By PwC Deutschland | 06 November 2019

UPDATE. Federal Cabinet adopts Real Estate Transfer Tax Amendment Bill

On 31 July 2019, the Federal Cabinet adopted the government draft of the "Real Estate Transfer Tax Amendment Act".

The aim of the draft bill is to tighten the real estate transfer tax (RETT) rules on so-called share deals, which has been under consideration for some time.

The planned regulations were originally included in the draft 2019 Finance Bill published on 8 May 2019 as the "Act on the Further Tax Promotion of Electric Mobility and the Amendment of Further Tax Regulations" (see our blog post of 17 May 2019). These regulations have been removed from the draft 2019 Finance Bill and transferred to a separate legislative procedure (under the terms of the draft RETT Amendment Act), but are in principle in line with the provisions of the original draft bill.

Planned measures

The following measures are aimed at putting an end to RETT avoidance using certain tax arrangements using shares:

- Reduction of the 95 percent investment threshold to 90 percent for changes in partnership interests or for consolidations of holdings;
- Application of a RETT charge on corporations in connection with shareholder changes of at least 90 percent;
- Extension of the (pre- and post- change) holding periods from five to ten years and in certain cases of holding consolidations an extension of the pre-holding period to 15 years;
- Application of a substitute basis of assessment within the meaning of the Valuation Act in cases in which real estate is sold by persons involved in a reorganisation/conversion transaction at a purchase price below the real estate value within the retroactive income tax holding period where the conversion would have triggered taxation under the RETT Act without the acquisition transaction;
- The cap of 25,000 Euros on penalties for late filing of or the failure to file a RETT declaration has been removed, so the penalty of 0.25% per month commenced will no longer be have an upper limit.

The proposed provisions to lower the participation limits and extend deadlines are to enter into force on 1 January 2020 and apply in principle to acquisitions made after 31 December 2019. However, the bill also includes rules for staggered implementation which are aimed at reducing hardship or unfairness and which should protect the principle of legitimate expectation. Due to a slight (and permissible) change in the normal legislative process for a bill, the start date for the staggered implementation may occur earlier than would have been the case, had the standard procedure been followed.

UPDATE

In a joint press release dated 24 October 2019 the CDU/CSU and SPD parliamentary groups in the Bundestag have now declared that they still need time for their deliberations on the law to amend the real estate transfer tax law and that further evaluations are necessary. As a result, the reform will be postponed.

The press release stated that:

- the new regulation will not enter into force on 1 January 2020, but should be completed in the first half of 2020.
- The coalition factions agree on the importance of preventing the arrangements for the avoidance of real estate transfer tax through share deals.
- In the coming weeks, the coalition factions will commit themselves to finding solutions that will enable them to achieve the goal agreed in the coalition agreement of an effective and legally secure legal regulation in the first half of 2020.

Sources:

Government draft of 31 July 2019

Joint press release of 24 October 2019

Keywords

Finance Bill, RETT, real estate transfer tax