



# German Real Estate Transfer Tax

Introduction to basics on German Real Estate Transfer Tax

## Background

When restructuring a group with companies owning German real estate or similar rights or when acquiring German real estate or a company owning German

real estate, German Real Estate Transfer Tax may arise and may then impact the cost benefit analysis of the restructuring/purchase price.

The following overview summarizes the key events triggering German Real Estate Transfer Tax. [➔](#)

## German Real Estate Transfer Tax

### General information

German Real Estate Transfer Tax ("RETT") is a transaction tax which can for example be triggered due to acquisitions (share and asset deals), mergers, reorganizations, contributions, demergers, spin-offs, etc. involving German real estate owning companies.

Real estate in the meaning of German RETT law includes land and buildings as well as

buildings under construction, hereditary building rights and buildings on land owned by a third party, but not machinery and equipment affixed to a site.

RETT due is calculated by multiplying the RETT basis with the applicable RETT rate. The RETT rate depends on the location of the real estate and ranges from currently between 3.5 percent and 6.5 percent depending on the Federal State.

The RETT basis needs to be determined in line with the complex provisions of the Valuation Tax Act. In general terms the RETT basis may be equal to the fair market value of the real estate.

### More details

RETT should generally arise inter alia in the following transactions:

- outright purchase or other agreement providing for the transfer of ownership in real estate
- (in-)direct transfer of at least 95 percent interests in a partnership that owns (in-) directly German real estate to new partners within a five-year period, regardless of the number of acquirers
- (in-)direct transfer of at least 95 percent (at once or in several tranches) of shares in a company that is the (in-)direct owner of real estate to a single new shareholder or an integrated group of shareholders

- (in-)direct first time unification of at least 95 percent of shares in a real estate-owning company in the hands of one shareholder or an integrated group of shareholders

The RETT triggering event depends inter alia on the type of the underlying legal transaction.

For example, in a share deal (acquisition of at least 95 percent of shares in a German real estate owning corporation) already signing of the share purchase agreement should be the RETT triggering event.

The parties involved in the transaction (not necessarily the entity that owns the German real estate) must generally report

the taxable transaction to the German tax authorities within two weeks/ one month (latter for non-German parties) after signing.

The deadline cannot be extended and not observing it may have severe consequences for the respective tax debtor of RETT.

It makes no difference for RETT taxation purposes whether the RETT triggering transaction takes place in Germany or abroad.

### Intragroup exemption rule

German RETT law provides for an exemption from RETT in case of specific intragroup restructurings. If granted, a five-years-holding and claw-back period would then need to be considered. According to a decree of German tax authorities various requirements need to be met for the intragroup exemption to apply, thus

requiring a detailed case-by-case analysis, also in light of recently published tax court decisions that may impact the applicability of the intragroup exemption rule resp. how tax authorities apply and interpret these rules. It remains to be seen whether resp. what kind of steps the German legislator may take as a reaction to the tax court case decisions.

### Exemption rules for partnerships

Several RETT-exemptions are provided if partnerships are involved. If a RETT-relief is applied, a five-year holding and claw-back period would then need to be considered.

**Additional remarks**

There are currently plans on revising German RETT rules inter alia regarding decreasing the triggering shareholding ratios mentioned above down to 90 percent (or – alternatively, down to 75%), extension of all holding/ claw-back periods for German real estate owning partnerships from five to ten respectively fifteen years and introduction of a new regulation for real estate owning corporations.

Under this latter new contemplated rule the (in-)direct transfer of at least 90 percent (subject to changes in the legislative

process) shares in a corporation that owns (in-)directly German real estate to one or several new shareholders within a ten-year period becomes a RETT triggering event. Liable for RETT would then be the German real estate owning corporation itself (and not e.g. the seller/ purchaser of the shares). Permanent monitoring of all changes in shareholding structure up to the top tier entities would then be required by the German real estate-owning corporation in order to comply with the tax reporting obligations. The initial draft bill provided for a retroactive application; meanwhile federal government and federal council concluded

on no retroactive effect. Also an exception for listed companies is under discussion.

The change in the RETT Act is scheduled for the first half of 2020.

Upcoming amendments to the RETT law will have significant impact on future share deals and reorganizations. Developments should be closely monitored.

RETT implications of contemplated transactions should be reviewed in detail before implementation and RETT planning considerations may be available.

## Contacts

**Do you have any more questions?**

We are looking forward to your call or email to discuss opportunities and requirements in more detail tailored to your needs and your expectations.

**Japanese Business Tax Team Germany**



**Thomas Welz**

Partner  
Tel: +49 (0)211 8772 3522  
twelz@deloitte.de



**Iris Sabine Mönnich**

Senior Manager  
Tel: +49 (0)211 8772 3572  
imoennich@deloitte.de



**Shinichi Ishida**

Japanese Coordinator  
Tel: + 49 (0)211 8772 2099  
sishida@deloitte.de



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