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Draft Bill issued on amendments to RETT on Share Deals

On 8 May 2019, the German Federal Ministry of Finance has published a draft bill, which includes – amongst others –changes in German Real Estate Transfer Tax (RETT) to tighten the taxation of share deals. The RETT changes basically reflect the status, that has previously been discussed in the Conference of German Finance Ministers in December 2018, but includes a number of transitional rules.

Under current law, RETT is triggered on

- the transfer of shares in a real estate partnership, if within a period of five years partnership interests of at least 95% are directly or indirectly transferred to new partners or
- at least 95% of the partnership interests or shares in a corporation owning real estate are – irrespective of the holding period – pooled with one purchaser or within a group of companies.

The proposed new RETT shall tighten the existing rules by

- reducing the 95% threshold to 90%
- extending the holding period from five to ten years as well as
- including (direct and indirect) transfers of shares in real estate owning corporations, if within a ten year period at least 90% of shares are transferred to new shareholders.

Consequently, share deal transfers of up to 89.9% within a ten year period will not be subject to RETT, irrespective of the legal form of the real estate owning company.

It has to be noted that the current draft would not align the **intra-group exemption** from RETT for certain group reorganizations to the new 90% threshold and the ten year holding period.

Generally, the new rules shall apply to transfers of shares or partnership interests in real estate owning corporations or partnership realized after 31 December 2019. As an exception to this rule, existing RETT rules would still be applicable, where the signing of a sale and purchase agreement has been made before the draft law will be submitted to the upper house of the German parliament ("Bundestag") and the closing being within one year after this date.

Nevertheless, the transitional rules are complex and include – amongst others – the following:

For **real estate partnership transactions** after 31 December 2019 transfers of interests in real estate partnerships to partners that have already been directly or indirectly partners within a five year period ending at 31 December 2019, i.e. have become partner at 31 December 2012 or before, would not fall into the new RETT regime. Where a partner has not fulfilled such criteria at 31 December 2019, he will be regarded "new partner" and the newly extended ten year period would apply.

Generally, the existing rules would continue to apply until 31 December 2024

- for cases, where within a five year period **partnership interests** of at least 90 % but less than 95% have been transferred RETT free before 31 December 2019. This is because, any subsequent transfer would not be subject to the new RETT rules, because the 90% threshold would have been already be realized before.

- to transfers realized after 31 December 2019, if at 31 December 2019 directly or indirectly at least 90 and less than 95% of the shares of the real estate owning company have been pooled with one purchaser or within a group of companies. However no RETT would be triggered in case the ownership in the company will be reduced to less than 90% after 31 December 2019.

The draft bill may undergo further changes, though no material changes are expected. It is likely to be introduced in the legislative process before the summer break in July/August 2019. Therefore, Investors both involved in real estate transactions and corporate M&A should closely monitor the legislative process to evaluate the impact on current and future transactions, for which the new rules will significantly increase complexity.

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