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By PwC Deutschland | 16. Januar 2026

Cabinet approves draft amendment to the Tax Consultancy Act and other tax regulations including Real Estate Transfer Tax

On January 14, 2026, the Federal Cabinet approved the draft of a Ninth Act Amending The Tax Consultancy Act and Other Tax Regulations. Among the various proposed amendment, the draft contains the following amendments with regard to supplementary real estate transfer tax provisions.

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Introduction

The relationship between the so-called supplementary provisions, namely the real estate transfer tax provisions for transfers of shares in real estate-owning companies (i.e. share deals, in particular Section 1 (3) Real Estate Transfer Act ("RETTA") and Section 1 (2a)/(2b) RETTA), has been highly controversial since the last reform of the RETTA effective from 1 July 2021: Indeed it has recently resulted in various Supreme Tax Court rulings allowing the taxpayer to temporarily suspend paying disputed real estate transfer tax until the court resolves fundamental legal questions about the law's application. This is because the tax authorities interpret the subsidiarity of Section 1 (3) RETTA vis-à-vis Section 1 (2a)/(2b) RETTA strictly in terms of timing, so that, in the opinion of the authorities, the transfer of shares in a real estate company is subject to taxation under Section 1 (3) No. 1 or No. 3 RETTA at the time of the legal transaction **(signing)** and to taxation pursuant to Section 1 (3) No. 1 or No. 3 RETTA at the time of the transfer of the shares **(closing)** (so-called "signing/closing problem"). In such cases, an assessment for the signing is revoked or amended upon request, however, pursuant to Section 16 (4a) in conjunction with (5) sentence 2 RETTA, this requires the complete and timely notification (two weeks or one month) of both acquisition transactions, which in practice entails considerable compliance requirements and carries the risk of double taxation of the same facts.

The draft law now provides a solution to the "signing/closing problem" by giving priority to signing (i.e., Section 1 (3) RETTA) in the future and excluding (further) taxation under Section 1 (2a)/(2b) RETTA.

Specific proposed legislative amendments

The future priority of taxation under Section 1 (3) RETTA is to be implemented in such a way that the subsidiarity of this provision stipulated in the introductory sentence of Section 1 (3) RETTA ("*[...] insofar as taxation under paragraphs 2a and 2b does not apply, [...]*") is deleted without replacement.

At the same time, a new Paragraph 1 (3b) RETTA-Draft is to be inserted:

"Paragraph 2a or Paragraph 2b shall not apply if shares are transferred in fulfillment of a legal transaction within the meaning of Paragraph 3 No. 1 or No. 3 or Paragraph 3a after completion of this legal transaction or if the shares are transferred in accordance with Paragraph 3 No. 2 or No. 4 or paragraph 3a."

In cases of share transfers where a taxation pursuant to Paragraph 1 (3) No. 1 or No. 3 RETTA is triggered at the time of signing, the subsequent closing would therefore no longer trigger taxation pursuant to Paragraph 1 (2a)/(2b) RETTA in accordance with Paragraph 1 (3b) RETTA-Draft. An application for revocation of the assessment or for non-assessment for the tax point at signing would therefore no longer be necessary, meaning that the corresponding provisions of Paragraph 16 (4a) in conjunction with (5) Sentence 2 RETTA can be deleted without replacement. Further amendments concern the inclusion of the property-owning company (in addition to the acquirer and, if applicable, the seller of the shares) as an

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additional taxpayer and thus as a party subject to a reporting obligation for cases of taxation under Section 1 (3) or (3a) RETTA 3a RETTA via an amendment to Paragraph 13 No. 5 and No. 8 RETTA-Draft, as well as a general extension of the statutory notification period in Paragraph 19 (3) RETTA-Draft for domestic tax debtors from two weeks to one month. Under current law, the one-month notification period only applies to foreign tax debtors.

Practical implications of the planned legislative changes

Case study:

B-GmbH holds a 100% stake in A-GmbH, which owns real estate. On 15.01.01, B-GmbH concludes a notarized purchase agreement with C-GmbH for all shares in A-GmbH (signing). On 15.07.001, the transfer of shares from B-GmbH to C-GmbH is notarized (closing).

Solution under current law (Opinion of tax authorities):

With the signing on 15.01.01, the acquiring C-GmbH carries out a share consolidation in accordance with Section 1 (3) No. 3 of RETTA. B-GmbH and C-GmbH are liable for tax and, as domestic taxpayers, they must report this acquisition to the competent tax office within two weeks.

With closing on 15.07.01, an acquisition transaction pursuant to Section 1 (2b) RETTA is realized at the level of the property-owning A-GmbH. As a domestic taxpayer, it must also report this to the competent tax office within two weeks. Upon request, no real estate transfer tax will be assessed pursuant to Section 1 (3) RETTA or the corresponding assessment will be revoked, provided that both acquisition transactions were reported in full and in a timely manner (Section 16 (4a) in conjunction with (5) Sentence 2 RETTA).

Solution after implementation of the planned legislative changes:

With the signing on 15.01.01, the acquiring C-GmbH implements a share consolidation in accordance with Section 1 (3) No. 3 RETTA. The tax debtors are A-, B- and C-GmbH, which must report the acquisition as domestic tax debtors within one month. With closing on 15.07.01, Paragraph 1 (2b) RETTA is not implemented in accordance with Paragraph 1 (3b) RETTA-Draft. There is therefore no obligation to report.

Summary:

While under current law taxation is primarily based on Paragraph 1 (2a)/(2b) RETTA, under the planned amendment share transfers will primarily be taxed in accordance with Paragraph 1 (3) RETTA. This not only has an impact on the timing of taxation and tax liability, but also, where applicable, on the application of other provisions (such as Section 1 (6) RETTA and Sections 5 and 6 RETTA).

Date of application and transitional provisions

The amendments to the law are to come into force on the day after the law is promulgated (Section 23 (28) RETTA-Draft). For transitional cases in which the signing takes place before and the closing after the entry

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into force, only the signing is to be taxed (Section 23 (29) RETTA-Draft). The planned amendments may therefore already be relevant for purchase agreements concluded before the entry into force.

Schlagwörter

RETT, Real Estate