

Reform of Real Estate Transfer Tax – End of RETT blocker model

Elimination of the so-called “RETT blocker model” has long been the subject of public debate. After the legislative process was surprisingly stopped in late 2019 amid constitutional concerns, the *Bundestag* [lower house of German parliament] on April 21, 2021 enacted the Law amending the Real Estate Transfer Tax Act [*Gesetz zur Änderung des Grunderwerbsteuergesetzes*] and the *Bundesrat* [upper house of German parliament] approved it on May 7, 2021. It will come into force on July 1, 2021.

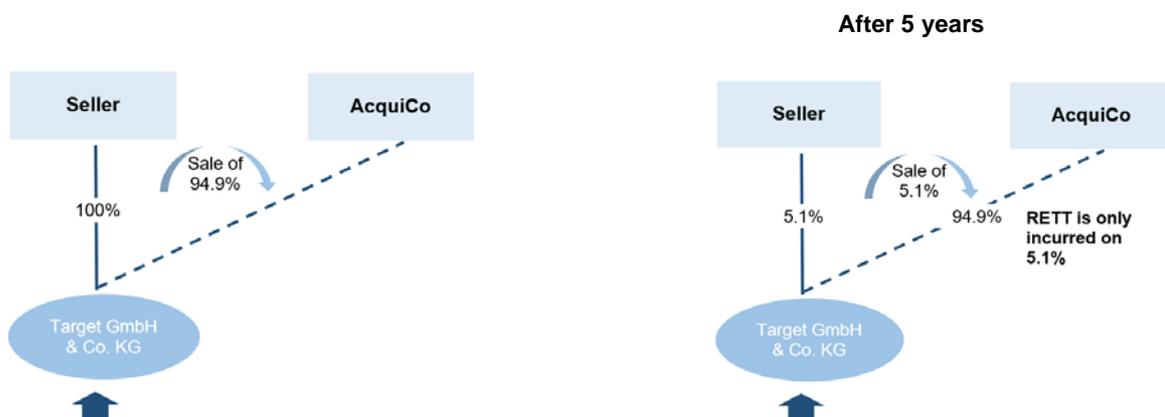
What's it all about?

In recent years, instead of real estate (so-called “Asset Deals”), 94.9% of the shares in partnerships owning real estate (in particular, GmbH & Co. [limited liability companies], KG [limited partnerships] and GbR [private partnerships] or corporations (so-called “Share Deals”) were transferred.

Since according to the present legislative position (section 1 (2a) sentence 1 and 3 No. 1 German Real Estate Transfer Tax Act [GrEStG]) real estate transfer tax is only triggered if at least 95% of the shares in a company owning real estate is acquired, the share deal was not subject to real estate transfer tax.

Furthermore, in the case of a partnership, acquisition of the residual 5.1% of the company shares was typically hedged by an option that was exercised after the expiry of five years following the initial share acquisition. Although the acquisition of the residual shares resulted in a share consolidation that was subject to real estate transfer tax (section 1 (1) No. 3 GrEStG), the originally acquired share (94.9%) was exempt from real estate transfer tax (section 6 (3) GrEStG).

As a result of extended share acquisition using a “RETT blocker” the real estate transfer tax charge compared to the Asset Deal was reduced from, for example, 5% to effectively 0.225%.



What is to be changed?

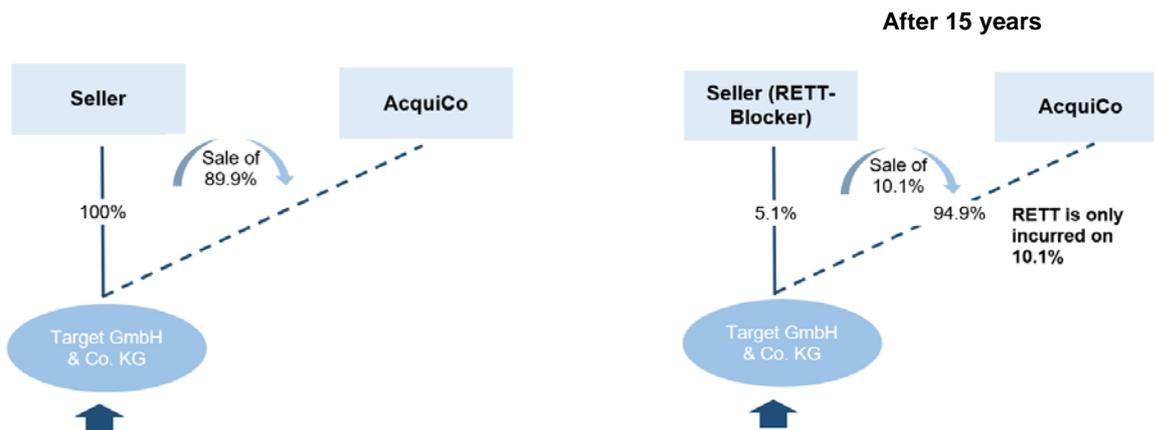
The above effect was a thorn in the flesh, particularly for the Federal States. The participation limits related to real estate transfer tax will therefore be reduced from the current limit of 95% to 90%, and the holding period for tax exemptions in connection with partnership shares will be raised from 5 to 10 or 15 years.

