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Important changes in German Real Estate Transfer Tax expected

On June 21, 2018, the Finance Ministers of the 16 German Federal States agreed on significant changes to be introduced to German tax law for reducing planning opportunities that are aimed at avoiding real estate transfer tax (RETT).

1. Expansion of taxable events for corporations owning real estate

Under current legislation, there is a RETT event whenever there is a 95% or more change in ownership of real estate partnership over a period of five years. For such taxable event, it is not necessary for any partner to have exceeded a certain participation threshold. This provision is to be extended to changes in shareholdings in corporations. Furthermore, the relevant threshold is to be reduced from 95% to 90%. The aim of these measures is to make share deals for real estate-owning corporations more difficult by requiring at least one shareholder to retain a significant participation in the corporation. A complete acquisition by an investor and his "friendly" co-investor is thus no longer possible without triggering RETT.

2. Extension of the relevant holding period from 5 to 10 years

The current 5-year holding period is to be extended to ten years. At present, for example, RETT is levied if at least 95% of the shares in the real estate-owning corporation or partnership are transferred to new shareholders or partners within five years. Thus, in order to avoid a taxable event, certain share deals were designed in such a way that, in a first step, 94.9% of the shares in the real estate-owning corporation were transferred to a new shareholder and the remaining 5.1% were transferred to this shareholder only after the lapse of five years. Following the extension of the 5-year holding period to 10 years, the remaining 5.1% may only be transferred to this new shareholder after the expiration of 10 years. The extension of the deadline to 10 years makes such structures more difficult from an economic point of view, as it significantly restricts the parties concerned in their entrepreneurial activities.

Structures already implemented might also be affected by this extension of the holding period creating the potential for significantly changing the economic terms of such structures.

3. Reducing the 95% threshold to 90%

The participation threshold is generally to be reduced from at least 95% to at least 90%, not only to the newly expanded taxable event but also the current standard taxable event. This intended change in conjunction with the extension of the relevant holding period has an even greater negative impact on share deal structures.

It is intended that these proposals will be submitted to Parliament shortly. Close attention must be paid to the date of effectiveness of the proposed changes, potentially resulting in a retroactive application of these rules. Any company currently considering the structuring of a share deal should already take into consideration the new rules and their potential impact on the financial terms of the investment.

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