# International Taxation of Real Estate Investments

2020 Survey on Europe, America, Australia and BRIC countries

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**2020 Survey on Europe, America, Australia and BRIC countries**

## About WTS Global

With representation in over 100 countries, WTS Global has already grown to a leadership position as a global tax practice offering the full range of tax services and aspires to become the preeminent non-audit tax practice worldwide. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced business people in a constantly changing world.

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## Contents

# Editorial

Dear Readers,

We are very happy to present to you the fifth edition of our Real Estate Investment Guide. As usual, our guide provides you with a comprehensive overview of all real estate related tax aspects in 50 countries. The information is based on the experience of dedicated real estate tax practitioners of WTS Global.

Global commercial real estate investments reached an all-time high of USD 800bn in 2019 as investors continued to seek out the solid return and relative stability of this asset class. Despite the corona crisis, we do not anticipate major changes in the attractiveness of real estate assets, especially due to the fact that the spending policy of national budgets “stabilize” the low interest environment and the bottleneck of valid investment opportunities. In parallel, the deficit spending increases the importance of taxation for the fiscal authorities. Therefore tax issues related to real estate remain crucial.

This guide will for the first time only be available in digital form, with no printed version. This is a humble contribution of WTS Global to the environment.

In addition to thanking our readers for your continued support and helpful feedback, we would like to express our gratitude towards all colleagues of the WTS global network who have contributed to this edition and without whom we would not have been able to put together such a concise, yet comprehensive guide.
We furthermore extend a special “Thank you!” to our colleague Tamas Dely from WTS Global Business Development for his valuable organisational contribution and the pleasant lay-out of the guide.

We hope this Real Estate Investment Guide will not only assist you in avoiding the pitfalls of manoeuvring through the tax jungle of international real estate investments, but also support you in finding new markets and business opportunities.

Should you require any further in-depth information on real estate investments into a particular country, please feel free to contact us or the relevant local contact person. WTS Global is always at your service.

Best regards,

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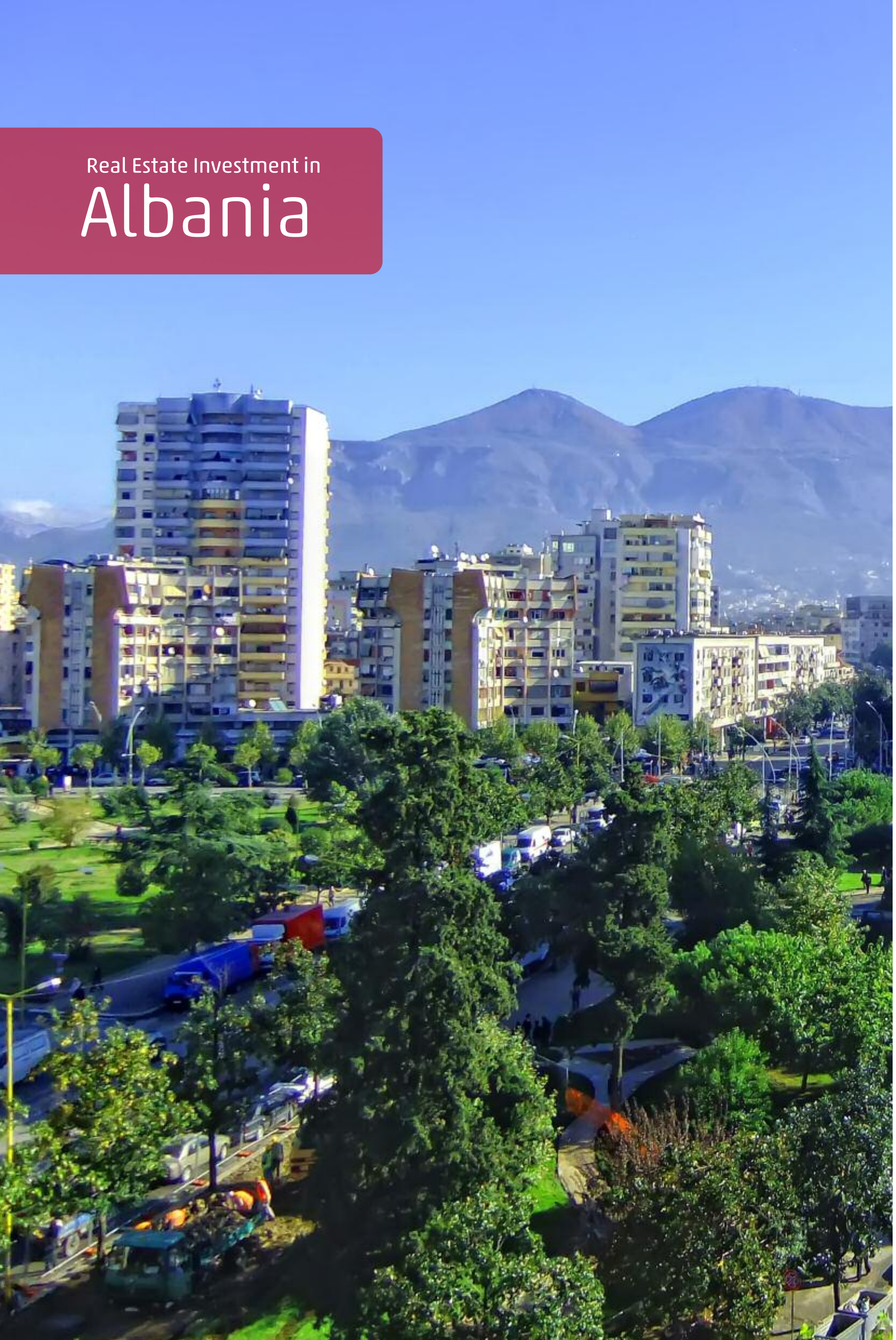
Real Estate Investment in

# Albania



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Albania? Does the acquisition have to be carried out by an Albanian corporation?

Under law no. 7980, dated 27 July 1995 "On the Acquisition of Plots", as amended, foreign individuals/entities may acquire and own land which can be built on, as long as it is proven that they have invested in the land not less than three times its value. The value of the land is determined by the Council of Ministers. Until such investment is made, the foreign individual/entity may use the land under a lease contract. Alternatively, foreign individuals/entities may acquire land by establishing a company under the Albanian law, which as an Albanian legal person can then freely acquire and own any type of immovable property.

Other immovable property such as buildings can be freely acquired by foreigners.

2. Which importance does the land register have?

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The law governing the registration of land is the recently adopted law no. 111/2018 "On the Cadaster". According to this law, all immovable property must be registered in the cadaster register. This register is open to the public and is administrated by the State Cadaster Agency.

The cadaster register is composed of all property records and cadastral maps that contain the following information on the immovable property: identity of the owner, the boundaries of the property, the date of registration and the relative deed of ownership acquisition, and plans that show the location of property. In addition, any mortgage, easement, usufruct, right to use or any other right connected to or deriving from the immovable property that is transferred to any third party, should be recorded in the property record. Any contract or other instrument effecting transactions involving an immovable property should be filed with the local directory of the State Cadaster Agency within 30 days of its execution, failure to comply will result in a fine of 10% of the fee for each day of delay to a maximum amount of ALL 300,000.

The owner of a property disposes freely the property only after registration of the property with the Cadaster and after receiving the Ownership Certificate.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Corporations conducting business in Albania and having an annual turnover exceeding ALL 14 million are subject to a corporate income tax (profit tax) at a rate of 15%. The rate for corporates having annual turnover between ALL 5 million and ALL 14 million is 5% (the tax will be 0% on 1 January 2021).

No profit tax applies for a 10-year period for accommodation structures "Four-Star and Five-Star Hotels, Special Status", benefiting the special status until December 2024.

No tax-grouping rules exist.

Personal income tax deriving from the transfer of ownership over real estate is 15% of the capital gain (sale price minus purchase price). In case of corporations, income from sale of real estate is considered as ordinary income (and subject to profit tax at 15% rate together with the other income).

2. What is the tax depreciation period for real estate in Albania?
   Are there depreciation categories? Which depreciation method is used?

The owner of an asset is entitled to depreciation allowances.

Buildings, structures and machinery with a long useful life depreciate with the declining balance method at a rate of 5%. The start date from which depreciation is calculated is the first day of the month following the month of purchase.

When the net book value of buildings, structures and machineries at the beginning of the period is lower that 3% of the historical cost, the net book value may be recognized as a deductible expense for the said period.

Depreciation allowances are not granted for land.



Any subsequent measurement of the tangible and intangible fixed assets after their initial recognition is not considered for tax purposes.

3. When is a foreign investor subject to limited tax liability in Albania?

Non-Albanian resident persons are taxed in Albania only for the Albanian-sourced income, while tax resident persons are liable for tax on their worldwide income.

4. Are asset deal and share deal possible in Albania?
   What are the main consequences?

Both asset deal and share deal are possible in Albania.

**Asset deal**

In the case of asset deal, the taxes payable depend on whether the seller is an individual or an entity registered for profit tax in Albania.

In case of an individual, the personal income tax at the rate of 15% over the capital gain (sale price minus purchase price) is payable at the moment of registration of the sale contract with the Cadaster. If the seller is an entity, the seller will have to pay the tax on transfer of real estate (as mentioned in the answer to *question C.1. below*) but also profit tax (15% over the difference between sale price and purchase price).

**Share deal**

In case of share deal, no tax on transfer of real estate is payable.

As regards capital gain, the following rules apply:

If during a taxable period direct and/or indirect ownership of stock capital or voting rights of a legal person changes by more than 20% in value or number, and if the average annual turnover in the last 3 years of this person exeeds ALL 500 million, the person is treated as disposing of a proportionate part of all the person's assets immediately before the change. The person is treated as:

- receiving sales proceeds for the disposal equal to the proportionate part of the market value of the asset at that time; and
- reacquiring the asset for the same amount.

Taxation of capital gains under the above paragraph is applicable irrespective of whether the shares' value derives directly or indirectly from immovable property or rights of exploiting natural resources situated in Albania, or not. Where a legal person pays profit tax because of a deemed disposal as mentioned above, then the disposal of shares that caused the change of ownership (giving rise to the deemed disposal) is exempt from profit tax (hence, tax liability is shifted from the seller to the company whose shares are being transferred).

In all other cases (i.e. when the conditions regarding the annual turnover and the limit of 20% share transfer are not met), the non-resident seller of the shares pays tax in Albania only in case of change of ownership of the share capital of a legal entity, either directly or indirectly, provided that more than 50% of the value of such shares, at any time for 365 days preceding the transfer, derives directly or indirectly from the immovable property, or the rights of exploitation of natural resources, which are situated in Albania.

Double tax treaties in force may provide for an exemption from this tax liability.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

The thin capitalization rules limit the deduction for interest paid on a loan to the portion of interest paid on the loan not exceeding four times the company's net assets (i.e. debt/equity ratio of 4:1). The rules apply to all loans taken, except for short-term loans (less than 1 year).

In case of loans and funding from related parties, the "net interest expense" will be considered deductible up to 30% of EBITDA. Net interest expense means the interest expense less the interest income, within the tax period. The taxpayer has the right to carry forward the non-deducted part of the interest and claim its tax deductibility in the following periods, except when the taxpayer's ownership has changed by more than 50%. This rule does not apply to banks, non-bank credit financial institutions, insurance and financial leasing companies.

In addition, interest in excess of the annual average bank interest rate, is non-deductible expense.

### 6. Can acquisition costs/financing fees/interest be deducted?

Acquisition cost is non-deductible expense (instead, it will be recognized as a cost through the depreciation allowances).

Interest is deductible, provided that the above mentioned thin capitalized rules are fulfilled.

Financing fees are usually deductible.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Debt push-down is possible.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest paid to non-tax registered residents or to non-residents is subject to a final withholding tax at a rate of 15%. No withholding tax applies when interest is paid to a person that is tax registered in Albania. The withholding tax at the rate of 15% is applicable also to non-resident creditors, unless a double tax treaty provides otherwise.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses may be carried forward for three years. Exceptionally, for the taxpayers who invest in business projects with value over ALL 1 billion, the resulting losses may be covered with the profits in the next five tax periods, in accordance with the principle "the first loss before the last one". However, this does not apply when the entity's direct or indirect ownership of the share capital or voting rights has changed by more than 50%. No carry back is allowed.

## C. Real Estate Taxes

1. Does Albania levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Albania applies a real estate transfer tax in the event of the transfer of the ownership of real estate properties. It is payable by the legal entity who transfers the ownership title (not applicable in case of individuals who pay only personal income tax).

In Tirana (capital of Albania) and Durres, buildings used for business purposes are taxed at ALL 2,000 per square meter and buildings which are used for residential purposes are taxed at ALL 1,000 per square meter. The tax is lower in other districts. The tax payable on the transfer of the ownership title to real estate property, other than buildings, is 2% of the sale price. Donors of real estate property to governmental entities, religious institutions or not-for-profit organizations are exempt from the tax on the transfer of an ownership title but are still liable to pay the fee to which the tax agent is entitled (3% of the tax amount).

2. Is real estate subject to any real estate tax? At which rate?

All Albanian and/or foreign individuals and legal entities which own real estate property consisting of building, agricultural and constructible land are subject to tax on real estate.

The tax on building is payable in respect of a building including underground floors, calculated with respect to the portion of the year that the building has been owned. The taxable base is the value of the building. The tax on buildings rate applied as a percentage of the taxable base per each year, is:

- (i) 0.05% for buildings used for dwelling;
- (ii) 0.20% for buildings used for economic activity;
- (iii) 30% of the respective tax amount for the entire building, for which the developer has failed to complete the construction within the deadline set forth in the construction permit.

Buildings owned by the state and by local governmental units, as well as by religious institutions are exempted from this tax.

A tax on agricultural land is paid in respect of each hectare of agricultural land. It varies depending on the land's category and the district where the land is located.



A tax on constructible land is paid for the land (not occupied by a building or other permanent constructions) within the city's border, which is classified as construction land. It applies at the level of ALL 0.14/square metre up to ALL 0.56/square metre when used by individuals, and ALL 12/square metre up to ALL 20/square metre when used by businesses, depending on the municipality where the land is located.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Under Article 53 of the Law on VAT, the sale of land and of buildings are exempt from VAT. However, upon specific circumstances, the taxpayers may opt to treat supply of buildings as taxable supply.

2. What are the VAT consequences of renting/leasing of real estate?

Under Article 53 of the Law on VAT, lease of land and lease of buildings when the lease duration exceeds two months (except accommodation in hotels and vacancy residences) are exempt from VAT.

However, upon certain circumstances, the lessor may opt to apply VAT (20%) on the rent of buildings.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

No.

2. Is there a stamp duty on debt granted to a local company?

No.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There is no legislation for Real Estate Investment Trusts.

Real Estate Investment in

# Argentina

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Argentina?
   Does the acquisition have to be carried out by a Argentinian corporation?

Non-residents are entitled to acquire real estate in Argentina, disregarding whether they are individuals or legal entities. Regulatory restrictions could apply in set cases, like the purchase of rural land or real estate located in the country's border or security areas.


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2. Which importance does the land register have?

All acts associated with real estate transfers such as acquisitions, injunctions, and other legal restrictions must be registered in the land register in order to be valid vis a vis third parties. Consequently, registration makes the title perfect and complete against any possible opposition, despite it is not constitutive of the ownership.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Argentine corporate entities and permanent establishments owned by non-residents are subject to the following income tax rates: 30% tax rate – for fiscal years 2018, 2019 and 2020 – and a 25% tax rate for 2021 onwards. Additionally, dividends and profit distributions are taxed at a 7% withholding rate, which will increase to 13 percent for fiscal years beginning on or after 1 January 2021. These tax rates apply both on ordinary corporate income as well on the sale and lease of real estate.

Resident individuals are general subject to the following personal income tax rates, depending on the annual revenues:

| Annual Net Taxable Income* | | Tax payable | | |
|---|---|---|---|---|
| From ARS | To ARS | ARS | + % | Over ARS |
| 0 | 20,000 | 0 | 5 | 0 |
| 20,000 | 40,000 | 1,000 | 9 | 20,000 |
| 40,000 | 60,000 | 2,800 | 12 | 40,000 |
| 60,000 | 80,000 | 5,200 | 15 | 60,000 |
| 80,000 | 120,000 | 8,200 | 19 | 80,000 |
| 120,000 | 160,000 | 15,800 | 23 | 120,000 |
| 160,000 | 240,000 | 25,000 | 27 | 160,000 |
| 240,000 | 320,000 | 46,600 | 31 | 240,000 |
| 320,000 | | 71,400 | 35 | 320,000 |

* *This table is updated annually with the coefficient of the fluctuation of the average salary of fixed employees.*

There are special tax rates for real estate transactions, both for resident individuals and non-residents.

Argentine resident individuals – other than those engaged in the real estate business – are subject to an income tax rate of 15%, applicable on the net capital gain from the sale. This tax applies on acquisitions made as of 1 January 2018. Real estate acquired before such date are subject to a different levy (1.5% real estate tax).

For non-resident individuals that do not have a permanent establishment in Argentina, the income tax rate is 15%, which works as a withholding at the paying source. This tax applies on acquisitions made as of 1 January 2018. Real estate acquired before such date are subject to a different levy (1.5% real estate tax).

For other non-resident aliens, like foreign business entities, the income tax rate is 17.5% applicable as a withholding on gross payments. Alternatively, it possible to tax the actual net capital gain, at 35%, under set conditions.

Set exemptions may apply in specific cases.

In general, there are no participation exemptions under Argentinean domestic rules. Further, tax consolidations between affiliated companies is not allowed, since each entity should pay taxes on a standalone basis.



2. What is the tax depreciation period for real estate in Argentina?
   Are there depreciation categories? Which depreciation method is used?

The tax depreciation period for real estate in Argentina (only applicable on construction and not land) is 50 years, which triggers an annual tax depreciation rate of 2%. Straight-line method applies under Argentinean domestic tax rules. This is the general rule, while real estate subject to faster depreciation (e.g. a shopping mall) may file for a faster depreciation allowance.

The only depreciation categories are:

(i) real estate 50 years;
(ii) movable assets, equipment and machinery: 10 years;
(iii) vehicles: 5 years; and
(iv) computers: 5 years.

3. When is a foreign investor subject to limited tax liability in Argentina?

Non-Argentine residents, who do not have local tax presence in Argentina, are only taxed on income arising from Argentine sources. Different effective withholding rates apply to income paid to non-residents; this is because a set percentage of the gross amount paid is deemed deductible expenses by the law. The percentage varies depending on the type of income and the location of its beneficiary (i.e. if located in a jurisdiction where Double Tax Treaty standards do alter the general income tax treatment).

## C. Real Estate Taxes

1. Does Argentina levy a real estate transfer tax on sale of real estate or shareholdings?
   Is it avoidable?

In addition to the direct sales of real estate elaborated above, indirect sales are also subject to tax. As of 1 January 2018, a new capital gains tax applies on the sale of equity interests in foreign companies that indirectly own substantial assets in Argentina.

There are two conditions for the tax to apply:

- → the interest being sold should be equal to or greater than 10 percent of the foreign entity's net worth, either as of the realization date or during the previous 12 months; and
- → 30 percent or more of the foreign entity's value stems from assets that were located in Argentina during the 12 preceding months.

In such cases, it is possible either to apply a 13.5% tax on the gross sale price or, alternatively, pay a 15 percent flat rate on the net gain.

There are many tax planning techniques to either mitigate or differ the tax burden, like roll over rules or business restructurings. However, all these options should be analyzed on a case-by-case basis, in view of facts and circumstances.

2. Is real estate subject to any real estate tax? At which rate?

**Federal taxation**

Federal personal asset tax applies on assets, which are either located in Argentina or abroad, held by individuals domiciled in Argentina and on undistributed estates located in Argentina. Non-residents are generally taxed on real estate located in Argentina. Individuals and business entities that are co-owners, possessors, users, depositories, administrators or custodians of assets belonging to non-resident taxpayers are liable as substitute obligors for tax due.

In the case of resident taxpayers, and pursuant to recent modifications passed, this tax applies as follows:

| Period | Tax basis | Rate |
|---|---|---|
| 2016 | Value of assets exceeding ARS 800,000 | 0.75% |
| 2017 | Value of assets exceeding ARS 950,000 | 0.50% |
| 2018 | Value of assets exceeding ARS 1,050,000 | 0.25% |

Since recent modifications, for period 2019 (onwards) the rates are the following for the assets in Argentina:

| Tax basis | Fixed tax | Rate | Over |
|---|---|---|---|
| Value of total assets ARS 0 - 3,000,000 | ARS 0 | 0.5% | ARS 0 |
| Value of total assets ARS 3,000,000 - 6,500,000 | ARS 15,000 | 0.75% | ARS 3,000,000 |
| Value of total assets ARS 6,500,000 - 18,000,000 | ARS 41,250 | 1% | ARS 6,500,000 |
| Value of total assets exceeding ARS 18,000,000 | ARS 156,250 | 1.25% | ARS 18,000,000 |



For the assets located or domiciled abroad, the tax rates are the following:

| Tax basis | Rate* |
|---|---|
| Value of total assets ARS 0 - 3,000,000 | 0.70% |
| Value of total assets ARS 3,000,000 - 6,500,000 | 1.20% |
| Value of total assets ARS 6,500,000 - 18,000,000 | 1.80% |
| Value of total assets exceeding ARS 18,000.000 | 2.25% |

* *The Executive Branch is entitled to increase the tax rate up to 2.50%.*

With respect to non-resident taxpayers that own real estate in Argentina are subject to the 0.5% annual tax rate mentioned above. If such real estate in owned by means of a local company, the personal asset tax also applies at the 0.5% rate.

Set exemptions may apply in specific cases.

**Provincial taxation**

Argentinean provinces apply the so-called property tax which is applied on the fiscal value of the real estate. Both the rate and fiscal value are determined by the relevant provincial jurisdiction. For instance, in the City of Buenos Aires the tax rate varies depending on the value of the real estate up to 0.7% plus a fix amount of ARS 6,300 per year.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Generally, VAT is not levied on the sale of real estate except on the first sale made by construction companies. VAT only applies on the sale of the building (as a retribution for the construction services), not on the land's sale.

2. What are the VAT consequences of renting/leasing of real estate?

Renting of real estate is generally subject to the standard 21% VAT tax rate.
Set exemptions may apply in specific cases. Specific rules apply to financial leases and sale and lease back transactions.

Real Estate Investment in

# Australia

## A. Legal/General

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1. Are non-residents entitled to acquire real estate in Australia?
   Does the acquisition have to be carried out by an Australian corporation?

It is possible for non-resident individuals and companies to purchase real estate in Australia. Any acquisition of real estate regardless of value requires notification to and approval by Australia's Foreign Investment Review Board (FIRB), unless an exemption applies.

