

## Government approves draft law addressing double RETT on share deal transactions

Draft law also includes proposed increase of minimum trade tax rate

In its cabinet meeting on 14 January 2026, the German government adopted a draft law that includes proposed amendments to the real estate transfer tax (RETT) rules relating to share deal transactions where the signing of a share purchase agreement (SPA) and the closing of the transaction qualify as two different RETT triggering events. Under the current RETT rules and their interpretation by the tax authorities, a double assessment of RETT might occur if the signing and closing events on the same transaction are both considered RETT triggering events. The draft law would generally result in a share deal transaction triggering RETT only once as a result of the signing event, with the following closing event no longer qualifying as a RETT triggering event.

The draft law also includes a proposed increase of the minimum trade tax rate assessed by municipalities from 7% to 9.8%.

### Amendments to RETT rules

Based on the RETT rules and their interpretation by the tax authorities, the signing of an SPA in a share deal transaction and the closing of the transaction might each qualify as a separate RETT triggering event requiring a timely filed and complete notification to the responsible tax office. If both notifications are filed on time and complete, the closing event “supersedes” the signing event and RETT is assessed only for the closing event. If the RETT notifications are not filed on time or are incomplete, RETT is assessed for both events, resulting in double RETT for one and the same transaction. This risk of triggering RETT twice for the same transaction has long been criticized by practitioners and is subject to several pending court procedures.

The draft law would generally result in share deal transactions triggering RETT only once as a result of the signing event, with the following closing event no longer qualifying as a RETT triggering event.

In addition, the draft law would include a German real estate-owning entity itself as a party subject to the RETT notification requirement and as an additional RETT debtor (in addition to the buyer and seller) as of the signing event in situations where 90% or more of the shares in the German real estate-owning entity are directly or indirectly transferred. Under the current rules, the signing of an SPA (where there is a direct or an indirect transfer of 90% or more of the shares in a German real estate-owning entity) results in a RETT notification requirement and RETT liability only for the seller and the buyer, with the German real estate-owning entity only subject to such requirement and liability upon the closing event.

The draft law would also extend the current notification period for a RETT notification for German resident taxpayers from two weeks to one month, which would align with the already existing one-month notification period for non-German resident taxpayers.

The effects of the proposed changes to the RETT rules can be illustrated in the following example:

- **Fact pattern:** GmbH 1 is the sole shareholder of the German real estate-owning GmbH 2 and is now selling its shares to GmbH 3. The signing of the SPA takes place on 28 January, and the closing of the transaction takes place on 15 March of the same year.
- **RETT consequences under the current rules:** The signing event on 28 January qualifies as a RETT triggering event. Both parties to the SPA (GmbH 1 and GmbH 3) are jointly and severally liable to RETT and have the joint obligation to notify the responsible tax office within two weeks of the signing event. The closing event on 15 March also qualifies as a RETT triggering event, resulting in GmbH 2 being liable to RETT and required to notify the responsible tax office within two weeks of the closing event.

Provided that the RETT notification for the signing event was properly filed on time, the RETT event as of closing supersedes the signing event and no RETT should be triggered as a result of the signing event (any RETT assessments already issued for the signing event would be repealed by the tax authorities upon application).

- **RETT consequences under the draft rules:** The signing event on 28 January would be the only RETT triggering event. GmbH 1, GmbH 2, and GmbH 3 would all be jointly and severally liable to RETT, and all three entities would have the joint obligation to file a RETT notification within a one-month period of the signing event. The closing of the transaction on 15 March would no longer qualify as a RETT triggering event and would not trigger any additional RETT notification requirements.

The planned amendments would enter into force on the day after the publication of the final law in the federal gazette. In situations where the signing event of an SPA takes place before the draft law enters into force and the closing event takes place after the draft law enters into force, a transition rule would provide that only the signing event would qualify as a RETT triggering event. The draft law might, therefore, affect transactions that are signed long before the draft law enters into force.

### **Increase in minimum trade tax rate**

The draft law also includes an increase of the minimum trade tax rate that applies at a municipal level on the profits of business activities. The minimum trade tax rate would be increased from the current 7% to 9.8%. This measure would implement one of the action points of the current government coalition as included in their coalition agreement that was put in place in May 2025. The increase of the minimum trade tax rate is aimed at “trade tax havens” that apply a low trade tax rate to attract businesses. The average trade tax rate in Germany is approximately 14% and can be up to 17% in larger municipalities.

### **Deloitte Germany comments**

The proposed amendments to the RETT rules regarding the signing and closing events in share deal transactions would be a highly welcome development and would reduce the complexity and uncertainty around share deal transactions that directly or indirectly involve a German real estate-owning entity. The draft law would significantly reduce the compliance burden for these transactions and eliminate the double RETT risk resulting from notifications that are not filed on time or are incomplete.

The designation of the German real estate-owning entity as an additional RETT debtor and as a party required to file the RETT notification reflects the situation under the current rules where, as a result of a closing event in a share deal transaction, the German real estate-owning entity has the same obligations. The designation of the German real estate owning-entity as an additional party owing the RETT and facing RETT notification obligations would need be properly reflected in the respective SPA.

The proposed increase of the minimum trade tax rate from 7% to 9.8% should not impact taxpayers that are pursuing activities outside of trade tax havens for trade tax purposes. Practical implications from the proposed increase for multinational enterprises would, therefore, be limited.

It remains to be seen what amendments will be included in the draft law during the formal legislative process. Currently, it is planned that the draft law will be finalized in early summer of 2026.

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