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German Tax and Legal News

Upper house releases opinion on planned amendment of RETT rules

On 20 September 2019, the Upper House of the German parliament issued its opinion on the planned changes to the real estate transfer tax (RETT) rules. The Upper House generally welcomed the changes but also asked the government to consider additional changes in the draft law.

The draft law, published by the government on 8 May 2019 (see GTLN), includes a considerable broadening of the applicability of the RETT rules, following an initiative originally announced on 21 June 2018 (see GTLN) by the finance ministers of the German federal states. The draft law includes the following proposed changes:

- Reducing the threshold for RETT-triggering events from 95% to 90%;
- Introducing a new rule for corporations, under which a transfer of 90% or more of the shares to multiple new shareholders within a 10-year period would trigger RETT (a similar rule already applies to real estate-owning partnerships ("partnership transfer rules")). The rules for both corporations and partnerships also would apply to indirect changes in the shareholder structure; and
- Expanding the minimum holding period in the RETT code for certain structures to qualify for favorable tax treatment from five to 10 years.

The Upper House generally agrees with the planned modifications but has asked the government to consider the following recommendations:

- Introduction of an exception for publicly traded companies from the existing and proposed partnership transfer rules so that shareholder changes that occur as a result of public trading do not qualify as RETT-triggering events. The exemption should be limited to companies where significant public trading takes place on a recognized stock exchange in Germany, the EU/EEA or in a third country recognized by the EU as fulfilling equal standards for stock exchanges (currently, this applies to stock exchanges in Australia, Hong Kong and the US).
- Broadening the intragroup restructuring exemption as a result of the planned tightening of the RETT rules so that more group internal reorganizations qualify for the exemption than is currently the case. The Upper House cited, in particular, the sale of real estate between group entities and a group internal share transfer in a real estate-holding company that is not covered by the current exemption clause. According to the Upper House, an intragroup transfer of real estate where no additional cash liquidity is generated should not be subject to RETT and the tightened provisions would further impede intragroup restructurings.
- Revising the proposed rules relating to a new 10-year monitoring period so that the extended monitoring period only includes share transfers that take place after 31 December 2019. The draft law includes an extended 10-year monitoring period for transfers under the existing and new partnership transfer rules, under which share transfers taking place within a 10-year period basically would be counted together to determine whether the 90% threshold is reached. As drafted, the proposal appears to bring share transfers that took place before the amended RETT rules become effective within the scope of the 10-year monitoring period.

Comments

The German government's response to the recommendations made by the Upper House likely will be made public very soon. The government then will forward the draft law, the statement of the Upper House and the government's response to the Lower House to move the legislative process forward. It is expected that the Lower House will start the first reading of the draft law in its session on 27 September 2019.

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