2. Which importance does the Australian land register have?

Property legislation in all states and territories is based on the Torrens principle of registration of title. Each state and territory has a central register of all land in the state which shows the owner of the land. The land title is the official record. It can also include information about mortgages, covenants, caveats and easements.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The corporate rate of income tax is generally 30%. However, from 1 July 2017, the tax rate was reduced to 27.5% for companies that are base rate entities. A base rate entity is identified as a company that both:

- has an aggregated turnover less than the aggregated turnover threshold – which is AUD 50 million for the 2019-2020 financial year;
- 80% or less of their assessable income is base rate entity passive income – this replaces the requirement to be carrying on a business.

The income tax rates for resident individuals for the 2019/20 Australian tax year are:

| | |
|---|---|
| AUD 0 - 18,200 | Nil |
| AUD 18,201 - 37,000 | 19c for each AUD 1 over AUD 18,200 |
| AUD 37,001 - 90,000 | AUD 3,572 plus 32.5c for each AUD 1 over AUD 37,000 |
| AUD 90,001 - 180,000 | AUD 20,797 plus 37c for each AUD 1 over AUD 90,000 |
| AUD 180,001 and over | AUD 54,096 plus 45c for each AUD 1 over AUD 180,000 |

The above rates do not include the:

- Medicare levy of 2% which starts at a taxable income of AUD 22,398.

The income tax rates for non-resident individuals for the 2019/20 Australian tax year are:

| | |
|---|---|
| AUD 0 - 90,000 | 32.5c for each AUD 1 |
| AUD 90,001 - 180,000 | AUD 29,250 plus 37c for each AUD 1 over AUD 90,000 |
| AUD 180,001 and over | AUD 62,550 plus 45c for each AUD 1 over AUD 180,000 |

Foreign tax residents are not required to pay the medicare levy.

## 2. What is the tax depreciation period for real estate in Australia? Are there depreciationcategories? Which depreciation method is used?

Under the capital allowance regime, the decline in value of income producing real estate plant and equipment is generally tax deductible over the asset's estimated useful life. A taxpayer may depreciate assets using either the prime cost method or the diminishing value method. Both calculation methods are based on the asset's effective life and give the taxpayer the same total deduction for the depreciation. However, the prime cost method does so over a shorter time.

Similarly, deductions are available under the capital works regime for certain capital expenditure on income producing buildings and structures, in respect of both freehold and leasehold property. This deduction may be over a 25-year or 40-year period, depending on when construction commenced and the use of the property.

A taxpayer can claim a deduction if construction began after:

- 17 July 1985 and the property is used for residential accommodation or to produce income;
- 19 July 1982 and the property is not used for residential accommodation (for example, a shop); or
- 21 August 1979, the property is used to provide short-term accommodation for travellers and it meets certain other criteria.

A deduction may also be available for structural improvements made to parts of the property other than the building if work began after 26 February 1992. Examples include sealed driveways, fences and retaining walls. The deduction does not apply until completion of the construction. The deduction is at the rate of 2.5% or 4% (adjusted for part-year claims) depending on the date the capital works began.

There is no depreciation on the capital cost of land.

Note: legislation was passed in November 2017, the Treasury Laws Amendment (housing Tax Integrity) Bill 2017, that dealt with the depreciation of division 40 assets (plant and equipment that is not considered part of the property's structure and can be easily removed). If a second-hand property is exchanged after 9 May 2017, depreciation cannot be claimed on the above mentioned asset already present in the property at the time of purchase.

## 3. When is a foreign investor subject to limited tax liability in Australia?

**Income tax and capital gains tax (CGT) – Individuals and companies**

From an income tax perspective, a non-resident investor will be subject to Australian taxation on any Australian-sourced property income less related expenses. For an individual foreign investor, where they directly hold the property or via a trust, this may be at the non-resident individual tax rates *(see B.1. above)*. For a company foreign investor, this will be at the corporate rate of tax of 30% or 27.5% for base rate entities.

From a capital gains tax (CGT) standpoint, a non-resident investor will be taxed on capital gains arising from the disposal of Australian real property or on disposal of certain "non-portfolio" interests in entities the assets of which, directly or indirectly, consist principally of real property in Australia. This liability can arise where one non-resident entity disposes of its interest in another non-resident entity if the underlying assets of that other entity directly or indirectly consist principally of real property in Australia.

Non-residents are also taxed on capital gains on the disposal of assets used by them in carrying on business through a branch in Australia.

**Foreign resident capital gains tax withholding tax regime**

A 12.5% non-final withholding applies from 1 July 2017 on purchases of certain Australian assets which are acquired from foreign residents. Purchasers will be required to pay 12.5% of the first element of the cost base (usually, the purchase price), to the Commissioner.

The obligation to withhold applies to the purchase of an asset that is:

- taxable Australian real property (TARP);
- an indirect Australian real property interest (IARPI); or
- an option or right to acquire TARP or an IARPI.

Withholding is not required in any of the following situations:

- transactions involving TARP or an IARPI which has a market value of less than AUD 750,000;
- transactions conducted through a stock exchange or crossing system;
- arrangements already subject to an existing withholding obligation;
- securities lending arrangements;
- transactions involving vendors who are subject to formal insolvency or bankruptcy proceedings (in Australia or elsewhere).

Where a clearance certificate or declaration is obtained from the vendor (seller) in the following situations:

- in the case of TARP and company title interests, where the vendor obtains a clearance certificate from the Commissioner; or
- in the case of other types of property (such as IARPIs and options over TARP and IARPIs):
  - where the purchaser does not know or have reasonable grounds to believe that the vendor is a foreign resident (the "knowledge condition");
  - where the vendor makes a declaration that they are an Australian resident ("vendor declaration"); or
  - where, if the CGT asset acquired is a membership interest (for example, shares in a company), the vendor makes a declaration that the interest is not an IARPI and the purchaser does not know the declaration to be false ("interests declaration").



Where a clearance certificate is obtained, the vendor will not be required to withhold the 12.5%.

Vendors, purchasers and creditors can also apply to the Australian Tax Authorities (ATO) to vary the amount required to be withheld.

**Withholding tax on distributions – Managed Investment Trusts**

Australia has a special withholding tax concession for foreign investors participating in investment structures qualifying as Managed Investment Trusts (MITs). The tax rate for withholding from payments to non-residents will vary depending on whether the amount is either:

- a payment of dividends, interest and royalties (DIR);
- a fund payment.

For DIR payments the withholding rates are:

- 10% for interest regardless of whether a tax treaty is in place;
- 15% for unfranked dividends (i.e. dividends without tax credits) and royalties where a tax treaty is in place;
- 30% for unfranked dividends and royalties where no tax treaty is in place.

For fund payments, the withholding rates as of 1 January 2019 are:

- 15% where the payment is made to a resident of a country that has an exchange of information agreement with Australia;
- 30% where the payment is made to a resident of a country that does not have an exchange of information agreement with Australia.

In order for a trust to be an MIT, there are four broad requirements that must be satisfied:

- either the trustee of the trust must be an Australian resident, or otherwise central management and control of the trust must be in Australia;
- the trust must be a managed investment scheme operated by a financial services licensee, as defined in the Corporations Act;
- the trust must satisfy certain requirements aimed at ensuring the trust is widely held; and
- the trust must not be a public trading trust for tax purposes (which goes to the nature of the trust's investments and business).

4. Are asset deal and share deal possible in Australia?
   What are the main consequences?

Asset deals and share deals are possible in Australia. The main difference for the purchaser will generally be that the tax cost basis of the underlying property assets in a share deal may be less than their market value had they otherwise been directly acquired under an asset deal. Where a share deal is pursued, it may be possible to step up the tax cost basis of the assets acquired to their respective market values.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

Australia has thin capitalization rules that apply to both inbound and outbound investors. A deduction may be taken for interest expenses (debt deductions) subject to a maximum debt to equity ratio of 1.5:1. Debt deductions are not subject to thin capitalization limits where they are (in aggregate) below the de minimis threshold currently AUD 2 million.

Australia has comprehensive debt/equity classification rules and certain hybrid funding instruments may classify debt payments as either interest or dividends for Australian tax purposes.

6. Can acquisition costs/financing fees/interest be deducted?

Costs associated with acquiring the property (i.e. stamp duties, accounting and tax, legal, valuation, corporate advisory, agent, borrowing costs) may be:

(i) deductible over time (up to five years in the case of borrowing costs);
(ii) included in the capital gains tax (CGT) cost base of the property;
(iii) possibly deductible immediately;
(iv) treated as black hole expenditures and deductible over five years.

Generally, interest is deductible if it is incurred in gaining or producing assessable income or in carrying on a business for that purpose and is not of a capital, private or domestic nature. On this basis, interest expenses incurred when acquiring Australian real property should generally be deductible against assessable income in the year in which they are incurred, where the real property is used to produce assessable income.

As covered in *B.5. above*, there are potential thin capitalization/debt classification limitations on interest deductibility.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

A debt push-down structure may be utilized, particularly in cases where a tax consolidated group is formed or multiple entry consolidated group (MEC Group) is used. Debt may be pushed down from the foreign investor to the domestic holding company, or bank debt may be taken on by the domestic holding company and pushed downstream into the acquisition entity.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Generally speaking, there is 10% withholding tax on interest paid to non-residents.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses may be carried forward indefinitely and utilized against income, subject to certain tests and restrictions which apply to companies and trusts.

**Companies**

In broad terms, companies may continue to deduct carried forward losses in a tax year if either of the following tests are satisfied:

- the Continuity of Ownership Test (COT); or failing that
- the Similar Business Test (SBT) effective 1 July 2015.

The COT is satisfied where a company has maintained continuity with respect to the majority (i.e. more than 50%) of its ultimate beneficial owners (i.e. individuals) from the start of the tax year in which the tax losses are incurred until the end of the tax year in which the tax losses are utilized. In general, the SBT requires that a "similar" business be carried on by the Australian company immediately before the change in majority ownership (i.e. the failure of COT) and continues to be carried on for the duration of the tax year during which the losses are recouped. The SBT involves a complex and fact-sensitive determination.

#### Trusts

Losses must be “quarantined” in a trust to be carried forward by the trust indefinitely until offset against future net income. It is possible to use those losses as deductions against income in the trust for succeeding income years if the trust satisfies certain tests relating to ownership or control of the trust. If the trust terminates before the losses can be offset against income, they are lost.

The trust loss rules apply in different ways to each of the following categories of trust:

- fixed trusts;
- non-fixed trusts;
- excepted trusts.

In order to determine which test applies, the type of trust that is seeking a trust loss deduction needs to be determined. The different types of trusts are:

- non-fixed trusts;
- family trusts;
- fixed trusts;
- unlisted widely held trust;
- unlisted very widely held trust;
- wholesale widely held trust;
- fixed trust other than a widely held trust.

Once the type of trust has been determined, the relevant trust loss tests need to be considered, and applied to that trust.

The relevant trust loss tests are:

- control test;
- 50% stake test;
- pattern of distributions test;
- income injection test.



## C. Real Estate Taxes

### 1. Does Australia levy a real estate transfer tax on sale of real estate or shareholdings?

All Australian states and territories impose stamp duty (transfer duty) on a sale of Australian real property, including buildings and improvements. Each state’s and territory’s stamp duty law is different. The liability for stamp duty arises on first execution of the relevant sale/purchase agreement. The sale of real property to Australian residents is subject to duty at rates of up to 7%, depending on the value and location of the property.
In the case of foreign purchasers, there is a surcharge on stamp duty that differs for each state and territory and it ranges from 0.75% to an extra 8% surcharge.
There are special stamp duty provisions that apply to transfers of shares in companies (or unit trusts) that hold Australian real property. Acquisitions of shares (and units) in companies and (trusts respectively) that own Australian real property are subject to stamp duty, in all Australian jurisdictions, at the same rates as a transfer of real property (referred to as land-rich or landholder duty). These rules generally apply when:

- there is a significant or majority acquisition in a company (or unit trust);
- that company (or unit trust) is land-rich or a landholder.

The exact land-rich/landholder rules and threshold tests vary depending on each jurisdiction. Additionally, in certain limited circumstances, these rules can apply to acquisitions of shares (or units) in listed companies (or trusts).

Duty is payable by the purchaser in all cases.

### 2. Is real estate subject to any real estate tax? At which rate?

Each state and territory (except the Northern Territory) imposes land tax at different rates and conditions.

Generally speaking, land tax is payable on an annual basis, and is calculated on the unimproved value of land owned above a certain threshold. Broadly speaking, factors that may vary and affect a taxpayer’s land tax liability include:

- the marginal rates of tax imposed;
- the brackets of unimproved values of land on which the marginal rates of tax are imposed; and
- the exemptions specifically provided in each state.

For the 2020 year, the thresholds and maximum rates of land tax for residents in each state and territory are as follows:

| State/Territory | Threshold (AUD) | Maximum rate |
|---|---|---|
| Australian Capital Territory | 150,000 | 1.10 % |
| New South Wales | 692,000 | 2.0 % |
| Queensland | 599,999 | 2.25 % |
| South Australia | 391,000 | 3.7 % |
| Tasmania | 24,999 | 1.5 % |
| Victoria | 250,000 | 2.25 % |
| Western Australia | 300,000 | 2.67 % |

Foreign residents incur a surcharge on the land tax payable as absentee owners in certain states and territories:

- Australian Capital territory – 0.75% surcharge from 1 July 2018
- New South Wales – 2% surcharge from 1 July 2018
- Victoria – 1.5% surcharge
- Queensland 1.5% surcharge from 1 January 2018

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

Australia's equivalent to VAT is its Goods and Services Tax (GST). The rate of GST is 10% and it is generally payable on a broad range of supplies by businesses in Australia, including supplies of goods, services, real property, rights and obligations, and is generally applied at each stage of the supply chain.

There are generally three types of supplies for GST purposes. These are:

- taxable supplies, where the supply attracts GST and the supplier is entitled to claim GST credits on its expenses associated with the supply;
- input taxed supplies, where the supply does not attract GST, however, the supplier is not entitled to claim GST credits on its expenses associated with the supply; and
- GST-free supplies, where the supply does not attract GST and the supplier is entitled to claim GST credits on its expenses associated with the supply.



The GST implications of real estate transactions depend on the nature of the property and the availability of any GST concessions.

The following tables set out the GST impact on the following sales of categories of property as taxable supplies under various scenarios:

| Residential property | GST impact |
|---|---|
| Sale of new residential property (including long-term lease – at least 50 years) | Taxable[1] |
| Sale of vacant land | Taxable[1] |
| Sale of existing residential property (including long-term lease – at least 50 years) | Input taxed |
| Sale of partially completed residential property | Taxable[1] or GST-free as a going concern[2] |

| Commercial residential property | GST impact |
|---|---|
| Sale of commercial residential property | Taxable or GST-free as a going concern[2] |
| Short-term accommodation (less than 28 days) in commercial residential property | Taxable |
| Long-term accommodation (28 days or more) in commercial residential accommodation | Concessionally taxable at 5.5% or input taxed at the option of the supplier |

| Commercial or industrial property | GST impact |
|---|---|
| Sale of commercial or industrial property | Taxable or GST-free as a going concern |

| Farm land for farming | GST impact |
|---|---|
| Sale of farm land for farming | GST-free |

[1] The margin scheme is an alternative method of calculating the GST payable on sales of real property. It allows sellers of real property to pay GST on the basis of the seller's "margin" rather than the total sale price.

2. What are the VAT consequences of renting/leasing of real estate?

The following table sets out the GST implication on the following leases of category of property as taxable supplies under various scenarios:

| Lease of category of property | GST impact |
| --- | --- |
| Lease of new or existing residential property (other than long-term lease) | Input taxed |
| Lease of commercial or industrial property | Taxable |

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

No. Where equity is injected into a local company or unit trust, the allotment or issue of a share or unit is generally exempt from duty (unless the land-rich/landholder provisions apply *(see C.1. above)* or there is an allotment of shares by direction).

2. Is there a stamp duty on debt granted to a local company?

There is no longer duty imposed on mortgages in the States and Territories throughout Australia.

3. Are there any local government taxes connected with the ownership of a property?

The main ongoing government tax connected with ownership of a property is council rates; council rates are charged quarterly to cover various local government expenses such as rubbish collection.

4. Does a special regime for Real Estate Investment Trusts exist?
If yes, what are the requirements?

Real Estate Investment Trusts are predominantly exempt from taxation at the trust level as they distribute their net income to their unitholders. This may result in differing taxation outcomes depending on each unitholder's circumstances.


## A. Legal/General

1 Are non-residents entitled to acquire real estate in Austria?
Does the acquisition have to be carried out by an Austrian corporation?

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In general, a foreign individual or corporate investor may invest in Austrian property directly or indirectly through a local company, such as a joint stock company (AG), a limited liability company (GmbH) or a partnership (KG/OG). From a legal point of view, the possibility to transfer real property is limited by the Land Transfer Acts regulating the transfer of agricultural and forestry land and the acquisition of real estate by foreigners. EU/EEA Citizens are treated equally to Austrian Citizens, therefore individuals and legal persons from the European Economic Area (EEA) are generally not subject to an approval by the local land transfer authority (Austria's nine provinces have the respective legislative competence in this regard). For others, however, the acquisition of real property is subject to an approval by the respective local land transfer authority, which is by law a suspensive condition for the purchase agreement.

2. Which importance does the Austrian land register have?

In Austria rights with respect to real estate are registered in the national real estate registry containing all real properties. This registry is administered by the Austrian district court in which the respective real property is located. In principle, it is available to the public and its information can be accessed online.

As regards the importance of the Austrian land register, a legal transaction involving real estate is not effective vis-à-vis third parties as long as it is not registered in the relevant land registry. In other words, before registration the purchasing party of a contract has only a contractual claim for execution against the selling party of the same contract, but has not yet become legal owner of the real property.

Furthermore, according to the principle of good faith, entries into the land registry can be relied on as accurate and valid.

For the registration of property rights (as well as of construction rights) a registration fee of 1.1% accrues. The consideration for the real estate (regularly the purchase price) serves as the base.

The required registration of a mortgage in the land register triggers a registration fee of 1.2% of the secured amount.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate: 25%
  If a company suffers a loss or turns a very small profit, the company still has to pay a minimum amount of tax. The annual minimum tax for public limited companies (AG) amounts to EUR 3,500 and for private limited companies (GmbH) to EUR 1,750. A newly established private limited liability company shall be subject to a minimum corporate tax of EUR 500 for the first five years and EUR 1,000 for the following five years. The minimum corporate tax can be credited to the corporate tax the company has to pay when it is profitable in following years. In case of corporates (AG, GmbH) general principles of determination of business profits apply, which did not change by the new rules applicable for capital gains with regard to real estate derived as of 1 April 2012. Changes incurred for certain private foundations and associations, for which the speculation period was abandoned and a withholding tax on real estate income tax was introduced *(see next bullet point)*. According to the government program the corporate income tax should be reduced to 21% by 2024 at the latest.

- Personal income tax rate: Marginal tax rate:
  - up to EUR 11,000: 0%;
  - from EUR 11,001 to EUR 18,000: 20%;
  - from EUR 18,001 to EUR 31,000: 35%;
  - from EUR 31,001 to EUR 60,000: 42%;
  - from EUR 60,001 to EUR 90,000: 48%;
  - from EUR 90,001: 50%.
  - from EUR 1.000,001: 55%.

  According to the government program from 2021, the lower three tarif levels for wage and income tax will be reduced. However, the reform will be extended to two years: in the first step, only the starting tax rate is reduced (from 25% to 20% – this was already implemented retroactively in 2020 due to COVID-19 crisis), the next two tax rates will follow in 2021 or 2022 (from 35% to 30% and from 42% to 40%).

In the case of alienation of real estate by an individual resident in Austria capital gains derived as of 1 April 2012 are subject to personal income tax, regardless of the period between the acquisition and the sale of the real estate and regardless of whether it is held as business property or as private property.
The capital gain is subject to a flat tax rate of 30% if the real estate was acquired after 31 March 2002. The tax assessment base is calculated as the difference between the sales price and the acquisition cost of the real estate.

The 30% tax rate is also applicable for sales of real estate in business property of private individuals, unless the real estate is a current asset, is used in a real estate trading business, was written off tax effectively in the past or was used for a deferral of tax by a transfer of hidden reserves from the alienation of other assets. The capital gain with regard to real estate in business property is determined as the difference between the sales price and the book value of the property.

The tax is basically withheld by the attorney-at-law or notary public, as far as involved in the transaction as a representative for real estate transfer tax purposes. For transactions without a notary public or an attorney-at-law the tax has to be declared by the tax payer in the course of the individual assessment, but he/she has to submit an advance payment to the tax office within 1-2 months after the transaction, which is credited in the assessment. Business expenses related to the income taxed at 30% are not tax deductible.

The general taxation of capital gains from real estate in private property is applicable also for real estate, for which the former speculation period of 10 years (in certain cases a longer speculation period of 15 years was applicable) had already expired according to the old legislation applied before 31 March 2012 (so called "old property"). For these buildings and land plots the acquisition costs may be determined for simplification purposes on a lump sum basis with 86% of the alienation proceeds or 40% of the alienation proceeds in case of a rededication in a building plot after 31 December 1987. Therefore, for "old property" the tax amounts only to 4.2% of the alienation proceeds or 18% of the alienation proceeds in case of rededications in a building plot after 31 December 1987.

**Participation exemptions**

In Austria, the sale of shares in a company whose assets mainly consist of Austrian property is not treated as the sale of property owned by the company.

Under the domestic participation exemption regime, any income (e.g. dividend distributions) derived by a resident corporation (such as GmbH or AG) from a participation in another Austrian corporation is exempt from corporate income tax, regardless of the capital ownership percentage and the holding period. However, the domestic participation exemption does not apply to capital gains of a GmbH or AG resulting from the alienation or liquidation of the domestic participation in another Austrian corporation.

The international participation exemption applies to specific income *(see below)* derived from a participation in a foreign company. The international participation exemption is applicable under the following conditions:

- direct or indirect (e.g. via an intermediate transparent partnership) equity participation of at least 10% in a foreign corporation for a minimum uninterrupted period of one year;
- such participation must be held in a foreign EU company in the sense of the EU Parent-Subsidiary Directive or any other foreign corporation comparable to an Austrian AG or GmbH.

The international participation exemption is also granted to Austrian permanent establishments of companies resident in another EU Member State if the companies fulfill the above-mentioned requirements.

Within the scope of the international participation exemption, dividends and capital gains are, in general, tax-exempt. Capital losses (except losses in the event of insolvency or liquidation) and other writedowns of the participation are basically non-deductible. The parent company may, however, exercise an option to have capital gains and losses from the participation be treated as taxable or tax-deductible, as the case may be. The option must be exercised in the year of acquisition and is binding on any group company holding or acquiring that participation.
Write-offs and capital losses must be spread over a seven year period. The international participation exemption does not apply if the foreign subsidiary mainly derives passive income. Passive income would be interest, license income, dividends and income from disposal of shares, income from finance leasing, income from activities of banks and insurance companies (with specific exceptions) as well as income of settlement companies. In such a case a switch over from the exemption method to the credit method applies for distributions from international participations.

