Substantial changes of German RETT law possible

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In brief

In Germany, the direct or indirect transfer of shares respectively interest in a real estate owning company triggers RETT. Since autumn 2016, the Ministries of Finance of the Federal States are discussing options to broaden the scope of the RETT Act. They now agreed to ask a committee to draft a respective bill. Although no formal draft document is available yet, changes are possible and could include a lowering of the threshold to 90%, a lengthening of monitoring/ claw back periods from 5 to 10 years, and the introduction of a new RETT triggering event for corporations that would have a substantial impact not only on real estate investors but also to owners of corporate real estate. However, it remains to be seen what exactly the legislator is willing to implement.

General background

In Germany, (i) the direct or indirect sale of more than 95% of the interest/shares in real estate owning partnerships/corporations as well as (ii) the direct or indirect sale of more than 95% of the interest in real estate owing partnerships within a five-year period are generally subject to German real estate transfer tax (RETT).

Since autumn 2016, the Ministries of Finance of the Federal States are discussing options to broaden the scope of the RETT Act. They now agreed to ask a committee to draft a respective bill covering to our understanding the following points:

Lengthening of monitoring periods

Presently, the direct and indirect transfer of 95% or more of the interest in real estate owning partnerships within a five-year period to new owners is subject to RETT. The Ministers of Finance aim at lengthening the monitoring period from 5 to 10 years.

New RETT triggering event for corps

Further, they aim at applying a similar concept to real estate owning corporations such that not only the unification of 95% of the shares, but also the transfer of 95% to new shareholders within a 5 or 10 year period would trigger RETT on the level of the real estate owning corporation.

Lowering the hurdle to 90%

In addition, the Ministers of Finance intend to lower the hurdle from 95% to 90% such that the acquisition of 90% of the shares in real estate owning corporations or partnerships would trigger RETT.

Lengthening of claw back periods

Under the present RETT regime, the acquisition of real estate by a direct partner from the underlying partnership or vice versa can be exempt (in part) from RETT. Furthermore, specific group internal reorganizations can also be RETT exempt. In both cases, certain conditions need to be met otherwise the RETT advantages might be clawed-back. The Ministers of Finance aim at lengthening these claw back periods also from 5 to 10 years.

Timing

There is no clear commitment on the entering into force of the new regime yet but it is expected to be on 1 January 2019 at the latest. However, it remains to be seen what exactly the legislator is willing to implement. One will therefore need to monitor the legislative process closely in order to take into account all details of the envisaged new law.

We will keep you posted.

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