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By PwC Deutschland | 29 March 2019

Real Estate Transfer Tax Act: changes planned to the treatment of "share deals"

The Federal Ministry of Finance is planning to introduce a bill based on the proposals made by the Finance Ministers' Conference in November 2018 in relation to the Real Estate Transfer Act (RETT Act). It is currently envisaged that the changes, which are likely to be discussed in the Cabinet at the end of April 2019, should be included in the Finance Act 2019.

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The proposed changes were discussed at the meeting of the finance ministers of the federal states on 14 March 2019. Among the matters discussed was the treatment of share deals for RETT purposes and extensions of certain thresholds and monitoring periods.

One of the aim of the measures is to make so-called “share deals” more difficult by ensuring that existing shareholders must continue to participate to an appreciable extent. A 100% acquisition by an investor and his “tag-along” co-investor should then be no longer possible.

Current rules

Under the current terms of Section 1 (2a) RETT Act RETT will only be payable if the 95% threshold (direct or indirect change of at least 95% of the partners in a partnership) is reached within 5 years. If this 95% limit is not reached in the said period, no RETT becomes payable.

For real estate-owning corporations under current rules, RETT should - broadly speaking and subject to the rules on the unification of 95% of the shares- not be triggered where less than 95% of the shares in the real estate-owning corporations are transferred.

Proposed changes

The current plans of the Federal Ministry of Finance include the introduction of three measures should be included:

- Reducing the 95% holding thresholds to 90%.
- Extending the previous holding periods of 5 years to 10 or 15 years respectively.
- Introduction of a new RETT triggering event, where 90% of the shares in a corporation with domestic real estate holdings are (directly/indirectly) transferred to new shareholders within a 10 year period.

As soon as a draft bill is available, we will inform you about it in detail.

Keywords

RETT, Share Deals, indirect transfers of real estate, sale of real estate, unification of shares