Portfolio dividends not covered by the international participation exemption (i.e. participations <10% or held for less than one year) and received from corporations resident in an EU state or an EEA state, with which Austria has concluded a tax treaty providing for comprehensive information exchange, are also exempt from Austrian corporate income tax ("portfolio exemption"). For assessments of the year 2011 and onwards the portfolio exemption was expanded to all dividends distributed by foreign corporations comparable to an Austrian AG or GmbH (i.e. also from third states), if Austria has concluded a tax treaty providing for comprehensive information exchange with the other state (see Sec. 10 (1) (6) CITA). The portfolio exemption covers only dividends and not capital gains. The portfolio exemption does not apply if the foreign subsidiary mainly derives passive income. However, this exception is only applicable for qualified participations of at least 5%. For participatIons <5% no switch over from the exemption method to the credit method can happen even though the main activity results from passive income.

**Controlled Foreign Corporation (CFC rules)**

A new Sec. 10a was introduced in the CITA, which attribute low taxed passive income *(for the definition of passive income see above)* of foreign controlled corporations and permanent establishments to the Austrian parent company. The CFC rules aims to implement the EU anti-tax avoidance directive into Austrian domestic law.
For the application of the CFC rule, the passive income has to represent more than one-third of the foreign subsidiary's total income. Control within the meaning of this rule is exercised if an Austrian parent entity directly or indirectly has more than 50% of the voting rights or capital respectively is entitled to more than 50% of the profits. Low taxation is present if the tax rate is not higher than 12.5%. The rules does not apply if the controlled foreign company conducts "substantial economic activity" supported by staff, equipment, assets, and premises As a consequence of the CFC rules, such passive income of controlled foreign corporations and permanent establishments is attributed to the Austrian parent company as profits even before the profit is actually distributed. Any foreign taxes paid would be creditable against the Austrian corporate income tax.

**Tax group**

If an Austrian corporation or a permanent establishment of an EU corporation registered in Austria holds a (direct or indirect) participation of more than 50% of the capital and the majority of the voting rights in a domestic or foreign corporation (being resident in an EU Member State or in states that have entered into a comprehensive administrative assistance arrangements with Austria), a tax group may be established. The minimum holding requirement can also be met together with other companies provided the shareholding of one corporation amounts to at least 40% and the shareholding of the other corporations amounts to at least 15%.

A tax group has the effect that all profits and losses of domestic group members (subsidiaries) will be allocated for tax purposes to the group parent at the top of the tax group.

The group may also include foreign first tier subsidiaries. In principle, losses of foreign group members may be deducted from the tax income of the whole group in proportion to the amount of the direct shareholding of the group in the foreign entity. Nevertheless, losses of foreign group members can only be recognized to the extent of 75% of the total profit of all domestic group members (including the tax group parent). The remaining loss surplus may be carried forward by the group parent. However, such losses are recaptured and taxed in Austria in subsequent years if and to the extent they can be offset against profits of the foreign entity under its domestic tax regime or if the foreign entity drops out of the group (e.g. due to sale of the participation). The general 75% cap applying to the utilization of tax loss carry forwards (calculated on the basis of the overall positive income) is not be applicable to profits resulting from the recapture of foreign losses. Hence, loss carry forwards available at the group parent's level may be fully offset against such recapture profits.

Profits of foreign group members are not to be included in the tax group.

A write down of participations in the share capital of group members is not deductible for tax purposes. Providing that all requirements are fulfilled, the group parent may opt for group taxation simply by filing an application form with the tax authorities (subject to certain time constraints). The tax authorities approve the tax group by official notice.

The tax group has to remain in existence for at least three full fiscal years. If the tax group is terminated earlier, all benefits from the group taxation will be lost and each member of the group will be taxed as a separate entity with retroactive effect.

### 2. What is the tax depreciation period for real estate in Austria? Are there depreciation categories? Which depreciation method is used?

In principal, the basis for depreciation with regard to real estate includes the acquisition costs of a building, but not the value of the land. Tax depreciation must be calculated using the straight-line method, according to which the annual depreciation is a fixed percentage.

In general, for business premises a depreciation rate of up to 2.5% (period of amortization: 40 years) is available for tax purposes in Austria depending on the use of the building (without evidence of the actual useful life; half of a percentage for the year of acquisition or disposal if the utilization of the real estate is less than six months). If the building is rented out for residential purposes, only a depreciation of 1.5% of the assessment basis may be deducted as tax allowable expenses, if no shorter useful life can be proved.

Real estate held as private assets and rented out by a natural person are subject to a 1.5% depreciation (no difference between business and residential purposes).

In case of rented residential buildings held as private property maintenance costs have to be split up into repair expenses (immediately allowable expenses, an application for a deduction over a fifteen year period is possible) and maintenance expenses (allowable only over a fifteen year period). The deduction over a fifteen year period for maintenance expenses for residential buildings is also compulsory for business assets (Sec. 4 (7) and Sec. 28 (2) ITA). Maintenance expenses are expenses that increase the utility value or the useful life of the building.

Outside a business certain production costs (in particular expenses according to the MRG – Act on Tenancy Law, WSG – Restoration Act for Residential Buildings and the DMSG – Act on Protection of Historical Buildings and Monuments) may be deducted over a fifteen year period upon application.

A plot of land is not depreciable. Tax-effective write down to the lower market value is required if the market value is permanently below the tax book value.

### 3. When is a foreign investor subject to limited tax liability in Austria?

An individual having neither a domicile nor habitual place of abode in Austria (herein after non-resident) is subject to limited tax liability only. Tax liability is limited to Austrian-source income as listed in Sec. 98 ITA.

A non-resident individual may carry on a business in Austria as sole entrepreneur through an Austrian permanent establishment or as a partner of an Austrian partnership (an Austrian partnership basically constitutes a permanent establishment of the partners to the partnership).

Income derived from the activities listed in Sec. 98 ITA is subject to income tax at the same rates as applicable for resident taxpayers. In the course of an annual tax assessment, the income of non-resident individuals (and partners to Austrian partnerships) is increased by a deemed additional amount of EUR 9,000. Under certain conditions, citizens of an EU Member State who are non-residents within the meaning of Austrian tax law may also apply for treatment as a resident ("Schumacker doctrine").

A non-resident corporation (i.e. neither the place of management nor legal seat is in Austria), which is comparable to an Austrian corporation, is subject to limited corporate tax liability if it carries on a business in Austria through an Austrian permanent establishment or an Austrian partnership. In this case, tax liability is limited to the income attributed to that permanent establishment or partnership. Further, income from Austrian real estate is subject to the limited tax liability (at a tax rate of 25%) if it belongs to the business of the foreign corporation.

According to the old legislation applicable until 31 March 2012, capital gains in connection with the sale of Austrian real estate were subject to limited taxation in Austria, if the property was sold within the speculation period of 10 years after acquisition (in certain cases a longer speculation period of 15 years was applicable). If the foreign seller is comparable to an Austrian company or is an individual holding the real estate in its business property, such capital gain was taxable regardless of the speculation period.

According to the stability Act 2012, applicable as of 1 April 2012, all capital gains in connection with the sale of Austrian real estate are subject to Austrian taxation – regardless of the period in which the real estate has been held and regardless of whether it is in private property or in business property. Therefore non-resident individuals are subject to tax on alienations of Austrian real estate. According to Sec. 30a (1) the special tax rate for real estate of 30% is available also for non-residents. Transitional provisions for Austrian real estate not subject to tax anymore after 31 March 2012 are applicable also for non-residents *(see above part B.1.)*.

Moreover, income from renting out real estate if the immovable property is located in Austria is subject to limited tax liability.

*For other tax consequences (VAT, capital tax, property tax etc.) see the questions below.*



## 4 Are asset deal and share deal possible in Austria? What are the main consequences?

The real estate investor can acquire Austrian real estate by way of an asset deal (e.g. direct acquisition of real estate or acquisition of tax-transparent partnerships owning real estate) or a share deal (e.g. acquisition of a corporation owning real estate). In a share deal, further reorganization steps to achieve a debt push-down may be required.

**Asset deal**

- Direct acquisition of real estate:
  An Austrian corporation may directly acquire Austrian real estate. Interest expenses for a debt-financed acquisition may be deducted from income from real estate if the real estate is rented out or used for its own business. The acquisition of real estate is subject to real estate transfer tax of 3.5% of the consideration.
- Acquisition of partnership interest:
  If the seller holds the real estate via an Austrian partnership, the acquirer may purchase the Austrian partnership interest. Austrian partnerships are tax transparent and the partnership's income is taxed at the partner's level. Interest expenses for the debt-financed acquisition of a partnership interest should be deductible from the income of the partner. Real estate transfer tax is levied under certain conditions.

**Share deal**

The acquisition costs of the shares must be capitalized and are generally not deductible. Interest on the debt-financing of the acquisition of a participation in a (resident or non-resident) corporation is tax deductible (except for acquisitions within an affiliated group) regardless of the fact that the participation exemption provides for a tax exemption on income from the acquired participation. However, interest payments (also inter-company) are only tax deductible if they meet the general arm's-length requirements.

Avoidance strategies for real estate transfer tax when acquiring the target-corporation are available.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

**Thin capital rule**

There are no explicit tax regulations available under Austrian tax law stipulating the minimum equity required by a company ("thin capitalisation rules"). Basically, group financing has to comply with general arm's-length requirements. Therefore, an Austrian group entity being financed by an affiliated entity must be able to document that it would have been able to obtain funds from third-party creditors under the same conditions as from an affiliated financing entity. The Austrian Administrative Court has established various principles to determine under which conditions debt financing is not recognised for tax purposes. Therefore the tax jurisdiction limits loan financing through hidden equity.

**Restrictions on the deductibility of interest**

Under the Austrian CITA, a restriction on the deductibility of interest relating to the acquisition of (foreign) shareholdings from related parties is not tax deductible. Apart from that, the deductibility of interest paid by Austrian corporations will also be denied if the payments are made to related parties located in low-tax and off-shore jurisdictions. The restriction applies if the income derived from the interest is not taxed in the recipient's state due to a general or individual tax exemption or is subject to a nominal tax rate of less than 10% or is subject to an effective tax rate of less than 10% due to specific tax incentives granted for such type of income.

## 6. Can acquisition costs/financing fees/interest be deducted?

If real estate activity qualifies as business income, the general principles of business taxation apply. Expenses (e.g. ongoing expenses and maintenance) are, in general, tax deductible. Acquisition costs must be capitalized and for buildings such acquisition costs may be depreciated over the useful life. The same is applicable for production costs (costs incurred by the land owner for the construction of a building or major extensions of existing buildings) of real estate. Financing fees for loans must be capitalized and depreciated equivalent to the corresponding duration of loan.
If related to tax exemption (e.g. dividends) deduction may be denied.

## 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

If the real estate is held by an Austrian corporation (target) and the purchaser acquires the target, Austrian law allows several strategies to generate a debt push-down. Common debt push-down concepts are a merger of the Austrian target (the corporation holding the real estate) with an Austrian NewCo (a corporation acquiring the shares in the share deal), a conversion of the target into a (tax-transparent) partnership and the setting up of a tax group between the NewCo and the target.

**Merger**

A (corporate income tax-neutral) merger of the target with the NewCo leads to the result that acquisition debt and business activity is on the same level. Banks generally prefer that bank debt and real estate is on the same level to allow a pledge of real estate as security of the bank loan. Thus, banks often grant an interest rate reduction after a merger (margin step-down). Before the merger, up-stream securities, which are limited by creditor protection rules and which require compensation at arm's-length, are required. Legal restrictions have to be considered for merger due to creditor protection rules.

An up-stream merger leads to real estate transfer tax. Also a down-stream merger can result to a real estate transfer taxation if after the merger someone holds at least 95% of the shares in the target company (unification of shares).

**Conversion**

The target is converted into a tax-transparent partnership under universal succession. NewCo often acts as a 100% limited liable partner (limited liability with equity injected). A second company acts as managing partner without an equity interest in the partnership that has unlimited liability (unlimited liability for all debts of the partnership).

An Austrian partnership is transparent for income tax purposes. Therefore, income generated at the target level is characterized for tax purposes as directly earned by the partners (according to their partnership interest) and taxed at the partner level. Thus, interest expenses of acquisition debt of NewCo are deductible from target's income.

A conversion triggers real estate transfer tax.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest income of a non-resident taxpayer (corporation and individuals) for a granted loan is not subject to tax in Austria. If the interest income is to be attributed to a permanent establishment of the nonresident recipient, that income is taxable as business income in Austria.

In addition, interest that is paid to associated companies or to their permanent establishments located in a member state other than Austria is exempt from the withholding tax due to the implementation of the EU Interest and Royalty Directive in Austrian law. The exemption is subject to the conditions that (i) the recipient qualifies as beneficial owner of such payments, (ii) the parent company has a form listed in the Annex to the Interest and Royalty Directive and (iii) the parent company is subject to regular income tax in its residence state (confirmation issued by the competent tax authority is necessary). A company is deemed to be associated if it holds directly at least 25% in the capital of the subsidiary for an uninterrupted period of one year. Furthermore, the exemption requires a confirmation from the recipient that it qualifies as beneficial owner of the payments and that it fulfills the participation requirements. In the case of tax avoidance, abuse of law and royalties exceeding the arm's-length amount are recharacterized as constructive dividends and are subject to withholding tax.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses from business activities that could not be deducted from other positive income in the same year may be carried forward without time limit provided the loss was computed according to generally accepted accounting principles. Loss deduction for individuals and partnerships is not limited either.

Basically, losses of corporations are treated tax-wise similiarly to losses of sole entrepreneurs and partnerships. However, loss deduction is limited to 75% of the positive yearly income of each year (except for restructuring/liquidation gains). Furthermore corporate income tax law provides for loss trafficking rules according to which the loss carry forward may no longer be used in case the company has lost its identity in the meaning of Sec. 8 (4) CITA. This is to be assumed if the ownership as well as the organizational and business structure has substantially changed. Apart from that, the Austrian Reorganization Tax Act provides for further loss transfer rules applicable to certain types of reorganizations (e.g. mergers).

There is no tax loss carry back in Austria.



## C. Real Estate Taxes

1. Does Austria levy a real estate transfer tax on sale of real estate or shareholdings?

**Transfer or real estate and comparable rights**

Real estate transfer tax is levied on transfers of immovable property (land and buildings) located in Austria. Taxable transactions include – inter alia – the sale and exchange of immovable property as well as transfers without a legal title and transfers of beneficial ownership. The tax assessment base for real estate transfer tax is in general the consideration (e.g. purchase price and assumed liabilities) for the respective real estate. However, the taxable base has to be at least the property value ("Grundstückswert"). This value will be calculated either on the basis of the sum of the projected pro rata three-fold land value ("Bodenwert") and the pro rata value of the building or derived from a proper real estate price index. The general tax rate is 3.5%.

For (partly) gratuitous transfers (except for transfers of real estate used in a farming or forestry business) the applicable tax rate will depend on the amount of the taxable basis which corresponds to the real estate's value ("Grundstückswert"). In the case of a taxable base of up to EUR 250,000, the tax rate amounts to 0.5%, for the subsequent EUR 150,000 tax base, the tax rate increases to 2%, and for any amounts exceeding such threshold, the tax rate amounts to 3.5%.

A reduced rate of 2% applies for real estate used in a farming or forestry business. Furthermore the tax basis for such real estate is the value of a special (rather low) assessed tax value ("Einheitswert").

**Transfer of shares**

Under Austrian tax law, not only the transfer of Austrian real estate, but also the transfer or consolidation of 95% of the shares in a property-owning company, triggers a 0.5% Austrian real estate transfer tax. The tax basis will essentially be the value of the underlying real estate. Such tax burden is equally triggered if at least 95% of the shares in a property owning company are acquired or owned by corporations which are part of a tax group for Austrian corporate income tax purposes. Moreover a new provision since 1 January 2016 pursuant to which the transfer of ownership of at least 95% of the interests in a partnership to new partners within a five years period will be subject to real estate transfer tax. As with share consolidations, legal ownership will be decisive for a change in ownership, however interests held in trust will be attributed directly to the trustor for real estate transfer tax purposes.

2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is levied on Austrian immovable property, i.e. agricultural, forestry, business and private immovable property. The tax is assessed at a basic federal rate (generally 0.2%) and is multiplied by a municipal coefficient (up to 500%, depending on municipality); therefore the tax rate amounts up to 1%. The taxable base is the assessed value for tax purposes of the property.

Undeveloped land plots are subject to an additional 1% undeveloped land tax of the tax assessed value exceeding EUR 14,600.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

In principle, sale, rental and lease transactions are VAT-exempt, with no input VAT credit.

The seller may, however, opt for VAT liability. As such, the sale of business premises would be subject to 20% VAT. The seller is only entitled for full input VAT deduction for services received related to the acquisition of real estate and the acquisition costs when he sells with application of VAT.

The same applies to VAT on certain major repairs undertaken within ten years before sale. If input VAT was deducted, a VAT-exempt sale within ten years leads to a pro-rata reversal of input VAT deduction (in case the asset is used for business and private use, the period may be extended to 20 years). The period of correction has been generally expanded to 20 years for real estate which was acquired or first used for rental income after 31 March 2012.

With regard to sales subject to VAT, the VAT forms part of the basis for real estate transfer tax.

2. What are the VAT consequences of renting/leasing of real estate?

As stated above *(in point 1.)*, rental and lease transactions are VAT-exempt as well, with no input VAT credit. However, rental for accommodations, such as apartments and family houses, is taxable at the rate of 10% with input VAT tax credit. In case of a rent or lease of offices, industrial premises, plants and other business (in the sense of non-residential) real estate, the lessor, may opt for taxation at a rate of 20% with input VAT tax credit. Therefore the lessor would charge VAT of 20% on the rent. The lessor is only entitled to input VAT deduction for services received that are related to the renting activity if he leases out with VAT.

In this respect the Stability Act 2012 comes up with restrictions for lease contracts concluded after 31 August 2012. Regarding those lease contracts it is only allowed to opt for taxation with the possibility to deduct input VAT in case the tenant himself is performing turnovers which are subject to VAT. Otherwise (in case the tenant/lessee uses the real estate almost exclusively for VAT-exempt transactions (like banking or insurance transactions) the option for VAT liability is excluded.

## E Other Taxes

1. Is there a capital tax for equity injected into a local company?

Since 1 January 2016 contributions of capital to Austrian companies (i.e. the AG, GmbH and a specific type of a partnership – the GmbH & Co KG) by the shareholder do not trigger a capital tax anymore.

2. Is there a stamp duty on debt granted to a local company?

For loans and credit agreements granted as of 1 January 2011 no stamp duty is levied any more in Austria.

Surety agreements (1% of amount), assignment agreements (0.8% of consideration), mortgage agreements (1% of value of liability) and commercial lease agreements (1% of agreed consideration) are in general subject to stamp duty. Strategies to avoid or reduce Austrian stamp duty are however available and need detailed planning.

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

In general the Investment Fund Act (Investmentfondsgesetz – "InvFG") applies solely to funds investing in securities. Therefore Austria has an own Austrian Real Estate Investment Fund Act (Immobilien-Investmentfondsgesetz – "ImmoInvFG"). The ImmoInvFG only applies to funds exclusively investing in real estate and the required liquid assets, it does not allow for mixed funds investing in all types of securities and real estate.

Share certificates in Austrian real estate funds are securities that securitise the rights of the shareholders in the assets of the real estate fund. Real estate funds invest the funds received from their shareholders in land, buildings and project developments or liquid financial assets such as securities and bank balances.
The general principles underlying the tax treatment of real estate investment funds do not differ from that of (securities) investment funds. A (real estate investment) fund itself is not subject to corporate income tax but the shareholders are subject to taxation. Investors are taxed via withholding tax on the proportionate income attributable to them. The starting point for calculating withholding tax is the fund's distributable annual profit, which consists of the following components:

- Management profits (rental income)
- Revaluation gains (80%)
- Gains on securities and liquidity
- Profit distributions by companies

Real Estate Investment in
# Belarus

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in Belarus? Does the acquisition have to be carried out by a Belarusian corporation?


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Belarusian laws provide different regulations for acquisition of buildings and land plots.

The general rule is that land plots can be acquired neither by foreigners nor by foreign corporations. Foreign citizens may inherit a land plot from their immediate relatives only. Foreign citizens and foreign companies may lease a land plot.

According to the House Code of the Republic of Belarus a foreign citizen as well as a foreign company is entitled to purchase a privately-owned residential property. Acquisition of state-owned residential property is possible provided that it is permitted by a respective international treaty.

Commercial properties may be acquired both by foreign citizens and corporations.

Registration of a foreign citizen as well as a foreign company with the tax authorities before state registration of the transaction is required.

Acquisition of a building involves the transfer of the land plot's title to the new owner of the building.

### 2. Which importance does the land register have?

Land plots, transactions and titles to them must be registered with the Unified State Register of Real Estate, Rights thereto, and Transactions therewith (the Real Estate Register).

Buildings, titles to buildings and agreements with respect to buildings, except for lease rights to buildings and lease agreements (including free-use and sublease agreements), are also subject to registration with the Real Estate Register.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

→ Corporate income tax rates:
- 18% – general flat rate;
- 12% – general rate for dividends;
- 6% – dividends, in case the shareholders did not distribute dividends for 3 years, but rather reinvested the profits;
- 0% – dividends, in case the shareholders did not distribute dividends for 5 years, but rather reinvested the profits;
- 10% – income received from the sale of high-tech goods (works, services) that are self-produced;
- 10% – income gained by science and technological parks, technology transfer centres, residents of scientific and technological parks;
- 25% – banks, microfinance, forex and insurance companies.

Income gained from the sale of self-produced goods (works, services) by companies situated and operating in medium-sized and small towns and rural areas are exempt from corporate income tax for seven years from the date of incorporation.

As an alternative to the general system of taxation, businesses may use the simplified taxation system (STS) and pay a unified tax imposed on gross revenues. Gross revenues are considered to be the amount of revenues received during the taxation period as the result of sales of goods (works, services), property rights and non-operating income. In order to use the STS, certain requirements on gross revenues within one calendar year and number of personnel have to be met.

Depending on the circumstances, the main tax rates under the STS are 3% (if the STS with payment of VAT is used); and 5% (if the STS without payment of VAT is used); and 16% (for such non-operating income as the goods (works, services), property rights, other asserts, as well as monetary funds received gratuitously).

Certain taxpayers and certain activities are subject to special taxation treatment. In particular, special taxation regimes are provided for residents of free economic zones and residents of High Technology Park (HTP), and residents of the China-Belarus Industrial Park "Great Stone".



