Image: BATO Group

The Grand Coalition — Changes for the Real Estate Industry

After the Federal Election in September and the failed "Jamaica" coalition talks, the grand coalition between the Christian Democratic Union (CDU)/Christian Social Union (CSU) and the Social Democrats´ party (SPD) is about to be renewed. In this newsletter we outline the coalition negotiation results concerning real estate, home building and construction industries as written in the coalition agreement.

New Housing Creation (*Wohnraumoffensive*)

The grand coalition has set itself the goal for 1.5 million new housings, to be created by both private as well as public sectors.

A summit is planned to take place this year, where the federal states and municipalities, representatives from the construction and real estate industries, tenants´ and landlords´ associations and unions are supposed to discuss the key points of the new legislative package.

A tax incentive has been promised to private investors for developing affordable housings - a special tax depreciation of 5% p. a. will be introduced in addition to the existing linear depreciation, although new tax incentive is limited to 2021.

The coalition wants to support municipalities when it comes to new housing creation by improving construction planning regulations. Furthermore, it pledged to improve the availability of land managed by the Federal Authority for Real Property Administration (*Bundesanstalt für Immobilienaufgaben, BIM*) for the municipalities, instead of *BIM* selling it to highest bidders.

The incoming government has pledged to take responsibility and to further cooperate with the federal states when it comes to social housing construction. Development activity for social housing is set to be maintained at the current level and to be stabilised in the long run as the minimum requirement. Two billion Euros will be allocated for the social housing promotion in the years 2020/21.

The coalition also wants to mobilise more land for housing development (*Baulandmobilisierung*) from undeveloped properties that are held for speculative purposes. Such land will be taxed with a new type of real property tax, *Grundsteuer C* (currently, *Grundsteuer* B covers all real estate incl. land suitable for development, while the *Grundsteuer* A is levied on agricultural and forestry land; see our previous newsletter regarding the real property tax).

Less Bureaucracy in Housing Construction

The coalition wants to continue the work of the Alliance for Affordable Construction and Housing (*Bündnis für bezahlbares Wohnen und Bauen*) that was initiated in 2014 between the federal government, municipalities, the housing and the real estate industries, tenats´associations and the construction industry. Its aim is to strengthen investment activity in housing construction, reduce construction costs, support the development of age-appropriate quarters and socially and environmentally friendly housing.

One of the alliance´s task forces (*Baukostensenkungs-kommission*) was set up to identify and abolish superfluous regulations in the construction permit procedures.

Further debureaucratisation is expected to be achieved by merging the three separate environmental regulations, the Energy Saving Ordinance (*EnEV)*, the Energy Saving Act (*EnergiesparG*) and the Renewable Energy Heat Act (*EEWärmeG*) into a "modern" Building Energy Act (*Gebäudeenergiegesetz*).

In general, the coalition´s aim is to support the international competitiveness and innovativeness of the construction industry as one of the largest employers in Germany.

The Rent Cap

The grand coalition has commited itself to assess the rent cap in terms of its efficacy and appropriateness by the end of this year, but has already pledged to introduce concrete measures to "improve" the rent control law.

Landlords will be obliged to disclose the rents charged in preceding rent agreements in order to prevent unjustified uses of the rent cap exemption (which applies when the previous rent was already higher than the maximum permittable level).

In case the rent is too high, tenants currently have to follow the procedure of sending a "qualified" complaint (*qualifizierte Rüge*) to the landlord explaining how they determined the local comparative rent and justify their conclusion that the rent exceeds the maximum allowable level (before they can withhold the part of the rent that is beyond the maximum). The coalition has pledged to simplify this procedure for tenants.

The coalition also promised to tackle the issues related to the local rent index (*Mietspiegel*). The local rent index serves as the benchmark for the rent cap, but has no validated standard procedure how to determine it. This drew a lot of criticism and was frequently subject of legal disputes.

The coalition wants to ensure a standardised procedure for the determination of the "qualified local rent index" through specified minimum quality requirements. In order to make it cost-efficient for local authorities, the binding period of the rental index will be extended from currently two to three years, which should also dampen rent increases. In smaller regions, a simple rather than a qualified rent index should be applied.