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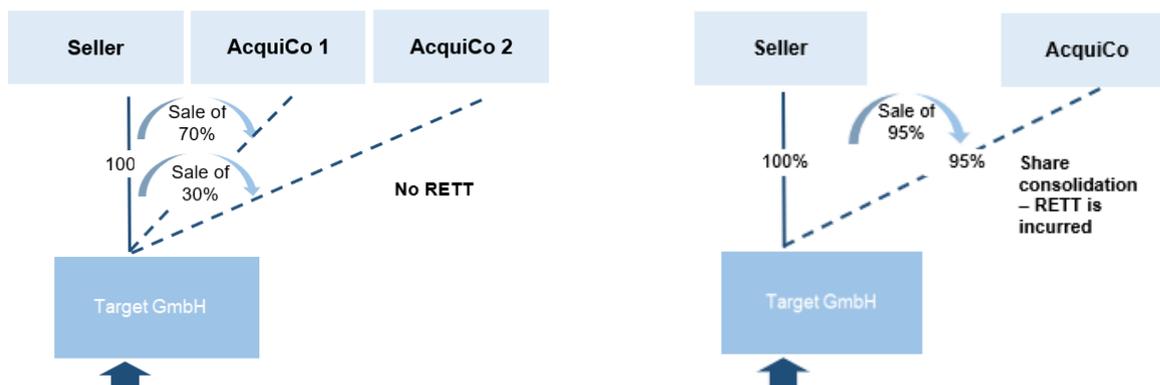
The “RETT blocker model” is consequently still in operation but due to the retention of more than 10% of the shares and an option period of 15 years it has become significantly less attractive.



What else is changing?

Real estate-owning corporations as well (particularly, limited liability companies [GmbH] and joint stock corporations [AG]) are affected by the new changes.

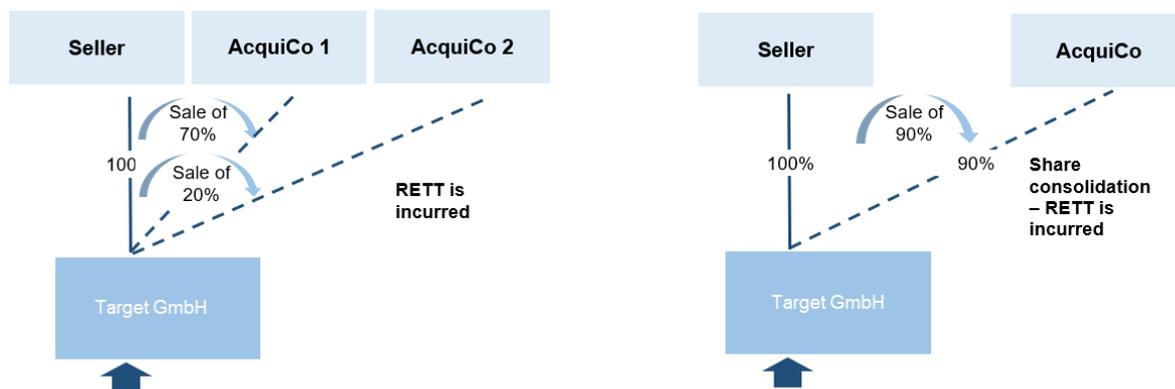
Previously, shares in corporations, unlike partnership shares, could be transferred with no restriction, without having any relevance in terms of real estate transfer tax. Only if at least 95% was consolidated in the hands of one shareholder was real estate transfer tax triggered.



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As a result of the Law amending the Real Estate Transfer Tax Act the threshold for taxable share consolidation is lowered to 90% and share transfers will result in a taxable transaction even if within 10 years they comprise at least 90% of the shares.

It therefore no longer depends only on the concentration of shares in the hands of one shareholder but on the transfer per se. An exception will, however, be made for listed companies since it cannot be determined or is hard to determine when the share transactions reach the 90% threshold.



From when is that applicable?

According to section 23 (17) GrEStG n.v., the changes are applicable for the first time to acquisition transactions that are realized as of July 1, 2021.

This means that options that can still be exercised up to that date are not affected as a matter of principle and should be implemented promptly. Subsequently, however, for constitutional reasons there will end up being a really complex juxtaposition of old and new laws (section 23 (18) – (24) GrEStG n.v.); hence “RETT blocker structures” in which the options can only be exercised after June 30, 2021 require special attention so as not to trigger real estate transfer tax after all. Due to the long holding periods, new investments must be structured with immediate effect in accordance with the new rules.

Isn't that all very complicated and what does that mean for me?

Real estate transfer tax was already always complicated in terms of its intricacies and will certainly not become any simpler as a result of the reform. We will be happy to assist you in taking on the challenge posed by the new regulations.

In the case of Federal State-related real estate transfer tax rates of up to 6.5%, it is worth using the remaining leeway or unscheduled RETT charges may nullify the profitability of a property.

We look forward to meeting with you to analyse your individual requirements and we are, of course, available at any time to answer any questions you may have.