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German Tax and Legal News

Joint task force to examine tightening of RETT provisions

Certain states have launched an initiative to consider reducing the RETT threshold for share transfers from 95% to 75% or less.

The German federal government and the federal states set up a joint working group on 8 September 2016 to examine the possibility of lowering the threshold that triggers the real estate transfer tax (RETT) in share deal transactions.

In addition, on 22 September 2017, some of the federal states in the upper house of parliament launched their own initiative to ask the federal government to consider amending the RETT code based on future recommendations of the joint working group. This initiative is being discussed at a committee level in the upper house.

Under current rules, RETT is triggered on direct transfers of real estate and where 95% or more of the shares in a German real estate-owning company are directly or indirectly transferred to a new owner or where 95% or more of such shares are directly or indirectly combined for the first time in the hands of a new shareholder. The same should apply if there is a 95% or greater change either directly or indirectly of the partners in a partnership.

The joint task force is considering three different models to lower the 95% threshold:

1. The first model consists of a straightforward reduction of the threshold to 75% or 50% of the shares in a real estate-owning entity that are directly or indirectly transferred or combined at the level of a new shareholder. RETT would be assessed on the full amount of the special tax value. If there is a subsequent increase of the shareholding percentage above the 75% threshold, no further RETT would be triggered.
2. The second model would be based on a more graduated approach: if at least 50% of the shares are directly or indirectly transferred, RETT would be triggered on a pro rata basis. RETT would be triggered on the full amount only if there is a direct or indirect transfer of 75% or more of the shares. If an existing shareholding is increased and this increase triggers RETT, RETT paid in previous transactions would be credited.
3. Under the third model, RETT generally would be triggered without a threshold (or a low 1% threshold) on a pro rata basis in the event of a share transfer.

The joint task force also is looking at other measures to tighten the RETT rules.
An amended RETT threshold for share transfers that take place after 31 December 2017 may be introduced. It is possible that a lower threshold could become effective retroactively to the date the legislative process commenced or when an official proposal was published.

Of the three models under discussion, the first appears to be the easiest to implement. The third model seems to be the most complex since there are concerns regarding the enforcement of this rule and it is unclear whether the federal government or the federal states would be entitled to the revenue generated by such a tax.

A lower RETT threshold could significantly affect taxpayers that own German real estate in their worldwide group. Both existing structures and ongoing transactions should be examined. Together with the uncertainty about the future of the intragroup restructuring exception in the RETT code (which currently is before the Court of Justice of the European Union regarding its compatibility with EU state aid rules, see GTLN dated 16 June 2017), it could create new hurdles for internal group restructurings of multinational groups.

The joint working group is expected to release preliminary results from its discussions on 19 October 2017, although this date could change. It is unclear whether and when a proposal for a reduced RETT threshold will be introduced into the legislative process, and the outcome of the federal elections that will be held on 24 September also could impact the initiative.