

Real Estate Tax Services News

Keeping you informed

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German Federal Constitutional Court disapplies law on Berlin rent cap

In brief

Berlin has been one of the most attractive residential investment markets for the past two decades. German federal law permits municipalities to apply certain rent control measures depending on local market parameters assessing the situation for affordable rents. Additionally, the Berlin House of Representatives passed a law in January 2020 introducing additional rent controls, taking effect in February 2020. However, on 15 April 2021, the German Federal Constitutional Court issued its decision declaring the Berlin Law on the Rent Cap in the Housing Sector (*Gesetz zur Mietenbegrenzung im Wohnungswesen in Berlin*, or *MietenWoG Bln*), known as the “rent freeze”, “rent cap” or “*Berliner Mietendeckel*”, to be unconstitutional and hence void. The decision has been highly anticipated due to its enormous economic impact for tenants and landlords on the Berlin housing market.

In detail

In a decision which has been highly anticipated by both domestic and international investors due to its potential implications for other German federal states contemplating the introduction of similar measures, the German Federal Constitutional Court has now issued its decision (Court order, 25 March 2021, 2 BvF 1/20, 2 BvL 5/20, 2 BvL 4/20) in the course of a judicial review procedure initiated by numerous members of the German parliament (*Bundestag*). The court did not as part of this process consider the question whether the law might infringe fundamental rights of landlords. In its decision, the German Federal Constitutional Court stated that Berlin, as one of the federal states, did not have the legislative competence

to enact the law since it is subject to competing legislation at a federal level. There was no need for the court to assess the compatibility of the individual measures that were included in this law.

The German Federal Constitutional Court emphasised that the Federal Government's regulations on leases and lease controls are comprehensive and conclusive with no further room for additional regulations by the federal states. Consequently, the opportunities for the state of Berlin to save the "*Berliner Mietendeckel*" are slim.

Our view

The federal election in Germany will take place this year and some of the parties have set out the idea of a federal version of the "*Mietendeckel*" in their manifestos. Depending on the outcome of the election, a federal version of the rent cap may therefore return in the near future. However, the question of whether this would be constitutional, and which features it may or may not contain remains to be decided.

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