→ Personal income tax rate:
- 13% – flat tax rate on income, including dividends;
- 6% – dividends, in case the shareholders did not distribute dividends for 3 years, but rather reinvested the profits (applicable only to individuals – Belarusian tax residents);
- 0% – dividends, in case the shareholders did not distribute dividends for 5 years, but rather reinvested the profits (applicable only to individuals – Belarusian tax residents);
- 16% – on income
  - received by individual entrepreneurs, from commercial private notaries' activities and private advocacy activities;
  - accrued by tax authorities based on the excess of expenditures over income;
- 9% – income received by
  - individuals from residents of the HTP under labour agreements, except for certain support personnel;
  - individual entrepreneurs who are residents of the HTP;
  - individuals involved in implementation of a registered business-project in the sphere of high technologies from non-residents of the HTP under labour agreements;
- 4% – income in the form of gains (returned bids that did not play) received by individuals from Belarusian legal entities engaged in – gambling business;
- Fixed rates – non-entrepreneurial income from real estate rented out to individuals not registered as individual entrepreneurs.

Under Belarusian tax laws there are no participation exemption and tax-grouping rules.

2. What is the tax depreciation period for real estate in Belarus?
   Are there depreciation categories? Which depreciation method is used?

For the purposes of tax depreciation real estate objects are divided into two main categories: buildings and constructions, each of these contains a range of corresponding groups and types. Depreciable fixed assets do not include land.

As a rule, depreciation periods for real estate used in commercial activities are based on useful lives of real estate objects. Considering different factors, useful lives of real estate objects are determined within the following limits: from 0.8 - 1.2 of normative lives of objects. Normative lives of fixed assets are established in the Resolution of the Ministry of Economic Affairs No.161 of 30 September 2011.

Under this Resolution normative lives for buildings are as follows:

- industrial and non-industrial buildings – from 10 to 125 years;
- demountable and portable buildings – from 5 to 20 years;
- other buildings – from 28 to 125 years.

Normative lives for constructions vary due to the group and type of real estate and can vary from 2 to 125 years. In particular, for multi-level aboveground and underground parking these are 60 and 50 years respectively.

Companies determine depreciation methods independently having regard to certain limitations established by law. With regard to real estate, straight-line and productive depreciation methods are generally used.

### 3. When is a foreign investor subject to limited tax liability in Belarus?

Non-resident companies which do not carry out activities through a Belarusian permanent establishment pay a withholding tax on certain types of income received from sources in Belarus (dividends, interest, royalties, capital gains, fees for certain services, etc). Tax rates are provided in the Tax Code of the Republic of Belarus and subject to application unless other rates are established in international double tax treaties.

Non-resident companies that carry out activities through a Belarusian permanent establishment are subject to corporate income tax on the income derived through such permanent establishment at a rate of 18%.

### 4. Are asset deal and share deal possible in Belarus? What are the main consequences?

Asset deals and share deals relating to real estate are both possible in practice.

The corporate income tax rate is 18%. Income received by non-resident companies which do not carry out activities through a Belarusian permanent establishment from the sale of shares in Belarusian companies is subject to withholding tax at a rate of 12% (double tax treaties with a number of countries provide exemption of such income from taxation).



Income received by a resident company from the sale of real estate is subject to corporate income tax at a rate of 18%, while income received by a non-resident company which does not carry out activities through a Belarusian permanent establishment is subject to withholding tax at a rate of 15% of gross amount payable minus costs for obtaining and building the real estate object supported with the documents, net of amortisation.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Since 1 January 2013 thin capital rules are applicable in Belarus.
Thin capital rules restrict the deductibility of interest on loans and certain other income (marketing, consulting, intermediary, management services, contractual fines and penalties, etc.) paid to related parties and will apply if the income recipient is:

(a) a founder (shareholder), either a company or an individual, and directly or indirectly holds a share of 20% or more in the capital of the income payer on the last date of the tax period; or
(b) a related person to a founder (shareholder) as described in (a); or
(c) a person for whom a related person as described in (b) and/or a founder (shareholder) as described in (a), acts as surety or guarantor and provides certifying letters and/or guarantees, or otherwise commits to secure the debt recovery by the income payer.

The debt-to-equity ratio is 3:1 (1:1 for companies producing excise goods).

Thin capital rules shall not apply to banks, insurance companies and companies in which the amount of lease payments received during the tax period is more than 50% of total revenues received from the sale of goods (works, services), property rights and income from operations of leasing (financial leasing) of the property.

### 6. Can acquisition costs/financing fees/interest be deducted?

As a general rule, costs on acquisition of depreciable assets are not included in the costs deductible for corporate income tax purposes. However, taxpayers may record up to 15% of the initial value of buildings and constructions as costs for corporate income tax purposes as of the date when those assets were initially accounted for. This benefit is subject to compliance with certain formalities.
Currently, interest costs can be deducted without limitations as far as they result from business purposes *(see also question 5. above)*.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

**Tax group**

In Belarus each corporate entity is regarded as a separate entity for tax purposes. There is no possibility under Belarusian tax law to be taxed on the basis of consolidated income or as a fiscal unity.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest payments to a non-resident company which does not carry out its activities through a permanent establishment, credits and loans are subject to withholding tax at a rate of 10%. A lower withholding tax rate may be provided by a respective double tax treaty.

There is no withholding tax on interest payments to a local creditor, as well as interest payments to a foreign creditor which carry out activities in Belarus through a permanent establishment (in the latter case it is subject to confirmation with the tax authorities). However, such payments are subject to corporate income tax at a rate of 18% calculated by creditors on their own.

9. Is a loss carry forward or loss carry back granted and what are the restrictions?

Starting from 2012, local companies became entitled to carry forward losses. Taxpayers may carry forward losses incurred in 2011 and subsequent tax periods for a period of ten years. Carry forward of losses is not possible with regard to:

- losses incurred as a result of activities outside Belarus if a company is registered as a taxpayer in a foreign state with regard to such activities; and
- losses incurred as a result of the tax period (periods or part of the tax period, respectively) when a Belarus company could apply corporate income tax relief established for several tax periods.

Carry back of losses is not allowed in Belarus.



## C. Real Estate Taxes

1. Does Belarus levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

N/A

2. Is real estate subject to any real estate tax? At which rate?

Belarusian tax laws provide for real estate tax and land tax.

**Real estate tax**

Corporate real estate tax is imposed on the depreciated value of buildings, constructions, and parts thereof, as well as car parking places owned or leased by companies. With regard to leased real estate objects, the company which has the real estate on its balance sheet according to the lease agreement is liable to tax; however, if the landlord is an individual or a foreign company not carrying out activities in Belarus through a permanent establishment, the taxpayer is normally the tenant.

The standard annual corporate real estate tax rate is 1%. In practice it is normally subject to increasing coefficients set by the local authorities.

Individual real estate tax is imposed on buildings, constructions and car parking places owned by individuals (including individual entrepreneurs). The annual tax rate is 0.1%. The rate is 0.2%, if an individual (including an individual entrepreneur) owns two or more housing units in residential buildings. Tax is calculated by the tax authorities based on the assessed value of the real estate object. The tax authorities send an individual written notice to taxpayers by 1 September of the relevant year.

Local government authorities may increase or decrease the tax rates for certain categories of taxpayers, but for 2019 by no more than two and a half times, and since 2020 by no more than two times.

### Land tax

Companies and individuals who own or use land in Belarus generally pay land tax.

Except for a limited number of cases, the tax base is the cadastral value of the land, which can be found at the official website of the National Cadastre Agency http://nca.by/. Tax rates vary significantly depending on the cadastral value and functional use of land. Local government authorities may increase or decrease the tax rates for certain categories of taxpayers, but for 2019 by no more than two and a half times, and since 2020 by no more than two times.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

As a general rule, the sale of real estate is subject to VAT at a rate of 20%.

Sale of real estate by individuals not registered as individual entrepreneurs does not trigger VAT.

2. What are the VAT consequences of renting/leasing of real estate?

As a general rule, renting/leasing of real estate is subject to VAT at a rate of 20%.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

N/A

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

N/A

Real Estate Investment in

# Belgium

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Belgium?
   Does the acquisition have to be carried out by a Belgian corporation?

In Belgium there is no restriction with regard to the acquisition of real estate. Residents as well as non-residents are entitled to acquire real estate.

Therefore, the acquisition of Belgian real estate does not have to be carried out by a Belgian acquisition company.

2. Which importance does the Belgian land register have?

Rights with respect to real estate are to be recorded in the Belgian land register as such rights only are refutable to third parties upon registration.

On the transfers of rights in rem (e.g. a long-term lease or a building right) a registration tax of 2% applies (0.5% for non-profit organizations).

These registration taxes are not due in case of a share deal since such a share deal does not imply the transfer of ownership rights of the real estate (subject to a general anti-abuse provision).


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## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporate income tax (CIT)**

**Corporate income tax rate**

For Financial Years ending as of 31 December 2019 (Assessment Year 2020 and onwards) the standard CIT rate is 25%. For Financial Years ending until 30 December 2019 (Assessment Year 2019) the standard CIT rate is 29,58%. For SMEs the CIT rate is 20% for the first tranche of EUR 100,000.

There is no specific tax rate for real estate income. However, a specific exit tax rate applies upon conversion or merger of a regular company into a BE-REIT *(see E.3.)*. This tax rate will be applied on the latent gain on the Belgian real estate and the tax-free reserves. The exit tax rate is 12.75% for Assessment Year 2019 (Financial Years ending until 30 December 2019) and will be 15% for Assessment Years 2020 and onwards (Financial Years ending 31 December 2019 and onwards).

**Deferred taxation**

Capital gains tax may be deferred by reinvesting the proceeds into other depreciable assets, provided the real estate has been held for more than five years and the sales proceeds are reinvested within three years (in case of reinvestment in depreciable assets other than buildings, ships or aircrafts) or five years (for reinvestments in buildings, ships or aircrafts).

Furthermore, the capital gain must be made unavailable for distribution (by recording it as an unavailable reserves account). If the aforementioned conditions are met, the corporate income tax on the capital gains will be deferred over the period during which the reinvested assets are being depreciated.



**Notional interest deduction**

Belgian resident companies may deduct a notional interest deduction from their taxable profits. The deduction is also granted to non-resident companies in respect of their Belgian permanent establishment or immovable property (or rights thereon) located in Belgium. As from 2018, this deduction is no longer calculated on the total amount of the company's qualifying equity.

The deduction is calculated on the company's average incremental net equity over the last five years. The notional interest deduction rate applicable for Assessment Year 2020 (Financial Year 2019) is 0.726% (1.226% for SMEs).

**Participation exemption**

Dividends received qualifying for the participation exemption received by Belgian companies are 100% tax-exempt. In order to qualify for the participation exemption, several conditions must be met:

- a minimum holding period of at least one year (with full ownership);
- a minimum participation of 10% or an acquisition value of at least EUR 2.5m;
- a subject-to-tax test.

The excess dividend received deduction may be carried forward.

**Capital gains on shares**

Capital gains derived from the disposal of shareholdings in other companies are fully tax-exempt. The conditions for exemption are fully aligned with the conditions to apply for the participation exemption. For Financial Years ending 31 December 2019 or onwards (as from Assessment Year 2020) the standard CIT rate of 25% will apply if these conditions are not met.

For Financial Years ending until 30 December 2019 (Assessment Year 2019) a tax rate of 25.5% applies if the shares are sold within the one-year minimum holding period and 29.58% if the minimum participation or the subject to tax test are not met.

Losses on the sale of shares and write-downs to impaired values are not tax deductible.

### Tax group

Belgium has recently introduced a limited form of group taxation as from Assessment Year 2020. Companies that are in taxpaying position can make a group contribution to group companies that are in a loss position via a group contribution agreement, subject to conditions and limitations. The receiving company can offset the group contribution with available tax attributes.

The scope of the measure is limited to certain qualifying companies and requires:

- a minimum 90% shareholding between the companies during the whole tax year;
- the measure is limited to group companies that are affiliated during at least five successive tax periods;
- the scope is also limited to the parent, the subsidiary or the sister company of the taxpayer or the Belgian permanent establishment.

Some companies such as investment companies and regulated real estate companies (SIR/GVV) are excluded from this regime.

### CFC rules

Further to the introduction of EU ATAD, Belgium had to introduce CFC rules. Belgium has opted to implement the option where income derived by a CFC from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage are taxed.

## Personal income tax

### General personal income tax rates

Progressive tax rate apply. The following tax bands and rates are applicable for income obtained in 2019, local surcharges excluded:

- from EUR 0.01 up to EUR 13,250: 25%;
- from EUR 13,250.01 up to EUR 23,390: 40%;
- from EUR 23,390.01 up to EUR 40,480: 45%;
- above EUR 40,480.01: 50%.

Income from real estate is in principle taxed at those progressive tax rates, either based on a deemed rental income (“revenue cadastral”) or on the actual rental income received.



### Capital gains on real estate

As a general rule, capital gains realized by individuals who have not used the real estate for business purposes are exempt from income tax.

There are however a number of exceptions:

- Capital gains realized on the disposal of land transferred within eight years from the acquisition (or within three years if acquired by gift if the transfer occurs within eight years of the original acquisition by the donor). These capital gains are taxed at a rate of 33% in the hypothesis of a disposal within five years from the acquisition and at 16.5% in the hypothesis of a disposal after this period of five years.

- Capital gains realized on the disposal of buildings transferred within five years from the date of acquisition (or within three years if acquired by gift if the transfer occurs within five years of the original acquisition by the donor) or on the disposal of buildings constructed on land acquired if the construction of the building started after five years after acquisition by the taxpayer or the donor and if the alienation takes place within five years after the date of the first occupation or rental of the building. These capital gains are taxed at a rate of 16.5%.

- Capital gains that arise from speculative operations that cannot be considered as “normal management of private property” are always taxable (regardless of the date of acquisition and alienation). These capital gains are taxed at a rate of 33%.

- Capital gains realized by individuals who use the real estate for business purposes are always subject to tax at the general personal income tax rates. However, the taxation of the gain may be subject to deferral under certain conditions (similar to the conditions of deferred taxation for companies).

- Capital gains from the sale of shares held by individuals are, in general, exempt from personal income tax. Under certain conditions such capital gains can be taxable as business income at the general personal income tax rates or as “miscellaneous income” at 16.5% or 33%.

**Cayman Tax**

A look-through tax, the so-called "Cayman Tax" applies on real estate income derived through certain types of legal constructions by Belgian resident individuals, who are founder or beneficiary of such constructions (and Belgian entities that are subject to legal entities income taxation). It concerns legal constructions such as trusts and trust-like relationships as well as foreign entities that are not subject to tax or subject to an effective tax rate of less than 15%. E.g. closely held UCITS ("Fonds dédiées"), both in and outside the EEA, are explicitly targeted. Income realized by these legal constructions is deemed to be realized directly by the Belgian individual.

## 2. What is the tax depreciation period for real estate in Belgium? Are there depreciation categories? Which depreciation method is used?

Land is not depreciable.

Depreciation for buildings used for business purposes is based on the acquisition or production cost of the asset.

The common depreciation rate (straight-line rate) for business real estate is 3% per annum. Industrial buildings can be depreciated at 5% per annum.

Some items of expenditure on the building can be depreciated separately (e.g. central heating, air conditioning, lifts). Depreciation rates vary from 10% to 33% of the purchase price depending on the type of equipment.

In most cases depreciations are made at straight-line rate.

However, provided the taxpayer does not rent the building to third parties, the taxpayer is entitled to a double-declining depreciation on a reducing-balance basis up to a maximum of the double of the straight-line depreciation (with an absolute maximum of 40% of the acquisition price). This double-declining method will no longer be available for assets acquired or established as of 2020.

No depreciation is allowed for real estate held in private property and not used for business purposes.

An exceptional tax effective write down is possible when the asset is exceptionally impaired due to technical, technological or economic conditions.



## 3. When is a foreign investor subject to limited tax liability in Belgium?

A non-resident individual having neither his domicile nor his "seat of wealth" in Belgium is subject to limited tax liability only. Tax liability is then limited to Belgian source income as listed in Article 228 of the Belgian Income Tax Code ("BITC").

Non-resident individuals may carry out a business in Belgium as sole entrepreneur through a Belgian permanent establishment or as a partner of a Belgian partnership (a Belgian partnership basically constitutes a permanent establishment of the partners to the partnership).

Income derived from the activities listed in Article 228 BITC is subject to income tax at the same rates as applicable to resident taxpayers.

Non-resident corporations are subject to limited corporate income tax liability, inter-alia, if a business is carried out in Belgium through a Belgian permanent establishment or a Belgian partnership. In case, tax liability is limited to the income attributed to that permanent establishment or partnership. Furthermore, non-resident corporations are subject to Belgian limited corporate income tax liability for income and capital gains from Belgian real estate, even if the business is not carried out in Belgium through a permanent establishment. The Belgian tax treaties allocate the right of taxation to the situs country of the property.

## 4. Are asset deal and share deal possible in Belgium? What are the main consequences?

The real estate investor can acquire Belgian real estate by way of an asset deal (i.e. direct acquisition of real estate) or a share deal (i.e. acquisition of a corporation owning real estate).

**Asset deal**

In case an investor purchases a Belgian property, the book values of the assets transferred are stepped up to the acquisition cost of the investor. The seller realizes a capital gain equivalent to the difference between the purchase price and the tax basis of the assets. Depreciable assets are depreciated over their useful lives.
As indicated above, land is not subject to depreciation. Furthermore, capital gains can benefit from deferred taxation if all conditions are met *(see above)*.

*For other tax consequences (RETT, VAT, etc.) see the questions below.*

**Share deal**

The book values of the assets and liabilities at the level of the target company remain unchanged.

*For other tax consequences (RETT, VAT, etc.) see the questions below.*

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

In Belgian tax law, the following limitations regarding the deductibility of interest payments should be observed and monitored:

**ATAD 30% EBITDA rule**

Belgium has introduced a new interest limitation rule on the basis of article  of the ATAD I Directive (30% EBITDA rule). Any arm's-length "exceeding borrowing costs" will, as a rule, only be deductible up to the higher of maximum 30% of the taxpayer's EBITDA or EUR 3m.

By way of exception, the first bracket of EUR 3m will never be caught by the interest limitation rule. Belgian companies part of a Belgian group must apply this first bracket of EUR 3m at consolidated level, a portion of this bracket is attributed based on an allocation key still to be determined by the minister of finance. Hence, the portion of exceeding borrowing costs absorbed by the current project is no longer available to be used for future projects.

Disallowed exceeding borrowing costs can be carried forward without time limit. Upon certain conditions, there is also a possibility to transfer 'deduction capacity' to another Belgian group entity.

Several types of loans are outside the scope:

- there is a grandfathering rule for loans granted before 17 June 2016 (these loans are still subject to the 5:1 thin cap rule);
- loans in relation to public-private partnerships;
- loans granted between Belgian entities being part of the same group.

Belgium has made full use of the tolerance to exclude certain types of entities from the scope of the 30% EBITDA rule. Thus, financial undertakings such as regulated investment institutions, insurance companies and pension institutions are also out of scope.

**5:1 debt-to-equity ratio**

The 5:1 thin capitalization rule is only applicable for interest on "old intra-group loans" (loans concluded before 17 June 2016) and for interest paid into "tax havens". This 5:1 debt-to-equity ratio applies in case interest is paid by a Belgian company to:

(1) beneficial owner who is either not subject to income tax or who is, for the interest concerned, subject to a tax regime which is significantly more advantageous than the common Belgian income tax regime (it should be noted that common tax regimes applicable to companies established in another EEA Member States are deemed not to be significantly more advantageous than the common Belgian income tax regime); or
(2) a beneficial owner who is a (directly or indirectly) related company.

In case a loan is guaranteed by a third party or in case a loan is funded by a third party which partly or wholly bears the risk related to the loan, the third party is deemed to be the beneficial owner of the interest, provided the guarantee or the funding has tax avoidance as main purpose.

In case the debt-to-equity ratio is not respected, the interest deduction is disallowed to the extent that the amount of the loans to the parties mentioned in (1) and (2) exceeds five times the sum of fiscal paid-up capital (at the end of the taxable period) and taxable reserves (at the beginning of the taxable period).

There are several exceptions to this thin-cap rule. Bonds and other publicly issued securities are excluded, as well as loans granted by banks and other financial institutions. Furthermore, it does not apply to loans contracted by movable leasing companies and companies whose main activity consists of factoring or immovable leasing within the financial sector (being companies which are under permanent prudential control) and to the extent the funds are effectively used for leasing and factoring activities.

Furthermore, the thin-cap rules are not applicable to companies whose main activity is the execution of PPP projects obtained in accordance with public procurement legislation.

**A 1:1 debt-equity ratio for interest payments to (corporate) directors and board members**

This ratio applies in case of interest payments by a Belgian company to a foreign company which is at the same time managing director or member of the board (or has similar functions as those executed by a managing director) of a Belgian company. The interest deduction would be disallowed and dividends are deemed to be distributed to the extent that the amount of the loan exceeds the sum of the paid-up capital (at the end of the taxable period) and the taxable reserves (at the beginning of the taxable period). The same applies for the part of the interest paid to such beneficiaries exceeding market interest rates.

**Interest payments to tax havens**

Interest paid or attributed to non-residents or foreign establishments which are not liable to income tax or are subject to a significantly more favorable tax regime than the Belgian tax regime, are not deductible. In such situations, interest is only deductible if the taxpayer shows that the payment corresponds to a normal business transaction and that the amount is not abnormally high. The taxpayer is entitled to ask for a ruling on this issue.

**Market rate**

Interest on loans that are not contracted with Belgian financial institutions, are deductible only to the extent that their rate is not higher than the market rate.

For interest relating to periods after 31 December 2019 interest for non-mortgage loans without fixed duration will only be tax deductible if the interest does not exceed a reference rate published by the Belgian National Bank.

### 6. Can acquisition costs/financing fees/interest be deducted?

Interest can be deducted within the limitations set by thin capitalization rules *(see above)*.

Acquisition costs and financing fees can be regarded as business expenses or charges if they are directly or closely connected with the conduct of a business.

Deductible business expenses or charges are those which were incurred or borne by the taxpayer to obtain or retain taxable business income (Article 49 BITC). They must actually be paid or borne during the taxable period, or be booked as certain and fixed liabilities. Their authenticity and their amount must be proven.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Belgium has only a limited form of tax consolidation, known as the "group contribution regime", allowing compensation of profits and losses between affiliated qualifying tax payers. This regime requires a 90% participation between parent and subsidiary or a common EEA parent company, holding a participation of at least 90% in both companies. The 90% participation is deemed to be held for an uninterrupted period of 5 years.

Companies which make real estate or rights in rem on real estate available to their director (private individual) and investment companies are excluded from this consolidation regime.

Apart from this group contribution, debt push-down is only possible under very strict conditions, based on rulings.

### 8. Is there a withholding tax on dividends or on interest payments paid by local company to creditor?

Dividends distributed by Belgian companies are generally subject to a withholding tax at a rate of 30%. A withholding tax of 15% may – under certain conditions – apply to SMEs (criteria to be determined on a consolidated basis).

