



Inheritance Taxation of East German Restitution Property

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INHERITANCE TAXATION OF EAST GERMAN RESTITUTION PROPERTY

According to current German law, German inheritance tax is due if someone who was entitled to restitution of East German property that had been confiscated by the Nazis died after September 28, 1990.

When Germany was unified in the fall of 1990, a law was enacted to provide for the restitution of property confiscated by the East German regime. This same law also provided for the restitution of property confiscated by the national socialists between 1933 and 1945 on what was later to become East German territory. This Law on Open Property Questions was promulgated in the Unification Treaty on September 28, 1990, and it became effective on the day after this promulgation.¹

An exemption from the German inheritance tax for restitution claims concerning such East German properties was not contemplated at the time of the Unification Treaty. The Treaty brought the governance of the West German Law on Inheritance Tax for the eastern territory. Even though the Inheritance Tax Law has always exempted West German indemnification payments for damage incurred by national socialist persecution from inheritance tax liability and has only recently been amended to exempt indemnification payments now still being granted to victims of National Socialism in eastern Germany,² this principle has not been extended to restitution payments.

A circular of the tax authorities of the states³ provides that the heirs of someone entitled to make a restitution claim would have to pay an inheritance tax if the decedent died after September 28, 1990. This tax liability arises if the decedent claimed restitution and his heirs got the property, if the decedent claimed restitution and restitution has not as yet been carried out, and also if the decedent or his heirs had claimed restitution.

The claim itself has a monetary value⁴ which is taxable under the German Inheritance Tax Law, which has tax rates that depend on the proximity of relationship between heir and decedent and the size of the inheritance for each heir. For children of the decedent, the rate ranges from 3 to 35%.⁵

¹ Gesetz zur Regelung offener Vermögensfragen, Sept. 23, 1990, Einigungsvertrag, Sept. 23, 1990, *Bundesgesetzblatt* (BGBl., official law gazette of the Federal Republic of Germany) II p. 885 (1159).

² Erbschaftsteuer- und Schenkungsgesetz, repromulgated Feb. 19, 1991, as last amended by Standortsicherungsgesetz, Sept. 13, 1993, BGBl. I, p. 1569, art. 13, §13, no. 8.

³ Ländererlass, November 3, 1991, *Bundessteuerblatt* I, p. 369, Appendix 8a.

⁴ H. Rodenbach, *Grundbesitz in den neuen Bundesländern* 85 (Bonn, 1992).

⁵ A copy of the tax rates as contained in J. Meincke, *Erbschaftsteuer- und Schenkungsgesetz* 525 (München, 1992) is included as an *Appendix*.

If a decedent entitled to restitution had at the time of his death resided in the United States, then the treaty on double taxation of estates between the United States and Germany would in all likelihood lead to the German taxation of the restitution claim and a credit from the U.S. estate tax.⁶

It is, however, advisable for anyone with a potential tax liability from a restitution claim to consult an attorney, not only on the double taxation aspects but also on the likelihood of a future change in German law which might be brought on by litigation or legislative developments. In addition, the mechanics of assessing the value of the restitution claim or the restituted property may be an issue of some complexity.

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⁶ Convention between the Federal Republic of Germany and the United States for the avoidance of double taxation with respect to taxes on estates. Signed at Bonn, Dec. 3, entered into force June 27, 1986, TIAS 11082.