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German Tax and Legal News

Amended RETT rules on share transfers approved by both chambers of parliament

Amendments will increase complexity and reduce threshold for application of rules as from 1 July 2021

Following the approval by Germany's lower house of parliament of a draft law to amend the German real estate transfer tax (RETT) rules on 21 April 2021, the upper house of parliament approved the amendments on 7 May 2021. The text of the draft law has now been finalized, but it still needs to be signed by the president and published in the federal gazette to enter into force; however, these steps are expected to be mere formalities. The amended rules generally will be applicable for share transfers that take place after 30 June 2021 and will add significant complexities to the RETT rules, in addition to reducing the threshold triggering their application.

Under the current rules, RETT is triggered on direct transfers of real estate, as well as where 95% or more of the shares in a German real estate-owning company are directly or indirectly transferred to a new owner, or where 95% or more of such shares are directly or indirectly combined for the first time in the hands of a new shareholder (or where there is a 95% or greater change, directly or indirectly, of the partners in a German real estate-owning partnership).

Earlier in 2021, Germany's governing grand coalition of Christian Democrats and Social Democrats reached an agreement regarding the content of amendments to the RETT rules, and the legislative process that had been stalled since 2019 resumed (see GTLN dated 09/23/2019 and GTLN dated 04/08/2021). The agreement on the amendments to the RETT rules was based on a 8 May 2019 proposal published by the Ministry of Finance (see GTLN dated 06/26/2018 and GTLN dated 05/09/2019), with some amendments.

As provided in the original proposal, the law that has now been finalized includes a considerable broadening of the applicability of the RETT rules; the originally proposed measures are still included, with certain amendments. In particular, the reduction of the current 95% threshold to 90% for a RETT-triggering event remains unchanged, confirming that the potential reduction to 75% (or an even lower threshold) that had been discussed has been abandoned. The law does not include a provision to align the intragroup exemption for certain reorganizations within a 95%-controlled group with the new 90% threshold. Other measures in the law include an extension of certain rules that currently are applicable to partnerships to apply to corporations, and the introduction of a 10 or 15-year monitoring period that will apply in certain situations.

Complex rules are included in the law to manage the transition from the existing 95% threshold to the new 90% threshold.

The expansion of the rules will require taxpayers to exercise additional care in their due diligence when reorganizing shareholdings above any entity owning German real estate. The expansion of rules currently applicable to partnerships to apply to corporations and the introduction of a 10-year or 15-year monitoring period also will add significant complexity to the RETT rules. In addition, it appears that the application of the intragroup restructuring exemption could (again) be questionable in light of EU law principles relating to state aid. Taxpayers should consider whether measures to mitigate the effect of the amended rules can be taken before the amended rules become effective as from 1 July 2021.

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