In accordance with the European Parent-Subsidiary Directive, dividends are exempt from withholding tax provided the parent company (i) has a legal form mentioned in the annex of the aforementioned Directive or a similar legal form in a state with which Belgium has concluded a double tax treaty providing for the required exchange of information; (ii) has its tax residency in Belgium, in a Member State of the European Union or in a country which has concluded a double tax treaty with Belgium; (iii) is subject to a corporate taxation or a similar taxation without the benefit from a specific beneficial regime different from the normal taxation rules; (iv) holds, at the moment of attribution of the income, a participation of at least 10% of the share capital of the distributing company (v) for an uninterrupted period of at least one year (or maintains this participation for an uninterrupted period of at least one year);

and (vi) the minimum participation has not been subject to any collateral or a stock lending arrangement. If the one-year period has not expired yet, withholding tax relief is granted provisionally.

A GAAR is applicable. The WHT exemption will be denied when the dividends originate from legal acts that are articficial and merely put in place in order to obtain the WHT exemption.

Interest paid to (non-resident) companies is subject to a withholding tax at a rate of 30%.

In accordance with the European Interest and Royalty Directive, interest and royalties paid or attributed by a Belgian company are exempt from withholding tax, provided the beneficiary is a Belgian company or a company of a Member State of the European Union, and the companies are affiliates. The companies are affiliated if one of them holds – directly or indirectly – a participation of at least 25% of the share capital of the other company at the moment of attribution or payment of the income. The same exemption applies when, at the moment when the income is attributed or paid, a third company of the European Union has fully owned a direct or indirect participation of 25% of the share capital of both aforementioned companies for an uninterrupted period of at least one year. The beneficiary of the income must have fully owned or enjoyed the usufruct of the stock, rights or goods in respect of which the income arises and that these stock, rights or goods were in the period during which the income arises at no point under the assets of a permanent establishment of the beneficiary situated in a third state.

The latter exemption is not applicable to income from real estate certificates, regarding the allotment or payment of the income wholly or partly related to the realization of the underlying property.

Furthermore, dividend or interest payments to non-resident companies can be subject to a withholding tax at a limited rate due to the double tax treaties Belgium has a comprehensive network of treaties for the avoidance of double taxation.

Other exemptions from the withholding tax on dividends and interest paid by Belgian companies are available.



### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses of a company or an individual who uses the real estate for business purposes may in principle be offset against all other sources of income and gains arising in the current taxable period. Losses may also be carried forward for an indefinite period.

However, a minimum taxable basis has been introduced. A number of deductions, such as carry forward losses may offset only 70% of the taxable amount exceeding EUR 1 million. The remaining 30% will be fully subject to the standard CIT rate.

Losses cannot be carried back.

Changes of ownership (directly or indirectly) of a corporation can cause the loss of tax loss carry forward, if the takeover cannot be justified on sound financial or economic grounds. The taxpayer is entitled to ask for a ruling on this issue. Furthermore, there are restrictions on loss carry-forward on the occasion of merger.

## C. Real Estate Taxes

### 1. Does Belgium levy a real estate transfer tax on sale of real estate or shareholdings?

**Transfer of real estate and comparable rights**

Transfer of the ownership of real estate in Belgium generally triggers real estate transfer tax ("RETT") ("droit d'enregistrement"/ "registratierecht"), payable by the purchaser. The tax base is the actual sale proceeds. However, the tax authorities may adjust the price upwards if it is below market value. This adjustment must take place within two years after the transfer.

The general rate is 10% for the Flemish Region and 12.5% for the Brussels and Walloon Region.

Under specific conditions, the tax is reduced to 5% for the Flemish and 6% for the Walloon Region. In the Brussels Region the tax is reduced to 8% if the real estate is acquired for resale by a real estate professional.

Real estate transfer tax is normally not payable in cases where the transfer of real estate is subject to VAT.

**Transfer of shares in corporations**

In general, the transfer of shares in companies owning Belgian real estate does not trigger any registration duties (subject to a general anti-abuse provision).

### 2. Is real estate subject to any real estate tax? At which rate?

Belgian real estate is subject to a real estate withholding tax ("précompte immobilier"/ "onroerende voorheffing") levied annually. The real estate tax is based on the deemed rental income ("revenu cadastral" / "kadastraal inkomen") of the real estate, as assessed by the Belgian tax authorities at a given reference date (i.e. 1 January 1975).

In order to obtain the basis for calculating the tax, the deemed rental income on 1 January 1975 is multiplied by a revaluation index, which is determined on an annual basis.

The effective rate of tax usually varies from 30% to 40% of the indexed deemed rental income of the property, depending on its exact location.

If the property is used for business purposes (by individuals or companies), the real estate tax is deductible as a business expense.

For specific cases exemption of real estate tax is possible.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The transfer of real estate is generally VAT-exempt (subject to registration duties). However, a transfer of a new building can be subject to VAT. If VAT is applicable there is an exemption for real estate transfer tax. A building is new until 31 December of the second year following the year of first use or occupation of the building.

VAT is applicable under the following scenarios:

- → The new building is sold by a professional building company (a company whose professional activities cover real estate transactions). For professional building companies VAT is automatically applicable to the sale of a new building.
- → The new building is sold by a VAT taxable person, not being a professional building company, or a non-VAT taxable person. In such case, the seller has the option to sell the real estate with VAT. Certain specific formalities are to be fulfilled (preliminary declaration, special VAT return, etc.).

If VAT has to be applied for the sale of the building, VAT is also due on the land on which the building stands, provided that this land is transferred at the same time and by the same person.

If VAT is applicable, in general, the standard rate (21%) applies. If certain conditions are met reduced rates apply for certain real estate transactions in connection with social housing, building of schools and renovation (6%) and the social sector (12%).

Any change in the use of the real estate property within a 15-year period requires a pro rata adjustment of the input VAT claimed upon purchase (a sale of real estate property without VAT within this period will trigger a VAT adjustment). If the parties have opted for VAT on a commercial lease this period is extended to 25 years *(see below)*. Renovation and transformation work in connection with real estate is subject to a five-year adjustment period.

No VAT is applicable and no VAT adjustment is required if the transfer of real estate is part of a VAT neutral transfer of going concern.

The transfer of shares in corporations is VAT-exempt.

### 2. What are the VAT consequences of renting/leasing of real estate?

The lease of real estate is often VAT-exempt, without the right to recover input VAT. There is no possibility to opt for VAT for the rental of buildings rented to private individuals, to taxpayers using the building for private purposes or to public bodies who use the building for an activity for which they do not qualify as a taxable person.

However, as from 2019, Belgium has introduced an optional VAT regime for commercial lease of new real estate used exclusively for business purposes (B2B).
If a building was subject to exigible VAT before 1 October 2018 the optional regime will not be applicable and the lease for such a building will be VAT-exempt.
If the parties opt for the VAT, an extended VAT revision period of 25 years is applicable (instead of the standard 15 year revision period for immovable property).

Furthermore, since 2019 new lease contracts for warehouses are automatically subject to VAT. Prior to 2019 it was also possible to lease warehouses subject to VAT but under stricter conditions.

There are several other exceptions to this VAT exemption:

- immovable lease (a lease contract with an option to purchase the real estate at the end of the agreement). The application of VAT on immovable leases is subject to specific conditions (content of contract, length of the contract, etc.). It should be noted that under Belgian VAT law both operational and financial lease agreements qualify as a supply of services;
- hotel services;
- provision of accommodation in (holiday) camps;
- letting of sites for parking of vehicles;
- letting of real estate in connection with the exploitation of harbors, airports and navigable rivers;
- letting of permanently installed tools/equipment or machinery.

Finally, the letting of immovable property for a period of no longer than 6 months is subject to 21% VAT. The regime for short-term rental will, however, not apply in the following cases:

- the rental of immovable property destined for habitation;
- the rental of immovable property to natural persons who use the property for their private purposes or, more generally, for purposes other than those of their economic activity;
- the rental of immovable property to non-profit organizations;
- the rental of immovable property to any person who uses the property for their VAT-exempt activities as set out by Article 44, paragraph 2 of the Belgian VAT Code.

**VAT-grouping**

Under Belgian VAT law there is an option to establish a VAT group between taxable persons for purposes of VAT if there is a financial, organizational, and economic link. Within a VAT group, intra-group supplies and services are disregarded for VAT purposes. A VAT group can be an adequate alternative to cover negative VAT adjustments in connection with intra-group real estate transactions and renting/leasing operations.



## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Only a fixed capital duty of EUR 50 is due upon contribution made to Belgian companies. However, if real estate is contributed together with a debt related to this real estate, the 10% (Flemish Region) or 12.5% (Brussels or Walloon Region) transfer tax is due on the amount of the debt.

Furthermore, the transfer of real estate by an individual to a company by way of capital contribution is subject to a capital duty of 10% (Flemish Region) or 12.5% (Brussels or Walloon Region) if the real estate is partly or totally designated for use or used as a lodging.

### 2. Is there a stamp duty on debt granted to a local company?

No stamp duty is due on debt granted to local companies.

However, in case of mortgage loan, registration duty is due at the rate of 1% of the principal of the receivable benefiting from the guarantee.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Apart from the Belgian quoted REIT (GVV/SIR), Belgium also has a very flexible private REIT structure available (FIIS/GVBF ). This regime is only available for institutional and professional investors (and so exclude private individuals)

The FIIS/GVBF is a closed-end real estate fund (meaning an investment fund with fixed capital) subject to a very limited number of regulatory constraints. The fund must comply with AIFMD regulations unless it qualifies for an exemption (e.g. the de minimis exemption if its assets remain below EUR 100 million or EUR 500 million in the absence of leverage). The value of the fund’s assets must amount to EUR 10 million (there is a transition period of approximately two years) and the fund must annually distribute at least 80% of its profits. The fund will be created for a period of 10 years. Nevertheless, the fund can in principle exist indefinitely since the initial period can be prolonged (albeit by a unanimous decision of the shareholders) for consecutive maximum periods of 5 years.

Even though the fund will be subject to certain restrictions, they are dwarfed by the flexibility resulting from the absence of other restrictions, such as:

- a FIIS/GVBF can be created by a single shareholder;
- the fund can exist with a single real estate asset;
- there is no maximum debt percentage;
- there is an exemption from the interest deduction limitations under ATAD;
- the Belgian Financial Services and Markets Authority ("FSMA") make no oversight or approval;
- there is no "cash trap" (due to the application of IFRS accounting standards);
- there is a "light" registration procedure with the Belgian Ministry of Finance.

The fund is virtually tax transparent since it is only taxed on a very limited notional corporate tax base. Latent capital gains are subject to an "exit tax" of 12.75% until end of 2019 and of 15% as of 2020 at the moment of the creation of a new fund and the contribution of assets into an existing fund.

All taxation is shifted from the fund level to the fund's shareholders. Belgian shareholders will, in principle, be taxed at the standard CIT rate (unless the shareholder possesses tax assets to shelter the dividend income) since a FIIS/GVBF's dividend distribution does not qualify for the Belgian participation exemption. Foreign shareholders may be subject to a more advantageous tax treatment dependent on the participation exemption regime in their resident tax jurisdiction and the available double tax treaties. Moreover, Belgium does not levy withholding tax on dividends distributed by the FIIS/GVBF to foreign shareholders (provided that the dividend does not originate from Belgian dividends or Belgian real estate income).

The FIIS/GVBF also benefits from a VAT exemption on (certain) management services invoiced to the fund.

International investors might decide to "pool" their European real estate investment in a FIIS/GVBF. The rental income from the European real estate will not be taxed at the level of the fund and the subsequent income repatriation remains tax-free in most cases. Moreover, the FIIS/GVBF might provide the ideal tool to re-leverage existing structures and avoid a "cash-trap".

Real Estate Investment in

# Bosnia & Herzegovina

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Bosnia & Herzegovina? Does the acquisition have to be carried out by a Bosnian corporation?

Generally, in accordance with local legislation, non-residents' (both physical persons and legal entities) right to acquire real estate in the Federation of Bosnia and Herzegovina (FB&H) and the entity Republika Srpska (RS) is based on the reciprocity principle. The exception applies for rights acquired through inheritance, if not otherwise specified by another law or international treaties.


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The list of countries and the conditions of reciprocity with Bosnia and Herzegovina are published by the Federal Ministry of Justice as well as the Ministry of Justice of RS, with the previously obtained opinion of the Ministry of Foreign Affairs of Bosnia and Herzegovina.

According to the list of countries with condition of reciprocity with Bosnia and Herzegovina, e.g. Germany is one of the countries whose residents can acquire property without any limitations.

2. Which importance does the land register have?

Land registry is considered to verify and fully maintain the factual and legal state of the property. The acquirer of property rights by law, inheritance, final court decision or final decision of another competent authority is authorized to request the registration of the acquired title to ownership in the land register.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Corporate income tax rate and personal income tax rate in Bosnia and Herzegovina are both set at 10%. For corporate income tax purposes, tax grouping is not allowed for cross-border transactions or entities.

For individuals acquiring real estate, income derived from property rights, in accordance with the personal income tax laws of both entities, is taxable (i.e. income from lease of objects, capital gains) at rate of 10%.

*For real estate specific taxation see section C.*

2. What is the tax depreciation period for real estate in Bosnia & Herzegovina?
   Are there depreciation categories? Which depreciation method is used?

In Bosnia and Herzegovina depreciation is calculated in accordance with IFRS on a monthly basis by the linear method, depending on useful life of asset.

In FB&H, depreciation expenses of real estate constructions are recognized in tax balance on annual basis at rate of 5%. When it comes to RS, depreciation of of real estate constructions is recognized as expense in the amount on the acquisition value with using annual depreciation rate of 3%.

3. When is a foreign investor subject to limited tax liability in Bosnia & Herzegovina?

Both in the FB&H and the RS, withholding tax is levied on income that non-resident generates within the territories of the Federation B&H and the RS. Withholding tax is payable at the rate of 10% in both entities.Tax rate on deduction may be lower in case of application of the Double Taxation Avoidance Agreement.

In FB&H, withholding tax is calculated on the basis of payments or otherwise settled:

- dividends or distribution from profit;
- interest or its functional equivalent by financial instruments and arrangements;
- royalties and other intellectual property rights;
- fees for management, technical and educational services (including fees for market research services, tax consultancy, auditing services and consulting services);
- lease payments based on lease of movable and immovable property;
- fees for entertainment and sporting events;
- insurance premium for insurance or reinsurance against risks in the Federation;
- fee for telecommunication services;
- other fees for services, but only for non-residents from countries with which there is no signed agreement on avoidance of double taxation.

In RS, withholding tax is calculated on the following payments to foreign legal entities:

- dividends and profits;
- interests;
- royalties related to similar rights and intellectual property rights (the right to reproduce literary, artistic, scientific and cinematographic works, patents, licenses, rights to use the name, design, model, trademark, draft, plan and other similar rights);
- for the performance of entertaining, artistic or sports programs in RS;
- for market research, advertising and promotion, management, consulting, tax and business consulting, auditing, accounting and legal services;
- for insurance premiums for insurance or reinsurance against risks in RS;
- for telecommunication services between RS and the foreign country; and
- for lease of movable property.

4. Are asset deal and share deal possible in Bosnia & Herzegovina?
   What are the main consequences?

Asset and share deals are possible in Bosnia and Herzegovina. Implications are assessed on case by case basis. Both deals may be subject to the corporate income tax or personal income tax (capital gains).

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

Thin capitalization rule applies in the Federation of B&H, under which interest expense relating to debt in excess of a 4:1 debt-to-equity ratio is treated as tax non-deductible. Mentioned ration considers subscribed equity only.

In RS, interest rate expenses are treated as tax non-deductible for the amount in which net interest expenses exceeds 30% of the tax base, which do not include interest revenues and expenses.

TP rules apply, but there are no safe harbor rates.

6. Can acquisition costs/financing fees/interest be deducted?

Acquisition of real estate is performed in accordance with IFRS. In accordance with Corporate Income Tax Laws of FB&H and RS, interest can be deducted up to the amount which is in accordance with thin capitalization and TP rules.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

N/A

8. Is there a withholding tax on interest payments paid by local company to creditor?

Withholding tax at the entity level, is a tax that is levied on income that non-resident generates in the territory of these two entities. In both entities, withholding tax is payable at the rate of 10% *(see also section B.3.)*. Withholding tax is calculated on the basis of payments or otherwise settled interests or its functional equivalent in both entities.

The rate of WHT may be lower in case of application of the Double Taxation Avoidance Agreement.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses may be carried forward for up to five years. Losses may be offset against the first available profits, with the oldest losses offset first.

The carry back of tax losses is not permitted.



## C. Real Estate Taxes

1. Does Bosnia & Herzegovina levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

The acquisition of real estate in the Federation of B&H is subject to real estate transfer tax levied at the cantonal level. The tax base is the market value of the property at the time of transaction. Either the buyer or the seller may be responsible for payment of the tax, depending on the specific legislation in the particular canton. The tax base for real estate tax purposes is the estimated market value of the property. In most cases it is determined at rate of 5%. There are certain tax exemptions available in some cantons (for example: contribution of real estate to subscribed equity of legal entity, agricultural land, first transfer of newly built real estate that is subject to VAT, statutory changes, etc.)

In the RS there is no real estate transfer tax.

2. Is real estate subject to any real estate tax? At which rate?

Property tax is regulated differently, depending on the entity in which the property is located.

In the RS, the tax is charged at the rate of 0.20%.

In the FB&H, real estate taxation is regulated by laws in each of the ten cantons. According to cantonal laws, properties, cottages, business premises, rented apartments, garages, motor vehicles, aircraft and craft are taxable. Property tax is paid annually per square meter based on fee defined by each municipality.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The transfer of real estate, except of the first transfer of property rights, or the right to dispose of newly built real estate, is exempted from VAT payment. Tax exemption refers to any further transfer of real estate property and parts of that property after the first sale of newly built real estate. It should also be noted that in case where the real estate transfer transaction is subject to VAT, no real estate transfer tax applies. *(reference: point C)*. In case of VAT-exempt supply of real estate, the seller is required to proportionally correct input VAT (if deducted at purchase and supplied within 10 years starting the day of purchase).

Please note that selling off a portion of the business (a business unit) may be exempted from VAT, conditional upon the provisions of the VAT Law and the nature of the sale itself. Otherwise VAT is charged at standard rate of 17%, except for the first supply of newly build real estate *(for more details see section D below)*.
If the transaction is VAT exempted, there might be requirement for correction of input VAT *(see previous paragraph)*.

2. What are the VAT consequences of renting/leasing of real estate?

Rental or leasing of residential houses, apartments and residential buildings for a period longer than 60 days are exempt from VAT payment. Tax exemption applies only to the rental of real estate and parts of real estate for residential purposes.

Rental of real estate and parts of real estate for any other purpose other than residential is taxable with VAT at standard rate of 17%.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

Tax such as capital tax for equity injected into a local company does not exist on any level in Bosnia and Herzegovina if capital injection is recorded in court register i.e. increase of subscribed capital. However, increase of capital reserves by cash injection could be subject to CIT.

Contribution of real estate to subscribed capital is possible, but could be subject to real estate transfer tax and/or might have some VAT consequences, as described above.

2. Is there a stamp duty on debt granted to a local company?

All documentation which is related to acquiring the right of ownership must be processed by notary in accordance with the corresponding law. It is necessary to have notary processed documents which implies that there will be some costs of notary services. Some administrative charges by local land registers also applies.

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

Special regime does not exist.

Real Estate Investment in

# Brazil

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Brazil?
   Does the acquisition have to be carried out by a Brazilian corporation?


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Foreign non-resident individuals and legal entities are entitled to acquire urban real estate in Brazil. Both, however, need to be enrolled with the taxpayer registry in Brazil. Therefore, the acquisition of urban real estate does not have to be necessarily carried out by a Brazilian legal entity.

Rural real estate, however, may only be acquired by foreign individuals residing in Brazil and foreign legal entities authorized to operate in Brazil, subject to the fulfillment of certain requirements (e.g. foreign legal entities may only acquire rural real estate destined to the implementation of agricultural, livestock, industrial or colonization projects related to their corporate purposes) which are analyzed by the National Institute of Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária – INCRA). In addition, other limitations apply to the acquisition of rural real estate in certain locations, such as border areas or locations considered “national security” area, which shall be previously approved by the National Defense Council (Conselho de Defesa Nacional), and/or exceeding certain size.

Additionally, Brazilian legal entities (i) which majority of capital stock is owned by foreign non-resident individuals and/or legal entities; or (ii) controlled, directly or indirectly, by foreign non-resident individuals and/or legal entities, are equated with foreign legal entities for the purposes of acquiring rural real estate in Brazil.

Furthermore, there is a legislative bill under discussion in Brazilian Senate that aims to relax the current restrictions for the acquisition of rural areas. Among other topics, the bill determines that the sum of rural areas owned by or leased to foreigners could not exceed 25% of the area of the municipality where such area is located – but such limit can be exceeded in case of certain strategic activities, upon the prior approval of Brazilian Congress. Nevertheless, certain restrictions such as the compliance with the social role of rural properties and the prior approval of the National Defense Council for the acquisition of Amazon biome region or border areas would still be applicable.

2. Which importance does the land register have?

In Brazil, every real estate must be registered before the Real Estate Registry with jurisdiction over the area where it is located. This registration (known as "matrícula") provides detailed information about the real estate (e.g. former and current owners, rights and liens over the real estate).

All rights and obligations related to a real estate shall be recorded in its "matrícula". Pursuant to the Brazilian law, the transfer of real estate ownership and the constitution of liens over it are only considered complete and effective before third parties after the relevant document (e.g. public deeds, court decisions) is recorded in the "matrícula".

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Legal entities**

Brazilian legal entities (including Brazilian branches of foreign companies) are generally subject to the levy of Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL) at a combined rate of up to 34% (10% IRPJ plus surcharge of 10% applicable for taxable income exceeding BRL 240,000 – approximately EUR 48,000[1] – per year and 9% CSLL) on their worldwide income, according to two main systems:

- Actual Profit System (mandatory in certain circumstances): IRPJ and CSLL are levied on profits ascertained by the company, on an accrual basis, pursuant to the Brazilian GAAP, with certain adjustments (additions and/or exclusions) set forth by tax laws. Generally, necessary, effective and usual expenses are tax deductible, as long as adequately evidenced (certain expenses are subject to specific deductibility requirements). Tax losses can be offset against taxable profits of subsequent periods, subject to certain limits; or
- Deemed Profit System: the taxable profit is calculated based on percentages of the company's gross revenues, which vary depending on the activity that generated such revenues (e.g. 8% for IRPJ and 12% for CSLL applies for the sale of merchandise and of real estate – in certain cases, 32% for IRPJ and CSLL applies for the rendering of services and rental of real estate). The taxable profits are the sum of (i) the result of the application of the percentages to the gross revenues; and (ii) other taxable revenues, including financial revenues and capital gains. Deductions from taxable profits and offsetting of tax losses are not allowed.

The capital gain arising from the sale of real estate is, as a rule, included in the taxable basis of IRPJ and CSLL on an accrual basis. In certain circumstances, it is possible to pay the IRPJ and CSLL on capital gain on a cash basis.

