

Germany: Share Deals and Real Estate Transfer Tax – Draft Bill Published by Federal Ministry of Finance

Introduction

On 8 May 2019, the German Federal Ministry of Finance has published a draft bill containing significant changes to the German RETT regime on share deals involving corporations and partnerships holding real estate. The draft has been long awaited and is now up for consultation.

The legislator intends to restrict the potential for saving real estate transfer tax by using share deal structures. Final implementation is subject to the bill being formally introduced into and potential changes during the legislative process. Promulgation is expected later this year.

According to the draft bill, the main changes are expected to be the following:

Thresholds reduced to 90%

- » The relevant participation quotas triggering real estate transfer tax will be reduced from "at least 95%" to "at least 90%".

Holding periods extended to 10/15 years

- » The current holding period of 5 years for partnership interests is extended to 10 years.
- » For structures involving a later consolidation of partnership interests in one hand, the relevant period shall be extended to 15 years. Existing option structures should be evaluated against this background.

Changes relating to regime share deals in corporations

- » Transfers of at least 90% of the shares in a corporation within 10 years will be taxable irrespective of the transferee. Under current legislation, a tax free transfer of 100% shares to two independent transferees (split 94.9/5.1) is possible.
- » Therefore, independent from the legal form of the entity in question, only 89.9% of shares/partnership interests may be moved within 10 years without triggering real estate transfer tax.

The new rules shall take effect...

- » ... from 1 January 2020.
- » Transactions consummated (i.e. signed and closed) until 31 December 2019 shall be governed by the existing rules.
- » Certain transition rules shall apply, in particular:
 - If parties sign transactions until the formal commencement of the legislative procedure (likely in June/July, possibly September), the transaction may be closed until one year thereafter under the existing regime.
 - So called existing "old partners" are protected: partners in a partnership who will have held their participation for 5 years on 31 December 2019 shall retain their status.
 - In case a participation between 90% and 95% exists on 31 December 2019, an increase to at least 95% shall trigger RETT.



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