The local rent is assessed every four years, but the incoming government wants to review and possibly change it. Tenants´ representatives demand a ten-year assessment period.

Property Refurbishment Costs

Currently, expenses incurred through modernisation of property can be allocated to rental payments of up to 11% a year (in areas where cap limits are applicable). In case the grand coalition comes to power, the rate will be reduced to 8%. The new regulation will be valid for 5 years and will then be reviewed.

Aiming at preventing luxury modernisations and displacement of tenants, an additional cap limit will apply after modernisation works. Monthly rent increases will be limited to €3 per square metre within six years. Breaches of this regulation will be considered as an administrative offence and tenants will be able to claim damages.

On the other hand, there will be simplified formal requirements for rent increase notices by landlords where refubishments costs do not exceed €10,000.

Tax incentives for energy-focused building refurbishments will be be continued, but owners will be able to chose between grant subsidies and taxable income reductions.

Incentives for Home Buyers

Families with children purchasing an own-use property for the first time will receive a child allowance amounting €1,200 per child a year, for the total period of ten years (*Baukindergeld*).

The coalition also wants to introduce a guarantee scheme for home buyers so that a share of the purchasing price (or construction costs) is backed by government-owned development bank KfW (*Kreditanstalt für Wiederaufbau*) as guarantor for a period of twenty years. The scheme aims at reducing the equity capital required for property purchases, which is usually not covered by mortgages.

The coalition agreement also states that the parties are examining an exempt amount from the real estate transfer tax for first-time home buyer families. The real property tax can be up to 6,5%, depending on the federal state and is a significant financial barrier for creation of (owner-occupied) housings.

Share Deals

The prospective government wants to prevent real estate investors from avoiding the property transfer tax via Share Deal Investments, i.e. when property is sold indirectly, by means of shares in a company. The real estate transfer tax is not applicable for Share Deals when the buyer acquires less than 95% of such shares.

The coalition agreement states: "After completion of the audit work by federal and state governments, the coalition will implement an effective and legally compliant legal regulation to end improper tax structures of the land transfer tax by means of share deals. The generated additional revenues can be used by the states to lower their tax rates."

According to *Immobilien Zeitung*, different proposals are being discussed by politicians such as lowering the share limit to 75% or 50% and an extended tax-relevant holding period in order to prevent purchases that are purely speculative.

Conclusion

In general, it can be said that the coalition agreement contains very little concrete changes and plenty of vague formulations, promising assessments, reviews and dicussions to follow, mostly keeping it open as to how the proposed changes are supposed to be achieved.

Creating 375,000 new housings per year (1.5 million in the four-year tenure), for example, seems like a great plan. However, in the past few years, only about half of the required new housings were built with 200,000 p.a., making just the accumulated backlog amount to 1.5 million housings. Recent estimations *Pestel-Institute* show that 400.000 new housings would need to be constructed each year in the period of 2016-2020. It is hence questionnable, whether the objectives can be met at all.

There are also rather minor tenancy law regulations (rent cap, modernisation cost allocation) and a small monetary incentive for potential home buyers - and only for those with families (child allowance). More significant changes (e. g. exempt amount for the property transfer tax that would have a greater effect) have been left to further.

The GroKo´s plan to limit tax savings for Share Deal investments is quite disturbing for real estate investment industry, although there are no specifications as to how the concerning regulations could look like. While Share Deals are exempted from the property transfer tax (as opposed to home purchase for example), they are an important instrument to actually avoid multiple taxation of the same property such as would be the case when building land is purchased, a building is constructed on this land and is then re-sold as developed property - as Germany´s Central Real Estate Committee (*Zentraler Immobilien Ausschuss, ZIA*) argues.

BATO Group keeps observing the political development concerning the real estate market; while we will inform our readers as soon as any relevant changes occur, please do not hesitate to contact us if you wish to receive more information. ■

Please note that the contents of this newsletter have been researched and written according to the best of our knowledge; however they are in no way to be accepted as a legal advice or suggestion. Therefore we exclude any liability.

Sources

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