Brazilian rules do not provide for any participation exemptions.

In Brazil, no tax-groupings exist.

**Individuals**

Worldwide income earned by individuals is generally subject to income tax at progressive rates ranging from 0% to 27.5% (special rates apply to financial gains).

Capital gain deriving from the sale of real estate in Brazil or abroad is exclusively subject to income tax at progressive rates ranging from 15% (for capital gains up to BRL 5,000,000 – approximately EUR 1,000,000) to 22.5% (for capital gains higher than BRL 30,000,000 – approximately EUR 6,000,000). The tax shall be calculated for each asset or right separately and tax losses cannot be used to offset taxable gains.

Exemption of income tax applies to:

- Capital gains on the sale of assets and rights of immaterial value, as long as monthly sales of the same asset or right do not exceed BRL 35,000 (EUR 7,000) – shares sold in the over-the-counter market and stock exchanges are subject to a specific BRL 20,000 (EUR 4,000) limit.
- Capital gains on the sale of the sole real estate of the individual, as long as the sales price does not exceed BRL 440,000 (EUR 88,000) and the taxpayer has not sold any other real estate for the past five years.
- Capital gains on the sale of one or more residential real estate, as long as (a) within 180 days from the first purchase and sale agreement, the seller

[1] Exchange rate of EUR 1 = BRL 5.

- uses the value of the transactions to purchase another residential real estate located in Brazil; and (b) such tax benefit has not been used for the past five years (a proportional exemption applies if the amounts in question are partially used to purchase another residential real estate or if the amounts in question are used to purchase more than one residential real estate); and
- Capital gains on the sale or other form of disposal of assets and rights owned abroad by the taxpayer acquired before the Brazilian tax residence, among others.

A reduction of the capital gain may apply to the sale of assets acquired as from 1969.

## 2. What is the tax depreciation period for real estate in Brazil? Are there depreciation categories? Which depreciation method is used?

All assets subject to wearing out caused by their use or by natural causes or usual obsolescence, including buildings and constructions, are subject to depreciation for tax purposes. The depreciation expense is only tax deductible under the Actual Profit System. However, buildings and constructions that are not rented or used by their owner in the production of its income or destined to resale and also any lands are not subject to tax depreciation.

Despite the criteria and method adopted for Brazilian GAAP purposes, companies are allowed to deduct the depreciation calculated on the acquisition cost using the straight-line method and rates established by tax authorities (buildings have an estimated useful life of 25 years and a general depreciation rate of 4% per year).

If companies can demonstrate that their assets devaluate at faster rates than the ones determined by tax authorities, different depreciation rates may be used. Depreciation may also be accelerated by use or by incentive.

## 3. When is a foreign investor subject to limited tax liability in Brazil?

Non-resident investors (individuals and legal entities) are subject to taxation in Brazil solely on income derived from Brazilian sources, even if the acquirer is also domiciled abroad.

Any capital gain (e.g. arising from the sale of real estate) ascertained by non-residents (individual or legal entities) is subject to the same tax rules applicable to Brazilian individuals (withholding income tax is levied at progressive rates of 15% to 22.5%). If the non-resident (individuals or legal entities) is located in a tax haven a 25% rate applies.



## 4. Are asset deal and share deal possible in Brazil? What are the main consequences?

Both asset deals and share deals are possible in Brazil and may be subject to income tax on the capital gain in Brazil *(detailed in B.1. above)*.

Asset deals involving real estate are subject to the levy of Tax on Real State and Related Rights Transfer *(ITBI – see part C.1. below)*. However, ITBI is not levied on share deals and on the contribution of real estate and/or "in rem" rights in exchange for capital of a legal entity or on ownership transfers resulting from corporate reorganizations, such as mergers or spin-off, except if, in any of such cases, the acquirer's core activity is the trading, rental or leasing of real estate.

## 5. Are thin capital rules applicable? Are there other limitations of interest deductions applicable?

Thin capitalization rules apply to Brazilian legal entities subject to the Actual Profit System, as follows:

Interest paid or credited to an entity abroad, not incorporated in a tax haven or under privileged tax regimes (as defined in local laws), such interest shall be tax deductible if, concurrently:

- the debt amount with the foreign related party, on the interest accrual date, does not exceed twice the net worth value of the related party's investment in the Brazilian legal entity (or the net worth of the Brazilian company in case no shareholding relationship exists); and
- the sum of all debts with foreign related parties, on the interest accrual date, does not exceed twice the sum of all net worth values of related parties' investments in the Brazilian legal entity (or the net worth of the Brazilian legal entity in case no shareholding relationship exists).

Interest paid or credited to beneficiaries in tax havens or arising from transactions carried out under privileged tax regimes shall be tax deductible if the sum of debts with such foreign entities does not exceed 30% of the net worth of the Brazilian company.

Additionally, interest remittances to foreign related parties are also subject to transfer pricing rules. Currently, the interest deductibility limits are calculated by applying one of the following rates, plus a 3.5% spread:

- transactions in US Dollar with predetermined rate: market rate of the sovereign bonds of Brazil, issued in the foreign market in US Dollar;
- transactions in Brazilian Real with predetermined rate: market rate of the sovereign bonds of Brazil, issued in the foreign market in Brazilian Real;
- other transactions when there is a Libor rate of the transaction currency: Libor rate for 6 months' deposits in the transaction currency; and
- other transactions when there is no Libor rate of the transaction currency: Libor rate for 6 months' deposits in US Dollar.

Further, remittances (including interest) made to individuals or legal entities in a tax haven or under a privileged tax regime, shall be deemed to be non-deductible for IRPJ and CSLL purposes unless the following requirements are met, concurrently:

- the foreign beneficial owner is identified;
- the operational ability of the foreign individual or company to carry out the transaction is proved; and
- documental evidence of the payment of the price and the receipt of the goods, assets, rights or the use of the services is presented.

6. Can acquisition costs/financing fees/interest be deducted?

**Legal Entities**

In principle, the capital gain arising from the sale of real estate shall result from the difference between the sale price and the value for which the net asset is registered. For tax purposes, borrowing costs (IAS 23) may be (i) included in the cost of the asset or (ii) deducted in the year they are incurred (but must be added to the taxable basis of IRPJ and CSLL upon depreciation, amortization, write-off etc).

**Individuals**

Interest, financing fees, realtor fees, ITBI paid and construction expenses may be added to the acquisition cost for the purposes of calculating the capital gain on the sale of real estate, provided that there are documents to support such expenses.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

A debt push-down may be implemented by means of a merger of the acquisition vehicle and the target. Other possibilities to allow for debt push-down may be analyzed on a case by case basis. Although there are no Brazilian rules stating that the interest expenses registered by the target after the debt push-down may not be considered as tax deductible, tax authorities may question the tax deduction of said expenses, based on the understanding that such interest expenses are not necessary, effective and usual.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Payments of interest on loans granted by non-residents are generally subject to a 15% WHT (an increased 25% rate applies to remittances made to tax havens). Exemptions or rate reductions may apply to interest remittances to certain countries due to Double Tax Treaties. If the creditor is a Brazilian financial institution, no WHT applies.

9. Is a loss carry forward or carry back granted and what are the restrictions?

For Brazilian legal entities subject to the Actual Profit System, tax losses can be carried forward without any statute of limitations, provided that the offsetting does not exceed 30% of the taxable basis of any given period. No carry back is allowed. As a rule, non-operating tax losses (i.e. negative results from the disposition of fixed assets, investments and intangibles) may be offset only against non-operating profits.

A restriction to the tax losses' offsetting is imposed in case (i) a change in the control of the company is cumulated with a change to the business activities; (ii) of a spin-off, in which case the company forfeits the tax losses proportionally to the spun-off part of its net worth; and (iii) of a merger, in which case the merged company's tax losses cannot be offset against the profits of the surviving company.

## C. Real Estate Taxes

1. Does Brazil levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

The remunerated transfer of real estate is subject to the levy of ITBI, which rates may vary according to the city in which the real estate is located. In the city of São Paulo, the general rate is 3%. The taxable basis corresponds to the fair market value of the property. The transfer of shares is not subject to ITBI.

If the transfer of real estate or shares occurs by death or donation, a Donation and Inheritance Tax (ITCMD) is levied on the fair market value or the value of the relevant donation or inheritance. Applicable rates vary from State to State, subject to a maximum 8% rate. In the State of São Paulo, ITCMD is currently charged at a 4% rate.

2. Is real estate subject to any real estate tax? At which rate?

Real estate located in urban areas is subject to the annual levy of Urban Property Tax (IPTU). The taxable basis corresponds to the fair market value of the property at a rate that may vary according to the Municipality and the use and price of the real estate. In the city of São Paulo, IPTU rates range from 1% to 1.5% with discounts or additions granted based on the market value and use of the relevant property.

Rural property is subject to the annual levy of Tax on Rural Properties (ITR). The taxable basis is the value of the taxable area, which shall be calculated according to specific rules. ITR rates may vary according to the total area of the property and level of use of the areas that can be exploited for agricultural purposes. Small sized properties exploited by the owner, who does not have any other real estate, are exempt from ITR.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Although the sale of real estate is, in principle, not subject to VAT consequences in Brazil. Revenues arising from the sale of equity stake registered as a current asset, however, are mandatorily subject to 4.65% Social Contribution on Revenues (PIS/COFINS) according to the cumulative regime (thus, no PIS/COFINS credits are available). In this case, the amounts spent with the acquisition of such equity stake may be excluded from the taxable bases of PIS/COFINS.

2. What are the VAT consequences of renting/leasing of real estate?

The revenues arising from the rental/leasing of real estate are subject to PIS/COFINS, at combined rates of 3.65% for legal entities subject to the cumulative regime, according to which no credits are available, or 9.25% for legal entities subject to the non-cumulative regime, according to which credits may be available.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

There is no capital tax for equity injected into a local company. However, the remittance of funds into Brazil for capital contribution of Brazilian legal entities is generally subject to Tax on Financial Transactions (IOF-Câmbio) at a 0.38% rate.

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

Trusts are not regulated by Brazilian law. However, Brazilian legislation provides for Real Estate Investment Funds (FII), which are subject to specific rules and requirements. FIIs are funds that must semesterly distribute to their quotaholders at least 95% of all their profits ascertained on a cash basis.

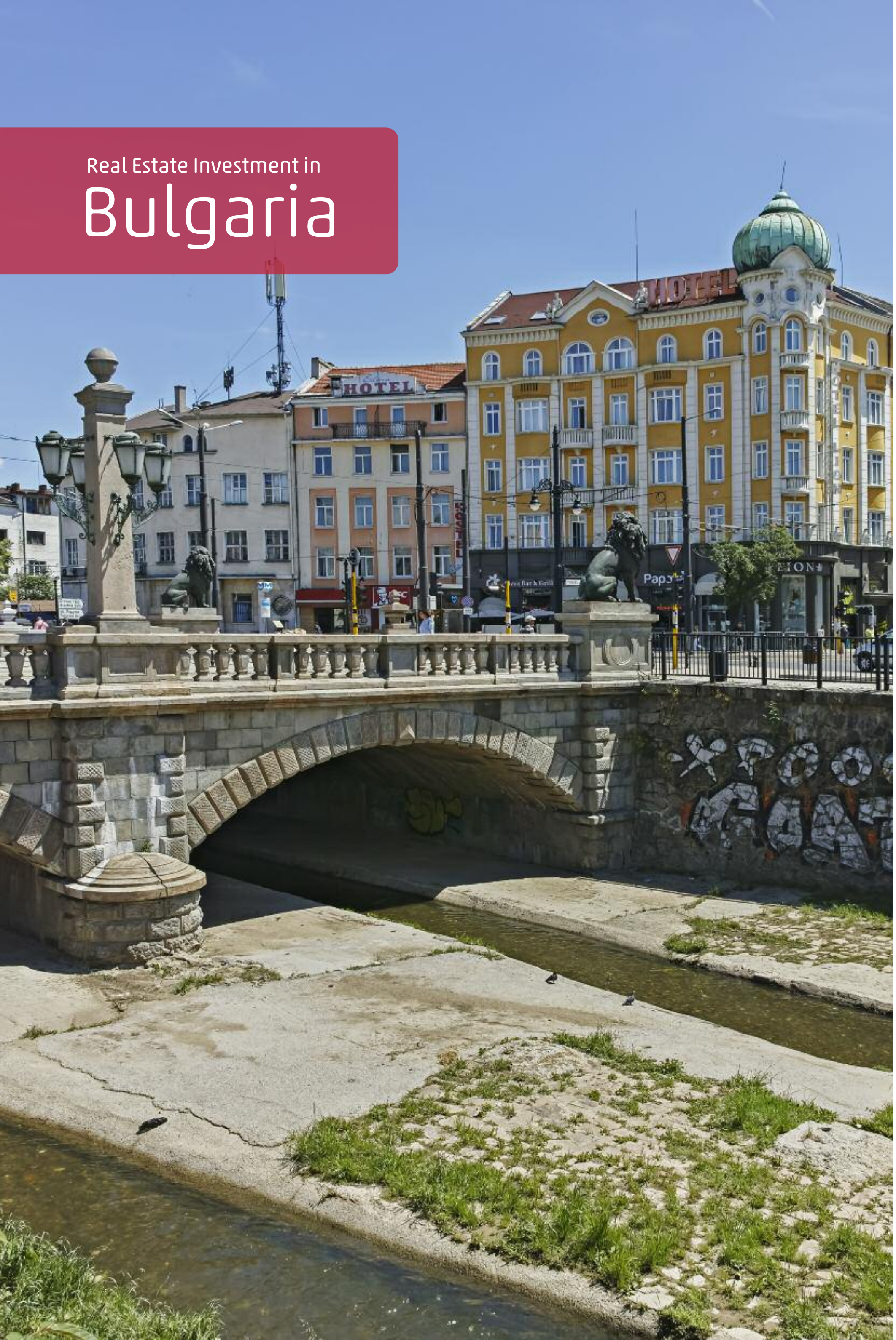
Income recorded by the FII is generally not subject to taxation. As general rule, income and capital gains earned by non-residents investing in FIIs are subject to a withholding income tax (WHT) rate of 20%.

If the conditions set out by the National Monetary Council are met by foreign investors, income earned through FII by non-residents should be subject to 15% WHT. Capital gains arising from the sale of quotas in the FII by non-residents complying with said requirements are exempt.

If additional conditions are met (the FII has, at least, 50 quotaholders, the quotas are negotiated exclusively at the stock exchange, organized over-the-counter market, among others), income received by non-resident individuals from FII is exempt from taxation.

Real Estate Investment in

# Bulgaria




## A. Legal/General

1. Are non-residents entitled to acquire real estate in Bulgaria?
   Does the acquisition have to be carried out by a Bulgarian corporation?

The following types of owners will be distinguished for the purposes of this question: EU citizens and EU legal entities; EEA ("European Economic Area") citizens and EEA legal entities; non-EU citizens and non-EU legal entities.

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**EU citizens; EU legal entities; EEA citizens; EEA entities**

EU citizens and EU legal entities, as well as EEA citizens and legal entities are entitled to acquire and own any type of real estate in Bulgaria without any restrictions.
In essence, EU citizens and legal entities and EEA citizens and legal entities are equalized in rights to Bulgarian citizens and Bulgarian legal entities as far as acquisition and ownership of Bulgarian real estate is concerned.

**Non-EU citizens and non-EU legal entities – acquisition and ownership of buildings**

Non-EU citizens and non-EU legal entities are entitled to acquire buildings (e.g. an apartment, a house, etc.) without any restrictions.

**Non-EU citizens and non-EU legal entities – acquisition and ownership of land**

Non-EU citizens and non-EU legal entities do not have the right to acquire ownership over land in Bulgaria. This restriction can be avoided by way of the non-EU acquirer registering a Bulgarian company for the purposes of the land acquisition.

**Non-EU citizens and non-EU legal entities – acquisition and ownership of agricultural land**

Concerning agricultural land, however, Bulgarian law poses additional restrictions applicable to the registered Bulgarian company, used as an acquisition vehicle.

In particular, the following Bulgarian legal entities are not entitled to acquire or own agricultural land, namely:

- Bulgarian legal entities, owned directly or indirectly by legal entities registered in jurisdiction with preferential tax regime, i.e. so called off-shore jurisdiction or off-shore companies;
- Bulgarian legal entities, owned by non-EU citizens and non-EU legal entities;
- Bulgarian bearer share joint-stock companies.

Notwithstanding the above, Bulgarian agricultural land can be acquired by:

- non-EU citizens, who have been residing in Bulgaria for more than five years or via incorporation of a Bulgarian company;
- a Bulgarian company, which has been in existence for more than five years.

2. Which importance does the land register have?

The transfer of a real estate in Bulgaria is made on the basis of a contract concluded in the form of a notarial deed, signed before a Bulgarian notary officer, acting in the region of the respective regional court where the real estate is located.

A notarial deed is not required only in the cases of acquisition of a real estate from a municipality or the state. In such instances, the real estate transfer is made on the basis of a contract in writing.

Each notarial deed is registered with the Real Estate Register. The notarial deed is submitted by the notary to the Real Estate Register on the day of its signing. The parties to the real estate transaction receive an original copy of the notarial deed only after completion of the registration with the Real Estate Register.

The registration of notarial deeds with the Real Estate Register is important because only after the registration the transfer of the real estate becomes effective for third parties (i.e. until its registration the notarial deed is effective only for the parties to the real estate transaction).

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporate income tax rate**

The Bulgarian corporate income tax rate is 10%.

**Personal income tax rate**

The Bulgarian personal income tax rate is 10%.

**Special tax rates for real estate**

Bulgaria does not apply special tax rates for real estate.

**Participation exemptions**

Exempt from corporate taxation are dividends received by a Bulgarian company from another Bulgarian company, from an EU company or from a company, resident in a country that is an EEA member.

2. What is the tax depreciation period for real estate in Bulgaria?
   Are there depreciation categories? Which depreciation method is used?

The tax depreciation rate for massive buildings is 4% and for buildings which are not considered massive is 15%. The straight-line method is applied.

3. When is a foreign investor subject to limited tax liability in Bulgaria?

Rental income is considered derived from a Bulgarian source and is taxable in Bulgaria. The double taxation treaties concluded by Bulgaria and the country of tax residency of the foreign individual may provide for reduction or exemption from taxation.

4. Are asset deal and share deal possible in Bulgaria?
   What are the main consequences?

Both asset and share deals are possible in Bulgaria.

As far as acquisitions of companies owning real estate are concerned, share deals are more cost effective as they do not trigger any transfer taxes. Whereas real estate transfer tax is levied on asset deals.

The choice between a share and an asset deal, however, should be made only after consideration of the concrete facts and circumstances (e.g. existence of a running business with the real estate or only ownership; other businesses of the company; duration of company existence; the level of depreciation of the real estate; risk profile of seller, etc.)

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

**Interest limitation regulations**

As of 1 January 2019 Bulgaria applies the interest limitation regulations (i.e. the ATAD regulations).

Thin capitalization rules may be also applicable under certain conditions.

6. Can acquisition costs/financing fees/interest be deducted?

In principle, all acquisition costs should be deductible.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

The pooling of debt financed interest with the income of the target is achieved by way of a downstream merger. The concept "tax group" is not introduced in the Bulgarian tax laws.



8. Is there a withholding tax on interest payments paid by local company to creditor?

**Bulgarian withholding tax on interest**

There is a 10% Bulgarian withholding tax on interest due by a Bulgarian company to a creditor.

**Exemption for EU creditor**

Interest due by a Bulgarian company to an EU creditor will be exempt from Bulgarian withholding taxation if the following conditions are cumulatively fulfilled:

- ➔ The creditor is an EU company that is:
  - » set up in a specific legal form listed in the Bulgarian law for each EU jurisdiction;
  - » a tax resident in an EU country;
  - » subject to tax with any of the taxes listed in the Bulgarian law for each EU jurisdiction.
- ➔ The EU creditor and the Bulgarian company, payer of the interest, are associated companies due to fulfillment of one of the following conditions:
  - » the creditor has owned at least 25% of the share capital of the Bulgarian company for an uninterrupted period of two years;
  - » the Bulgarian company has owned at least 25% of the share capital of the creditor for an uninterrupted period of two years;
  - » a third (Bulgarian or EU) company has owned at least 25% of the share capital of both the Bulgarian company and the creditor for an uninterrupted period of two years.
- ➔ The creditor is the beneficial owner of the interest.

**Double tax treaty**

Bulgaria has a very developed network of double tax treaties. The Bulgarian withholding tax on interest may be reduced or eliminated under some of the double tax treaties.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Bulgaria allows loss carry forward for a period of five years.

Bulgaria does not allow loss carry back.

## C. Real Estate Taxes

1. Does Bulgaria levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfer of real estate**

A real estate transaction in Bulgaria triggers the following costs:

- Local real estate transfer tax:
  The local real estate transfer tax is determined on an annual basis by each municipality. For 2019 rates vary between 0.1% and 3%. The local real estate transfer tax is levied on the higher between the tax evaluation of the real estate and the purchase price. The local real estate transfer tax is paid to the municipality where the real estate is located.

- Notary fee:
  The notary fee is determined by reference to a progressive table and is capped at BGN 6,000 (app. EUR 3,070) VAT exclusive. The notary fee is levied on the higher between the tax evaluation of the real estate and the purchase price. The notary fee is paid to the notary officer making the real estate transaction.

- Real estate registration stamp duty:
  The real estate registration stamp duty is 0.1% and is levied on the higher between the tax evaluation of the real estate and the purchase price. The real estate registration stamp duty is paid to the Registration Agency.

The real estate transfer taxes and fees are not avoidable.

**Transfer of share**

There are no transfer taxes in the case of a share transaction.



2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is due for real estate within the regulated construction boundaries of urban areas as well as for real estate outside urban areas, which according to zoning regulations may be used for residential, production, warehousing, resort, sports and entertainment, etc. purposes.

Exempt from real estate tax is agricultural land and forests.

**Real estate tax**

The annual real estate tax is paid to the municipality where the real estate is located. The municipality determines that tax rate, which for 2019 varies from 0.01% to 0.45%.

Individuals pay real estate tax on the basis of the tax evaluation of the real estate.

Companies pay real estate tax on the higher between the balance sheet value and tax evaluation of the real estate.

**Waste disposal fee**

The waste disposal fee is determined by each municipality. The basis for calculation of the waste disposal fee is either the book value or the tax evaluation of the real estate. There are also other ways for companies to pay the waste disposal fee (e.g. based on waste bins, etc.).

For example, in Sofia, the capital city of Bulgaria, in 2019 the waste disposal fee for companies is calculated as 1% of the book value and for individuals – 0.16% of the tax evaluation.

