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tax + legal newsflash

Important changes in law and regulations

German real estate transfer tax reform

German parliament’s Finance Committee recommends approval of the reform of the taxation of share deals

In brief

On April 14, 2021, after a long legislative process, the Finance Committee of the German parliament (“Bundestag”) has completed its consultation process on the law amending the Real Estate Transfer Tax Act (RETTA). This increases the chance that the law, which includes the long-discussed changes to the taxation of share deals, will be implemented within this legislative period. The effective date of application of this law is intended to be July 1, 2021. Following the completion of the consultation process, the second and third readings of the bill are expected to take place in parliament in the week commencing April 19. The Federal Council (“Bundesrat”) would then be expected to address the bill in its next plenary session on May 7, 2021.

The reform is based on the proposals from 2019 and introduces some tightening of the rules on the taxation of share deals. In addition to domestic and foreign partnerships, corporations with domestic real estate holdings will particularly be impacted by the reform. Taking into account the amendments to the initial draft bill recommended by the parliament’s Finance Committee, the key elements of the reform would be the following:

Introduction of a new RETT triggering event for share deals in corporations

As with the draft bill issued in 2019, the bill includes the introduction of a new supplementary provision governing the taxation of share sales for corporations. This should apply similarly to the existing rules for transfers of interest in partnerships in situations where 90 % of the shares in a corporation are transferred to new shareholders within a ten-year period. The company owning the real estate will become liable to pay the tax and is subject to a reporting requirement in this regard.

However, following a proposal of the Bundesrat the Finance Committee recommends parliament to introduce a grandfathering provision, according to which transfers of shares that take place prior to July 1, 2021 will not be taken into account when applying this new provision.

Lowering of thresholds

The reform continues to include a reduction in various shareholding thresholds which currently apply to transfers of interests in partnerships and corporate share acquisitions from 95 % to 90 %. A further reduction of the shareholding threshold to 75%, as was discussed during the process, was not adopted. It should be noted, however, that the shareholding requirement in order to apply the “group escape clause” for RETT purposes remains unchanged at 95% of the shares.

The old participation hurdle of 95% will continue to apply in certain cases.

Extension of relevant periods from five to ten years

The period in Sec. 1 para. 2a RETTA (share transfers in relation to interest in partnerships) for which to determine whether there has been a change of partners by at least 90% (formerly 95%) is extended from five to ten years. For certain cases, the bill provides for grandfathering rules.

In addition, the clawback periods for tax-neutral transfers of real estate from or to a partnership are extended from five to ten respectively 15 years.

Stock exchange exemption clause

As a central amendment to the initial draft bill, the Finance Committee recommends to introduce a stock exchange exemption clause. Such a clause was demanded to prevent situations in which RETT is repeatedly triggered on transfers of shares in listed companies owning German real estate or owning companies/partnerships with real estate.

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