only stated in section 13 of the Law, but they are also scattered throughout its provisions describing the various benefits.

According to section 13, the claim does not devolve upon the state by escheat nor does it pass to undeserving heirs such as Nazi party members. Moreover, the decedent can also exclude individual successors from the right of inheritance.

⁴ Bundesrückerstattungsgesetz, July 19, 1957, BGBl. I, p. 734, as amended.

⁵ BEG, § 45.

⁶ BEG, § 29.

⁷ W. Brunn, et al., Bundesentschädigungsgesetz 73, (Berlin, 1965).

Noteworthy among the other limitations on inheritability are the following, which are scattered throughout the provisions granting the benefits: monthly survivor benefits of spouses and children of victims killed in the holocaust are terminated with the death of the beneficiary, whereas lump-sum payments and accrued monthly payments for the death of a holocaust victim can be inherited only by spouses and close relatives (parents, children, and grandchildren);⁸ monthly benefits of victims injured in the holocaust are also terminated with their death, while lump-sum payments for personal injury as well as accrued monthly payments can be inherited by spouses and close relatives, and, if the claim has been adjudicated, by any heir;⁹ likewise, lump-sum payments for deprivation of liberty can be inherited only by spouses and close relatives; yet, these can be inherited by any heir if the original beneficiary died after the payments had been awarded by an agency or court decision.¹⁰

Tax treatment of compensation

It is a general principle of the German compensation legislation for holocaust victims that the receipts are not taxed.¹¹ With regard to income taxation, section 3, paragraph 1, number 8, of the Income Tax Code¹² exempts recurring payments, lump sum compensation, as well as health benefits that are granted on the basis of statutory provisions on restitution for national socialist wrongdoing.

Likewise, the Inheritance Tax Law has exempted claims for compensation payments from taxation¹³ through a provision that has essentially remained unchanged since 1959.¹⁴ Consequently, no inheritance tax liability arises when the heir of a holocaust victim inherits the right to receive a payment.

Although there is no statutory provision eliminating the inheritance tax liability for assets of a decedent holocaust victim, case law has established this principle to a limited extent. In several decision of the 1960s and 1970s, the Federal Fiscal Court decided that the heir of a holocaust victim does not have to pay inheritance tax for that portion of the inheritance that clearly constitutes a recent compensation payment. To the extent that compensation payments had been deposited in checking or savings accounts, they still qualify for the exemption. However, when the payments are reinvested, as, for instance, through the purchase of securities, the exemption no longer applies. These cases are still being followed today and the rule applies to any heir, not just surviving relatives.¹⁵

⁸ BEG, § 26, para. 2.

⁹ BEG, § 39, para. 2.

¹⁰ BEG, § 46, para. 2

¹¹ Jewish World Congress, *supra*, note at 6.

¹² Currently, Einkommensteuergesetz 1990, September 7, 1990 BGBl. I, p. 1898.

¹³ Currently, Erbschaftsteuer- und Schenkungsteuergesetz, repromulgated February 19, 1991, BGBl. I, p. 468, § 13, para. 1, no. 8.

¹⁴ Erbschaftssteueränderungsgesetz, March 24, 1959, BGBl. I, p. 157.

¹⁵ H. Megow, Erbschaftsteuer- und Schenkungsteuergesetz 343 (München, 1987).

The Federal Fiscal Court used constitutional arguments to exempt compensation payments made to the decedent from the inheritance taxation of the heir. Going beyond the letter of the law was deemed necessary to live up to the principle of atonement which is inherent in the Constitution and expressed in, among other provisions, the rule of law and the guarantee of human dignity. To impose an inheritance tax on a compensation payment would diminish that which was granted for the purpose of making atonement.¹⁶ This would be particularly unfair because some of the payment were not overly generous to begin with, and the recipients had to wait many years to have their case decided.¹⁷

Yet this expansive interpretation of the tax exemption is limited to the payment received by the decedent shortly before his death, provided the compensation had not been reinvested. If the payment is still deposited in a checking or savings account it is exempted; however, if the payment has been used to purchase securities or real estate, then these assets are subject to inheritance tax like any other assets of the decedent. There never has been a legislative intent to exempt the heirs of holocaust victims from inheritance taxation.¹⁸

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¹⁶ Bundesfinanzhof (BFH) decision, March 4, 1964, Bundessteuerblatt (BStBl) II 246 (1964).

¹⁷ BFH decision, March 12, 1968, BStBl 1968.

¹⁸ BFH decision, December 9, 1976, BStBl II, 289 (1977).