As of the beginning of 2017, calculation of the waste disposal fee by reference to the book value or tax evaluation of the real estate will be abolished and municipalities will have to use other methods for determining their cost for waste disposal services.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

**VAT rate**

The Bulgarian VAT rate is 20%

**VAT-exempt transactions**

Exempt from Bulgarian VAT are the following transactions:

- the transfer of title over land, establishment and transfer of rights in rem over land and the renting of land;
- the transfer of title over buildings or parts of building, which are old *(as defined below)*, the transfer of land, adjacent to old buildings, the establishment and transfer of other rights in rem over land adjacent to old building;
- the renting of a building or a part of a building for residential purposes of individuals.

The transferor may opt for VAT.

**Transactions subject to VAT**

Under Bulgarian law the following transactions are subject to VAT:

- transfer of title over regulated land (except for transfer of title over land adjacent to old buildings);
- transfer of title and other rights in rem, as well as the renting of equipment, machines, installations and structures permanently attached to the land or constructed underneath the surface of the land;
- transfer of title and other rights in rem as well as the renting of camping, caravan parks, vacation resorts, parking areas, etc;
- transfer of title over land adjacent to new buildings, as well as the establishment and transfer of other rights in rem over such land.

According to the Bulgarian VAT Act provisions "new" is considered a building, which as at the date of the transaction is not older than five years as of the date of issuance of the permit for the use of the building. Further, "adjacent land" should be understood as the sum of the built-up area and the area surrounding the built-up area within a distance of three meters from the outlines of each of the surrounding walls of the first ground floor.

### 2. What are the VAT consequences of renting/leasing of real estate?

The renting of buildings (or a part of a building) is subject to VAT.

VAT is levied on the renting of camping, caravan parks, vacation resorts, parking areas, etc.

The renting of a building (or a part of a building) for residential purposes of individuals is VAT-exempt transaction. The supplier, however, may opt for VAT.

The renting of agricultural land is a VAT-exempt transaction but the landlord (lessor) may opt for VAT.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Bulgaria does not levy any capital tax for equity injected into a Bulgarian company.

### 2. Is there a stamp duty on debt granted to a local company?

Bulgaria does not levy any stamp duty on debt granted to a local company.

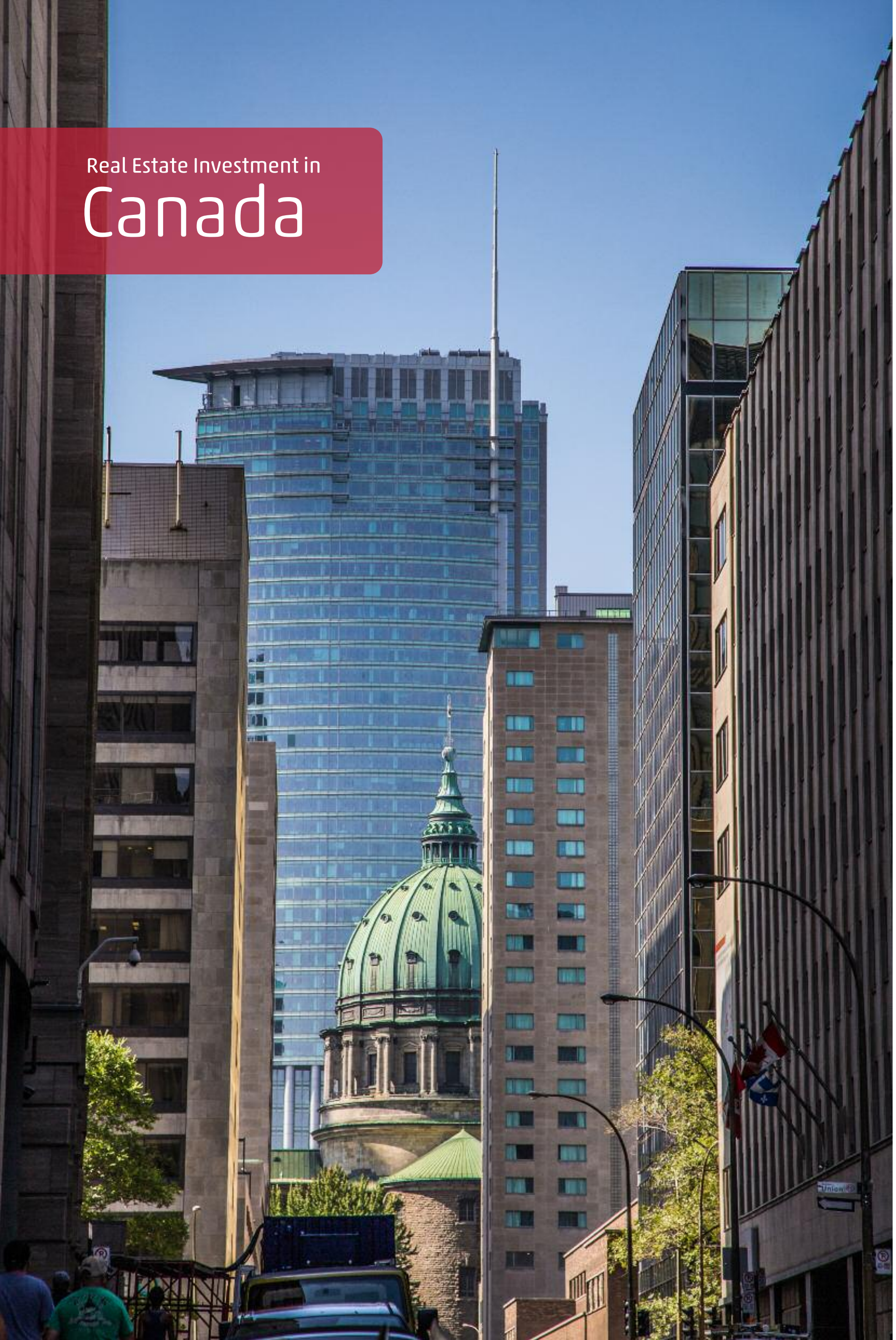
### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

No special regime for real estate investment trust exists[1].

[1] Special purpose vehicles under the Special Purpose Vehicle Act are not subject to Bulgarian corporate income tax.

Real Estate Investment in

# Canada



## A. Legal/General

1. **Are non-residents entitled to acquire real estate in Canada? Does the acquisition have to be carried out by a Canadian corporation?**

Generally speaking, there are no restrictions with regard to the acquisition of real estate in Canada. Residents as well as non-residents can acquire real estate.

The acquisition of real estate does not have to be carried out by a corporation. The acquisition may be carried out in a number of ways directly or through a number of vehicles including corporations (Canadian or foreign) trusts or partnerships.

2. **Which importance does the Canadian land register have?**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There is no federal land register in Canada. Such land registers are kept by the provinces and their importance may vary accordingly.

For example, in Québec, documents stating a transfer of real property have to be registered with the Land Registry Office in order to become effective in relation to third parties. The transfer would however be effective between the parties whether or not it has been registered.

In most provinces, the transfer has to be registered with the pertinent administrative office to become effective in relation to third parties. In some provinces, the transfer will remain ineffective, even between the parties, as long as it is not registered. A study of the pertinent provincial legislation should be conducted prior to any transfer of real property in Canada.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?

Income tax is imposed by both the federal government and provincial governments in Canada. Thus, rates may vary greatly depending on the province in which the individual or the corporation is conducting its business.

**Corporate tax rates for the 2019 taxation year**

The federal and provincial corporate tax rates vary, depending on the industry and type of corporation involved. Federal income taxation is levied on resident corporation, on their worldwide income. A non-resident corporation pays tax on income earned in Canada, subject to certain tax treaty concessions.

Generally speaking, a small business reduced rate is available on the first CAD 500,000 of active income earned by some small private Canadian-controlled corporations.

The following table presents a snapshot of the applicable tax rates for 2019:

| Jurisdiction | General | Small business |
|---|---|---|
| Federal | 15% (general rate of 25% less a 10% rebate available for income earned in a province) | 9% |
| Ontario | 11.5% (26.5% combined with federal) | 3.5% (12.5% combined with federal) |
| Québec | 11.6% (26.6% combined with federal) | 6% (15% combined with federal) |

Various tax credits are also available to corporations operating in different sectors, both at the provincial and at the federal levels.



**Personal income tax rates for the 2019 taxation year**

Federal

| Taxable income | Marginal tax rates |
|---|---|
| CAD 0 - CAD 47,630 | 15.00% |
| CAD 47,631 - CAD 95,259 | 20.50% |
| CAD 95,260 - CAD 147,667 | 26.00% |
| CAD 147,668 - CAD 210,371 | 29.00% |
| Over CAD 210,371 | 33.00% |

A personal tax credit exists on the first CAD 12,069 of income earned by a taxpayer (referred to as the Basic Personal Amount), which essentially means that no tax is payable on this amount.

Provincial

→ Alberta

| Taxable income | Marginal tax rates |
|---|---|
| CAD 0 - CAD 131,000 | 10.00% |
| CAD 131,000 - CAD 157,000 | 12.00% |
| CAD 157,000 - CAD 210,000 | 13.00% |
| CAD 210,000 - CAD 315,000 | 14.00% |
| Over CAD 315,000 | 15.00% |

A personal tax credit exists on the first CAD 19,369 of income earned by a taxpayer (referred to as the Basic Personal Amount), which essentially means that no tax is payable on this amount.

→ Ontario

Combined with federal taxes, marginal tax rates vary between 20.05% and 53.53%.

A personal tax credit exists on the first CAD 10,582 of income earned by a taxpayer (referred to as the Basic Personal Amount), which essentially means that no tax is payable on this amount.

- Québec

  Combined with the federal tax rates, the marginal tax rate for individuals varies from 27.53% to 53.31%.

| Taxable income | Marginal tax rates |
| --- | --- |
| CAD 0 - CAD 43,790 | 15.00% |
| CAD 43,791 - CAD 87,575 | 20.00% |
| CAD 85,576 - CAD 106,555 | 24.00% |
| Over CAD 106,555 | 25.75% |

  A personal tax credit exists on the first CAD 15,269 of income earned by a taxpayer (referred to as the Basic Personal Amount), which essentially means that no tax is payable on this amount.

**Real estate**

There is no special tax rate provided for gains realized on real estate specifically. However, only half of capital gains are to be included in computing a taxpayer's income in Canada. Thus, if the gain realized on the sale of a real property can be considered as being on account of capital, rather than business income, the tax rates mentioned above will effectively be reduced by half.

## 2. What is the tax depreciation period for real estate in Canada? Are there depreciation categories? Which depreciation method is used?

Depreciation is based on the acquisition or production cost of the real estate, except for land, which is not depreciable. The rates are determined by law and depend on the usage of the property. Depreciation is not mandatory. The depreciation of real property is calculated using declining balance rates.

The three categories of depreciation regarding real estate, and the corresponding rates are as follows:

- properties of which 90% of the floor space is used for the manufacturing or processing of goods for sale or lease: 10%;
- other non-residential properties: 6%;
- residential properties: 4%.

## 3. When is a foreign investor subject to limited tax liability in Canada?

Income tax is imposed by the federal, provincial and territorial governments. Canada's income tax system taxes its residents on their worldwide income. Canada does not impose tax on the basis of citizenship. A non-resident is generally only subject to Canadian taxation on Canadian-source income, such as:

- income from office or employment in Canada;
- income from a business carried on in Canada; and
- capital gains on the disposition of property, known as "taxable Canadian property".

Taxable Canadian property includes:

- real property located in Canada;
- a share of a private corporation resident in Canada where more than 50% of the fair market value of the share is derived (or was derived at any time in the previous 60-month period) from real property in Canada, Canadian resource properties, timber resource properties, options in respect of any such property, or a combination thereof;
- a share of a public corporation (or mutual fund trust) where (i) the holder holds more than 25% of the issued shares of any class of shares or units and (ii) more than 50% of the fair market value of the share (or unit) is derived (or was derived at any time in the previous 60 month period) from real property in Canada, Canadian resource properties, timber resource properties; options in respect of any above listed property, or a combination thereof.

Much of the tax payable by non-residents is collected through Canadian withholding taxes (generally at the rate of 25%, subject to being reduced or eliminated by the provisions of an applicable income tax treaty), which may be reduced by the multiple tax treaties signed by Canada. For instance, to ensure compliance in respect of the sale of taxable Canadian property, a non-resident must obtain a tax clearance certificate by depositing, on account of income tax payable, an amount equal to 25% of the gain to be realized, failing to obtain such certificate renders the buyer liable.

Rent received by a non-resident of Canada in respect of real property is, subject to the terms of an applicable tax treaty, subject to a withholding tax of 25% of the gross amount of the rent (this rate may be reduced by a tax treaty). An election by the non-resident to file a regular income tax return in Canada to report the net rental income is possible and reduces the withholding obligation of the payor.

Canadian generally accepted accounting principles, subject to certain statutory modifications, are usually used to calculate the income upon which tax is levied. Federal income taxation is governed by the Income Tax Act, while the provinces also impose their own income taxes.

### 4. Are asset deal and share deal possible in Canada? What are the main consequences?

Real or immovable property can be acquired in Canada either through an asset deal or a share deal. Both methods may provide benefits and disadvantages and a case-by-case analysis should be conducted before opting for a specific method. The following general comments may however be provided:

**Asset deal**

The cost for tax purposes of the property transferred through an asset deal will be stepped up to the acquisition cost of the investor. This will generally provide a larger depreciation base for the purchaser.

The seller will generally realize a capital gain equal to the difference between the purchase price and the tax basis of the assets (value after depreciation). The gain may also be considered as business income depending on the circumstances.

Interest expense on debt to finance the acquisition may be deductible from income from real property on real property rented out or used in a business.

**Share deal**

The cost for tax purposes of the assets remain at the level of the target company (subject to certain planning and reorganization provisions). The purchaser also acquires all the underlying liabilities of the target company.

The acquisition costs of the shares must be capitalized and are generally not deductible.

The seller will generally realize a capital gain upon the sale of its shares.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Thin capitalization rules exist in Canada. Generally, interest paid by a corporation is a deductible expense. However, the Canadian thin capitalization rules impose a limit on the amount of interest paid to certain non-residents which may be deducted in computing the income of a Canadian corporation. The acceptable ratio of debt to equity is 1.5 to 1. If the average amount of a subsidiary's outstanding debt exceeds 1.5 times its equity, a prorated portion of the interest paid or payable in the year to certain non-residents will not be deductible in computing the income of the Canadian corporation subsidiary. A number rules apply to present circumventing this limit through the use of arrangements such as back-to-back loans.

More generally, the deductibility of interest is always limited by paragraph 20(1)(c) of the Income Tax Act. The paragraph provides that interest expenses are only deductible if they meet all of the following criteria:

- the interest is payable during the year;
- the taxpayer has a legal obligation to pay the interest;
- the interest is paid on borrowed money;
- the borrowed money is used for the purpose of earning income from a business or property.

### 6. Can acquisition costs/financing fees/interest be deducted?

Costs incurred during the process of acquiring a property (e.g. legal fees, financing fees, etc.) will generally be deductible provided that the property is acquired for the purpose of producing income. Acquisitions costs must be capitalized and for buildings such cost may be amortized (as describe above).

*Interests will be deductible if they meet the conditions set out in the section B.5.*

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

The Canadian income tax regime does not allow, as such, the possibility of pooling debt financed interest with the income of a target or subsidiary. Effectively, debt push-down strategies are not permitted in Canada.

However there are structures that effectively allow for a similar result where, for instance, an acquisition vehicle borrows to acquire the shares of a target corporation which is later wound up into or merged with the acquisition vehicle.

*Please refer to section B.5. for the general rules regarding the deductibility of interest expenses in Canada.*

8. Is there a withholding tax on interest payments paid by local company to creditor?

Withholding taxes on interest exist, but they only apply where a Canadian resident pays interest to a non-resident with whom he is not dealing at arm's-length or if the interest paid to the non-resident constitutes participating debt interest.
The Canadian Income Tax Act provides for a 25% rate in situations where withholding taxes apply, but this rate is often reduced by tax treaties.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Generally speaking, Canada allows loss carry backs and carry forwards. The time frame in which the losses can be reported will vary according to the nature of the loss:

- non-capital losses: may be carried back 3 years and carried forward 20 years;
- net capital losses: may be carried back 3 years and carried forward indefinitely.

Loss carry backs and carry forwards are however greatly restricted in the event of a change of control in the ownership of a corporation.

It is to be noted that the losses of a non-resident taxpayer may only be used to offset the non-resident's Canadian taxable income.

## C. Real Estate Taxes

1. Does Canada levy a real estate transfer tax on sale of real estate or shareholdings?

The federal government does not levy a real estate transfer tax on the sale of real or immovable property. However, the provincial administrations do so. It is thus probable that the acquisition of real estate in Canada will result in the imposition of a transfer tax for the buyer, whether he is a Canadian resident or not. The amount of tax to be paid, varying according to the price paid and the location of the property, will have to be determined on a case-by-case basis.



For example, in Québec, the real estate transfer tax amounts to 0.5% to 3% of the purchase price of the property (depending on the price paid and the location of the property in the province).

In Ontario, the tax amounts to 0.5% to 2.5% of the purchase price of the property. However, first time homebuyers may be eligible for a partial or total refund of the tax paid.

2. Is real estate subject to any real estate tax? At which rate?

There is no specific tax applying to real estate transactions other than the taxes mentioned in the other sections of the present chapter.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

In general, federal and provincial VAT will apply to the sale of any real or immovable property. The rates will vary according to the province in which the property is located.

For example:

- Alberta: 5% (federal goods and service tax ["GST"]) = 5%.
  There is no provincial VAT.
- Ontario: 13% (harmonized sales tax ["HST"]) = 13%.
  This rate includes federal and provincial VAT.
- Québec: 14.975% (federal GST = 5% + provincial Québec sales tax = 9.975%)

The main exception to this rule is that the sale of used residential properties that have not been substantially renovated is exempt from VAT.

2. What are the VAT consequences of renting/leasing of real estate?

Commercial leases are subject to federal and provincial VAT, whereas residential leases are not. As noted above, the VAT rates will vary according to the province in which the property is located.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

N/A

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

Canadian REITs were established in the early 1990s. They are required to be configured as trusts and are not taxed if they distribute their net taxable income to their unitholders. Several requirements must be met in order to qualify as a REIT. In addition to requirements regarding the entity itself, certain thresholds will have to be met with respect to the type of assets held by the REIT and the source of its revenue.

Real Estate Investment in

# China

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in China? Does the acquisition have to be carried out by a Chinese corporation?

Real estate in China can be separated into two categories: Self-use real estate and non-self-use real estate. The acquisition requirements of real estate in China for non-residents are distinguished according to these categories:

- For self-use real estate: Branches or representative offices (excluding real estate enterprises) set up in China by overseas entities, and overseas individuals who work or study in China are eligible to purchase self-use houses. Overseas individuals shall, in purchase of a house in a city, comply with the local house purchasing policies.
- For non-self-use real estate: Only foreign invested real estate enterprises can purchase non-self-use real estate upon the approvals from the relevant authorities. Upon the completion of the relevant registrations, foreign institutions and individuals can then carry on their business pursuant to the approved business scope.

### 2. How important the land register is?

The rights with respect to real estate are to be recorded in the Real Estate Registration Office. Real estate without a proper right registration cannot be traded.


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## B. Income Tax

1 What are the corporate and the personal income tax rates?
Are there special tax rates for real estate?
Are there international participation exemptions?
Does a tax-grouping exist? If yes, what are the requirements?

There is no special tax rate for real estate.

- Corporate income tax ("CIT") rate:
  - 25%
  - High-tech companies can enjoy a 15% tax rate.
  - A preferential CIT is offered to "small and low-profit enterprises". They can use a low CIT rate of 20% based on 25% or 50% of the taxable income.
  - Non-resident enterprises which have not set up institutions or establishments in China, or which have set up institutions or establishments but which do not have any actual relationship with the income obtained by the institutions or establishments are subject to a CIT rate of 10% in relation to the income originating from China unless reduced under an applicable double tax treaty.

- Individual income tax ("IIT") rate:
  - China tax launched an IIT reform since 1 January 2019. A new IIT taxing approach has now been made effective. The salaries and wages income of individual persons in China would be taxed on an annual consolidated basis.
  - The IIT rate of transfer of property would generally be 20% of the income derived from the transfer minus the previous purchase cost and reasonable expenses. In case the purchase cost is not available because of incomplete or inaccurate documents, the tax authority may levy IIT at the rate of 1%-3% of the transfer income.
  - Income from selling property, which has been used for more than five years by the owner and is the family's only house, is exempt from IIT.

- Participation exemptions:
  - The dividend received by a resident enterprise from another resident enterprise can enjoy CIT exemption.



2. What is the tax depreciation period for real estate in China?
Are there depreciation categories? Which depreciation method is used?

Real estate in China should be divided and capitalized by two categories:

- fixed assets, such as houses and buildings;
- intangible assets, such as land use rights.

The minimum term for tax depreciation is as follows:

- for buildings, it shall be 20 years;
- for land use right, it shall be 10 years or above.

Only a straight-line method is allowed.

3. When is a foreign investor subject to limited tax liability in China?

**For enterprises**

A foreign entity is subject to CIT when setting up institutions or premises in China, creating a permanent establishment, representative office or when becoming subject to withholding tax on the China-sourced income. The extent to which a foreign entity is subject to Chinese taxation depends on its activities undertaken in or related to China.

For dividends from Chinese investments, a foreign investor is subject to withholding tax at a rate of 10% (unless reduced by an applicable double tax treaty).

**For individuals**

Effective from 1 January 2019, China domiciled or non-domiciled individuals who have stayed in China for 183 days or more in a calendar year are now defined as Chinese tax residents.

For an individual's income including salary, a non-resident's activities in China is subject to IIT on his/her Chinese-source income.

For the salary income, the residency condition and the salary payer should be taken into consideration:

- For a non-resident (who stays in China for less than 90 days), only China-sourced and China-paid/undertook salary is subject to IIT.
- For a non-resident (who stays in China for more than 90 days but less than 183 days), only China-sourced salary income is subject to taxation in China.
- For a resident (who has stayed in China for no more than six years), overseas sourced and overseas paid salary income can be exempted from IIT.
- For a resident (who has stayed in China for a period more than six consecutive years), the worldwide income is subject to IIT.

### 4. Are asset deal and share deal possible in China? What are the main consequences?

A real estate investor may acquire Chinese real estate in the form of an asset deal or a share deal (e.g. acquiring the shares of a corporation owning real estate).

**Corporate income tax (CIT)**

Selling the real estate in an asset deal is treated as operating business income and subject to CIT. Selling the shares in a share deal should be treated as capital gain and also subject to CIT.

**Value added tax (VAT)**

Selling the real estate is subject to VAT, and selling the shares is not subject to VAT. There are some specific policies regarding transactions of real estate. *For details, please see VAT section below (D.1.)*.

### 5. Are thin capitalization rules applicable? Are there other limitations of interest deduction applicable?

There are two ways to determine the foreign loan that a Chinese company can borrow and the company is allowed to choose one of them.

