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German Tax and Legal News

Finance ministers of federal states recommend tightening of RETT rules

Proposed measures could create more complex rules

On 21 June 2018, the finance ministers of the German federal states announced an initiative to propose changes to the Real Estate Transfer Tax (RETT) code that would significantly tighten the rules. The federal government and the federal states had set up a joint working group in 2016 to examine the possibility of lowering the threshold that triggers the RETT in share deal transactions, along with other measures (see GTLN dated 22 September 2017).

Under current rules, RETT is triggered on direct transfers of real estate and 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 if there is a 95% or greater change either directly or indirectly of the partners in a partnership).

Although a draft law has not been released, the initiative of the federal states focuses on the following measures:

- Reducing the threshold for (direct/indirect) share transfers to trigger RETT from 95% to 90%. A transitional rule should be introduced to ensure that where shareholders that currently (directly/indirectly) hold between 90% and 95% of the shares in a German real estate-owning entity, any increase in their shareholding would trigger RETT.
- Introducing a new rule for corporations, whereby a transfer of 90% or more of the shares to several new shareholders within a period of (likely) 10 years triggers RETT (such a rule already applies to real estate-owning partnerships). The federal states intend for changes to the RETT rules to target structures where an outside investor/bank acquires a minority interest or where a seller retains a minority interest to avoid triggering RETT.
- Extending most of the minimum holding periods for certain structures in the RETT code from five to 10 years.
- The EUR 25,000 penalty for filing a late RETT return should be increased or abolished.

Changes to the RETT rules are specifically mentioned in the current coalition agreement between the governing parties, so it is likely that some form of the above measures will be approved and possibly could be implemented during 2018. It also is possible that the measures would apply retroactively from the date the first draft law becomes publicly available.

If the above measures are implemented, the RETT rules will become more complex, and it will become more important for potentially affected parties to closely monitor any indirect changes in the ownership chain above German real estate-owning companies. A lower RETT threshold and the changes in the rules for corporations could significantly affect taxpayers that own German real estate in their worldwide group. Thus, corporations that could be affected by the changes should examine both existing structures and ongoing transactions. Along with the uncertainty about the future of the intragroup restructuring exception in the RETT code (which currently is being challenged at the Court of Justice of the European Union regarding its compatibility with EU state aid rules, (see GTLN dated 16 June 2017), the changes could create new hurdles for internal group restructurings of multinational groups.

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