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By PwC Deutschland | 17 May 2019

Finance Bill 2019: proposed changes to the real estate transfer tax regulations in the case of so-called shares deals

Following the discussions of the Conference of Finance Ministers of the Federal States, the government has included in the Finance Bill 2019 amended regulations in respect of so-called “share deals” in real estate transactions. Aim of the proposed rules is a tightening of the financial framework around the indirect "transfers" of real estate held through companies and other associations of persons.

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*The draft bill includes the following amendment*s:

- Introduction of a provision according to which a transfer of property will be deemed to occur where the shareholder composition of a real-estate holding corporation changes directly or indirectly in a 10 year period in such a way that at least 90% of the shares are transferred to new shareholders.
- Lowering of the investment threshold from 95% to 90%, above which a transfer of real estate will be deemed to occur where there is a change in partner interests in a partnership or where a so-called consolidation of holdings occurs.
- Extension of the holding period from 5 to 10 years during which changes of the interests in a partnership are deemed to be a transfer of real estate.
- Extension of the holding period from 5 to 10 years for transfers of real estate, which are made between different types of joint owners or from joint ownership to sole ownership, or where fixed parcels of real property are allocated between joint owners.
- Introduction of a new chargeable event. This applies to certain types of consolidations of holdings, which do not constitute a chargeable change of a partnership interest, as they do not exceed the 95% threshold. The new provision imposes a pre-transfer holding period of 15 years in these circumstances.
- Application of a substitute basis of assessment under the Valuation Act in certain circumstances, where the real estate is sold for an undervalue.

The proposed provisions to lower the participation limits and extend the holding periods should apply, in principle, to transfers occurring after the 31 December 2019. However, the proposal also includes rules for staggered implementation which are aimed at reducing hardship or unfairness and which should protect the principle of legitimate expectation.

Source:

Draft bill published by the Ministry of Finance on 8 May 2019

Keywords

Finance Bill, RETT, indirect transfers of real estate