- The capital-based method
  - The maximum foreign loan allowed is the difference between the registered capital and the total investment. The total investment is less than USD 3 million, registered capital must constitute 70% of the total investment. If the total investment is between USD 3 million and USD 10 million, the registered capital must constitute at least 50% of the total investment. If the total investment is between USD 10 million and USD 30 million, the registered capital must constitute 40% of the total investment. If the total investment exceeds USD 30 million, at least a third of total investment must be registered capital.

- The asset-based method
  - The maximum loan under this method shall be no more than twice of the net assets.

Furthermore, from a tax perspective the interest rate should be no more than the loan interest rate stipulated by the People’s Bank of China. The excessive part of the interest cannot be deducted.

The thin capitalization rule for general enterprises is 2:1 (debt-to-equity ratio) and 5:1 for financial enterprises. The interest expense exceeding this ration cannot be deducted from the taxable income, unless the enterprise can prove that is at arm’s- length or the effective tax rate of the borrower is lower than the lender’s.

### 6. Can acquisition costs/financing fees/interest be deducted?

Acquisition costs, financing fees and interest occurred in relation to the real estate investment can be deducted.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Each corporate entity is regarded as a separate entity for income tax purposes. Thus, the parent corporation and its subsidiaries are taxed separately. The resident parent corporation and the resident subsidiaries cannot opt for taxation as a fiscal unity.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

**Creditor as an enterprise**

Interest paid by a Chinese company to a non-resident enterprise is subject to 10% withholding tax (unless reduced by an applicable double tax treaty).

**Creditor as an individual**

A local company should withhold the individual income tax (IIT) for the interest paid to an individual; the tax rate is 20% for the Chinese tax residents. Nevertheless, for a non-Chinese tax residents, the applicable double tax treaty will become the prevailing rules to determine the tax rate. For example, per the tax treaty between China and Germany, the tax rate for interest income to a Germany tax resident is 10%.

9. Is a loss carry forward or loss carry back granted and what are the restrictions?

An enterprise's loss can be carried forward to offset the future profit within a five-year period.

There is no possibility to carry back losses in China.

## C. Real Estate Taxes

1. Does China levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

China levies VAT and LVAT on the sale of real estate. For the sale of shareholdings, neither VAT nor LVAT is levied.

**Land value added tax (LVAT)**

Income from the transfer of real estate is subject to LVAT, which is based on a progressive tax rate with four different tax levels and is levied on the amount of the gain. The lowest tax rate is 30% and the highest is 60%.
However, LVAT is exempted for individuals selling houses started from 1 November 2008.

**Value added tax**

Selling real estate is subject to VAT, and selling the shares is not subject to VAT. There are some specific policies regarding transactions of real estate. *For details, please see VAT section below*.

**Farmland occupation tax**

Farmland occupation tax is levied on taxpayers who construct buildings or conduct non-agriculture related activities on farmland. This tax is computed according to the actual area of farmland occupied, varying from location to location.

**Deed tax**

When purchasing real estate in China, deed tax is needed to be paid. Tax rate is 3%-5%. For individuals, if the real estate is smaller than 90 square metres and it is the only real estate of the purchaser, the tax rate is 1%; if the real estate is larger than 90 square metres, the tax rate is 1.5%. For an individual purchasing a second property while still possessing one, with an area smaller than 90 square metres, the tax rate is 1%; if the area exceeds 90 square metres, the tax rate is 2%.

2. Is real estate subject to any real estate tax? At which rate?

**Real estate tax**

Real estate tax shall be paid by property owners.

For enterprises

- In case of real estate for self use, it should be 1.2% of the residual value of the property. The real estate tax will be based on the original value of the property after deducting between 10% and 30%.
- If the real estate is rented out, real estate tax rate is 12% of the rental. If the real estate is rented to the individual for living, the tax rate is 4% of the rental.

For individuals

- If the real estate is for self use, it is exempted from real estate tax.
- If the real estate is rented out, the real estate tax rate is 4% of the rental.

**Urban land-use tax**

Taxpayers, including all enterprises and individuals utilizing the land, are subject to this tax. The tax rates are set by the tax authority in each location, varying from RMB 0.6 to RMB 30 per square meter annually.

Urban land-use tax is exempted for real estate used by individuals.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

VAT has completely replaced business tax (BT) from 1 May 2016 under a VAT reform.

In the deepening VAT reform, Chinese government has reduced VAT rate on the sale or renting of real estate from 10% to 9%, which is effective from 1 April 2019. Effective from 1 January 2019, if the monthly sales amount of a small-scale taxpayer does not exceed RMB 100,000, it is exempted from VAT.

**General enterprises**

For general taxpayers (annual revenue more than RMB 5 million), the VAT rates are:

- On the sales of real estate, 9% is levied on the sales price.
- On the sales of real estate purchased before 30 April 2016, a simple method is adoptable. 5% is levied on the balance between the sales price and the purchase cost.
- On the sales of real estate developed before 30 April 2016, a simple method is adoptable. 5% is levied on the sales price.

For small-scale taxpayers (annual revenue less than RMB 5 million), the VAT rates are:

- On the sales of real estate purchased, 5% is be levied on the balance between the sales price and the purchase cost.
- On the sales of self-built real estate, 5% is levied on the sales price.

**Real estate developers**

For general taxpayers:

- On the sales of real estate developed, 9% is levied on the balance between he sales price and the land cost.
- On the sales of real estate projects developed before 30 April 2016, a simple method is adoptable, and 5% is levied on the sales price.

For small-scale taxpayers:

- 5% is levied on the sales price of real estate developed by them.

**Individuals**

Sales of purchased house:

- On the sales of house holding for less than two years, 5% is levied on the sales price.
- On the sales of house holding for more than two years, VAT is exempted except for the luxury houses located in Beijing, Shanghai, Guangzhou and Shenzhen (5% shall be levied on the balance of sales price and the purchase cost).



Sales of purchased real estate (non-house):

- 5% is levied on the balance between the sales price and the purchase cost.

Sales of self-built house:

- VAT is exempted.

2. What are the VAT consequences of renting of real estate?

**For enterprises**

General taxpayer:

- On the renting of real estate, 9% is levied on the rental income.
- On the renting of real estate purchased before 30 April 2016, a simple method is adoptable, and 5% is levied on the rental income.

Small-scale taxpayer:

- 5% VAT is levied on the rental income.

**For individuals**

- 1.5% VAT is levied on rental income.

## E. Other Taxes

1. Is there a capital tax for real estate injected into a local company?

The injection is subject to VAT, LVAT and CIT. For CIT, the Chinese investor can enjoy the preferential policy by spreading the capital gain over a period of five years.

2. Is there a stamp duty on debt granted to a local company?

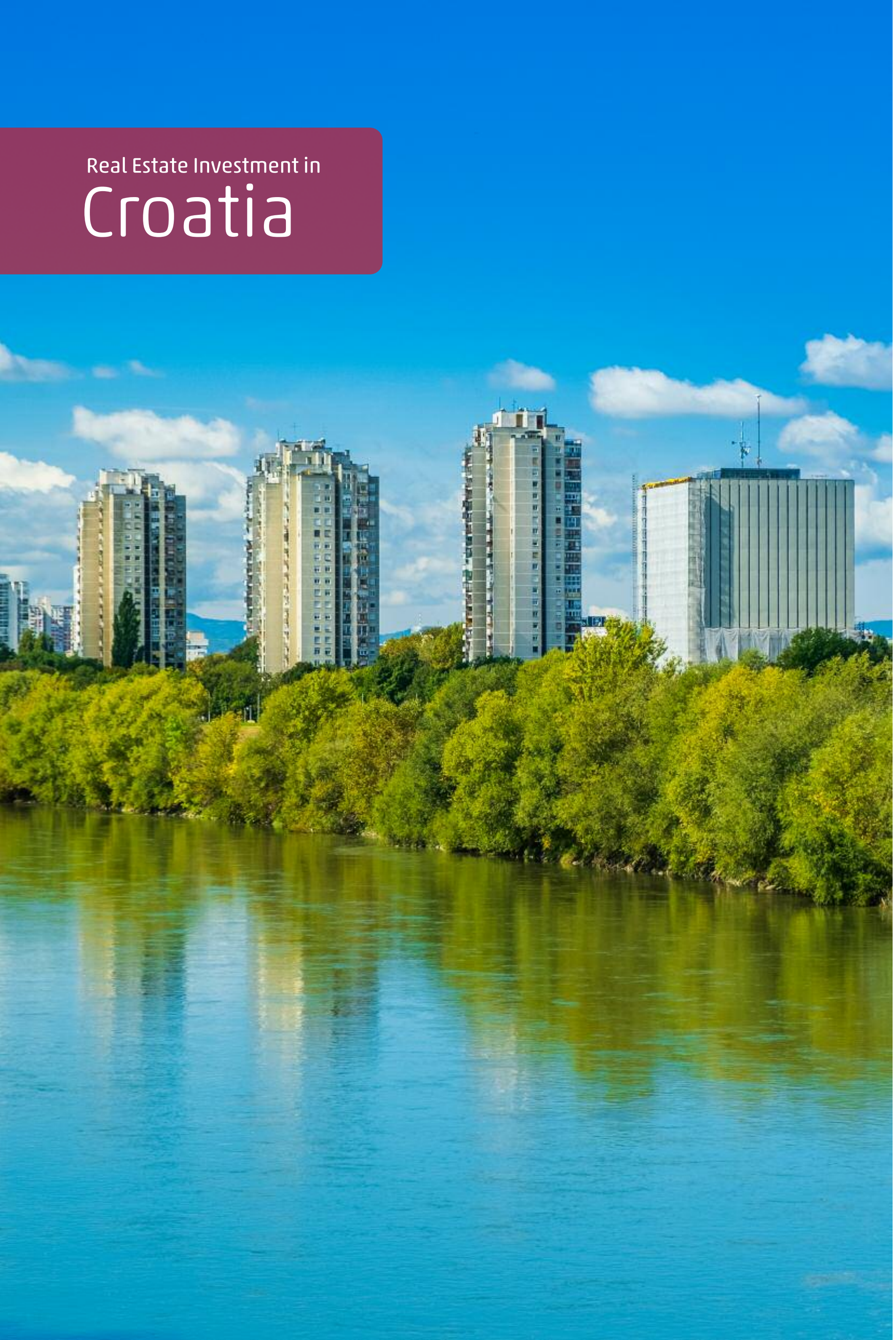
Stamp duty with a rate of 0.005% is levied on the total amount of the contract concluded.

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

No.

Real Estate Investment in

# Croatia



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Croatia?
   Does the acquisition have to be carried out by a Croatian corporation?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Non-residents are entitled to acquire real estate in Croatia, however the procedure is less difficult for citizens of EU Member State compared to citizens of third countries. Citizen or a legal person from a member state of the EU, can acquire the right of ownership of real estate in the Republic of Croatia under the assumptions that apply to the acquisition of the right of ownership for citizens of Croatia and legal persons with headquarters in Croatia, except for excluded real estate – agricultural land determined by a special law. In case of third countries, citizens can acquire real estate in Croatia when reciprocity in acquiring property rights between Croatia and other state is in force.

2. Which importance does the land register have?

Land register is highly important. In Croatia, the system of registration of real estate and rights to them are based on two specific registers – cadastral register and land register. Land registers are public books in which data on legal status of real estate relevant to legal transactions is entered. Land registers, excerpts, and prints and transcripts from land registers enjoy public trust and have the proving power of public documents. It is considered that the land register is true and fully reflects the factual and legal status of the land.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Corporate income tax rates are:

- 12% for revenues up to HRK 7,500,000.00
- 18% for revenues over HRK 7,500,000.00

Personal income tax rates are:

- 24% for annual income up to HRK 360,000.00
- 36% for annual income over HRK 360,000.00

Income derived from sale of real estate by a physical person is taxed with personal income tax at rate of 24%. Taxable income from real estate is calculated as difference between market value of the real estate at the date of sale and the purchase value. Income from sale of real estate is not taxable if transfer is done between spouses and relatives in the first line and other members of the immediate family, and if a person sells real estate that served for living purposes.

There are no special tax rates for sale of real estate, when the seller is a corporate income taxpayer.
In case of rental income realized by individuals, income tax on rent of real estate is paid on the amount of the rent reduced by 30% of the expenditure, and taxed at a rate of 12%.

Tax-grouping does not exist in Croatia.

2. What is the tax depreciation period for real estate in Croatia?
   Are there depreciation categories? Which depreciation method is used?

Corporate income tax act prescribes depreciation for real estate at the rate of 5% (20 years period). Taxpayers can also use accelerated depreciation at the rate of 10% (10 years). There are no depreciation subcategories for real estate. However, if a real estate is categorized as cultural monument, it cannot be subject to depreciation. Only straight-line depreciation method is accepted by Croatian Tax Authorities.



3. When is a foreign investor subject to limited tax liability in Croatia?

Article 6 of the DTA States that income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State. Derived income includes income from the direct use, letting, or use in any other form of immovable property. Therefore, income derived from real estate in Croatia by a foreign persons shall be taxable in Croatia.

4. Are asset deal and share deal possible in Croatia?
   What are the main consequences?

The sale of business units (or parts of businesses) is possible. It is important for all assets, receivables, claims and liabilities involved in a particular business activity to be included in the business unit that is being transferred.

The sale of shares in a company – a share deal – is possible.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

Thin capitalization rules apply for inter-company interest. Corporate income tax act prescribes that interest on loans provided by foreign shareholder with 25% or more holding in their Croatian subsidiary is not deductible for tax purposes, if the amount of the loan exceeds four times the amount of capital (i.e. share capital plus reserves plus retained earnings) for that shareholder (i.e. 4:1 ratio).

Corporate income tax rules prescribe maximum tax deductible interest expense on loans granted by foreign related companies. For calendar year 2020 prescribed interest rate amounts to 3.42%.

Starting with 1 January, Corporate Income Tax Act further limits tax deductibility of interest expense by introducing new category of exceeding borrowing costs. Exceeding borrowing costs represent amount for which the taxpayer's expenses (treated as tax deductible) exceed the taxable interest revenue or other economically equivalent taxable revenue. A taxpayer may, as tax deductible expense, determine exceeding borrowing costs incurred in the tax period only up to 30% of EBITDA-e or up to EUR 3 million, depending on which amount is more favorable for taxpayer. New provisions refer to related companies and companies that are part of a consolidated group, and therefore do not refer to independent taxpayers nor financial companies.

6. Can acquisition costs/financing fees/interest be deducted?

As explained in *section B.5.*, interest costs are limited by thin capitalization rules and rules of exceeding borrowing costs, as well as with the maximum tax deductible interest rate.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

There is no practice or instructions of the Tax Authorities on debt push-down. Nevertheless, based on general provision of the Corporate Income Tax Act, according to which deductible expenses should be related to business activity of the taxpayer, the Tax Authorities have legal ground to challenge deductibility of such interest.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Withholding tax is levied on interest paid to a non-resident at the rate of 15%, unless the rate is reduced or exempt under a tax treaty or the EU interest and royalty's directive.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses may be carried forward for up to five consecutive years.

Loss carry back is not applicable in Croatia.

## C. Real Estate Taxes

1. Does Croatia levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Real estate transfer tax is charged at 3% (4% until 1 January 2019) of the market value of the real estate on the contract date and is paid by the acquirer. If a seller is not a Croatian tax resident there are no tax consequences in Croatia.

Real estate transfer tax is not applicable in case of acquisition of a real estate for which VAT is payable *(see section D.1.)*.

2. Is real estate subject to any real estate tax? At which rate?

Act on local taxes prescribes taxation of holiday homes. Tax for holiday homes in Croatia is calculated and paid in the amount from HRK 5 up to HRK 15 per square meter. The amount of tax on holiday homes is prescribed by a local government.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

When selling a real estate, it is necessary to determine its status. Accordingly, taxpayers must take into consideration whether the real estate is:

- new (not yet used) or used up to 2 years;
- used for more than 2 years.

The VAT Act stipulates that the real estate's first use is considered as the moment of putting the property into use, that must be accompanied by appropriate documentation of property usage. The delivery of new property (not inhabited) or real estate used up to 2 years irrespective of the buyer (taxpayer or natural person – citizen) is taxable with VAT, at the rate of 25%. Supply of a real estate or parts of real estate and land on which they are built is VAT-exempt in case when that real estate was inhabited for at least 2 years. In such situations when seller does not have to calculate and charge VAT, the buyer of real estate is obliged to pay real estate transfer tax at the rate of 3%.

However, VAT payer selling real estate has rights to opt for taxation, if real estate buyer is VAT taxpayer eligible to fully deduct input VAT. In that case, reverse charge mechanism is applied, meaning that real estate seller does not charge VAT.
Real estate buyer simultaneously deducts input VAT and self-charges output VAT.

2. What are the VAT consequences of renting/leasing of real estate?

Renting/leasing of real estate is not taxable with VAT until legal entity or natural person exceeds revenue in the amount of HRK 300,000. When revenue from renting of real estate reaches HRK 300,000 legal entity/natural person must register as VAT payer and pay VAT at the rate of 25% on further revenues.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no capital tax prescribed for equity injected into a local company.

### 2. Is there a stamp duty on debt granted to a local company?

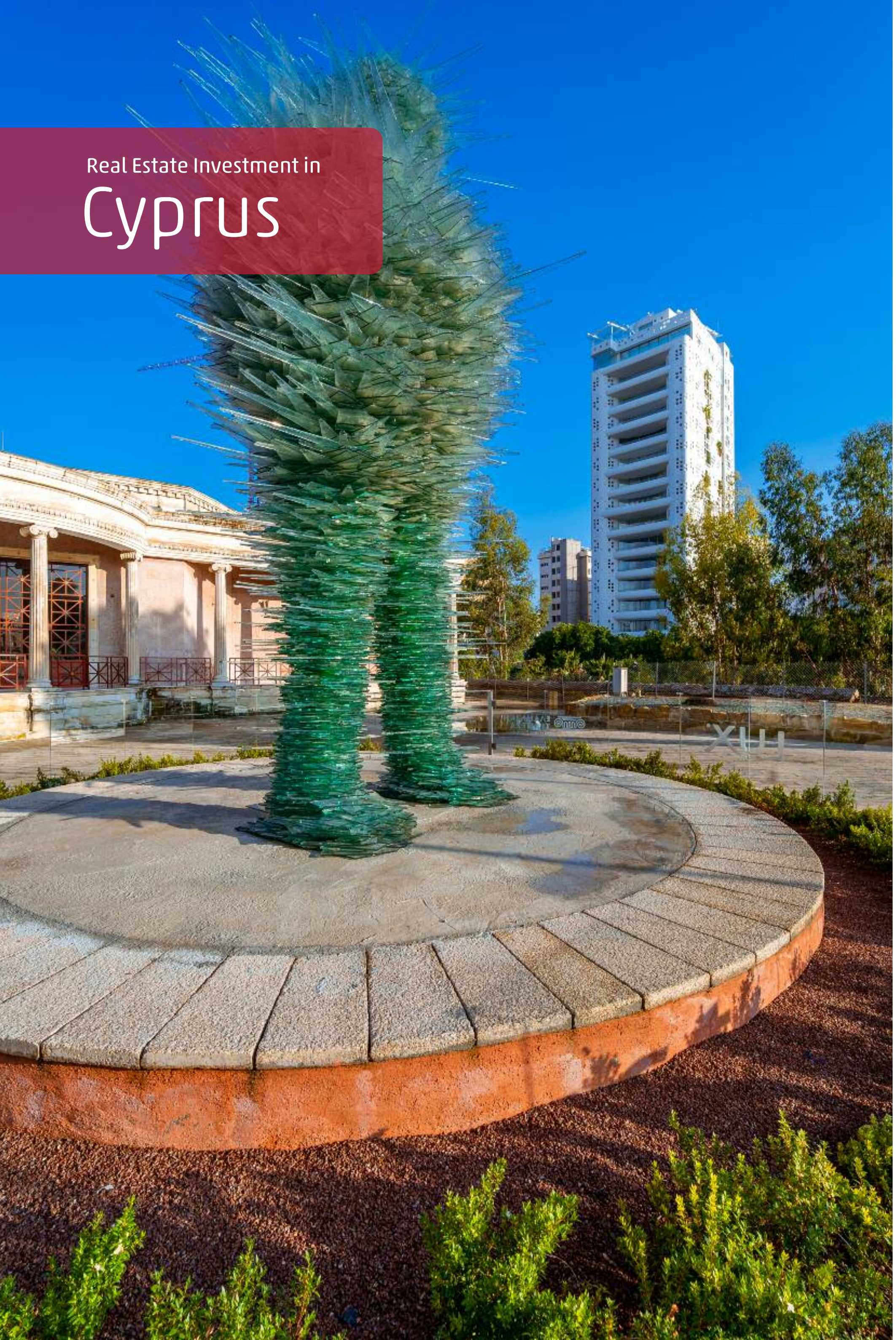
In Croatia, drafting and negotiating of the documents may include translation costs and notarial costs.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

In Croatia, Real Estate Investment Trusts (hereinafter REITs) are alternative investment funds which are closed-end investment funds that are not intended for public offering.

With regard to taxation, REITs are treated as any other legal entities in Croatia, provided that they are established as legal entities.

Real Estate Investment in
# Cyprus



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Cyprus?
   Does the acquisition have to be carried out by a Cypriot corporation?

Cypriots and EU individuals and/or companies are allowed to purchase real estate property without any restrictions.

Other foreign individuals or companies (non-EU) are only given permission to purchase one of the following:

- one apartment; or
- one house; or
- a building plot or land up to 4,000 square metres.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Entities from third countries may also acquire premises for their business or for the residence of their non-EU employees. In order to effect a transfer of real estate to a foreign company or individual, a permission from the government is required.

This permission may be obtained provided that the property is not intended for commercial exploitation; however, an exception may be given by the government for projects that may enrich tourism and increase employment, on an ad hoc basis.

2. Which importance does the land register have?

The land registry is an important government department as all properties are recorded there, deeds and other documents are issued and full record of past and current ownership as well as mortgages and encumbrances is maintained.

Rights over the property may be acquired either via the transfer of the title deed on the name of the new owner or by the registration with the land registry of a sale and purchase agreement or a lease agreement exceeding 15 years for the particular property.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Gains from disposal of real estate**

In regards to income from alienation of real estate, three types of taxation could apply:

- Corporate tax
  The corporate tax rate is 12.5% on the net profit of the company as adjusted for tax purposes. In order for a company to be taxed under corporate tax it has to prove that the company's line of business is dealing in land or developing real estate and therefore any gains are considered to be of a revenue nature and not of a capital nature (which fall under capital gains as explained below).

- Personal tax up to 35%
  With the same rationale as above, an individual dealing in the real estate business will be taxed under personal income tax for any profits generated.

  The current tax rates for individuals are as follows:

| Chargeable income (EUR) | Tax rate | Accumulated tax (EUR) |
|---|---|---|
| 0 - 19,500 | 0% | 0 |
| 19,501 - 28,000 | 20% | 1,700 |
| 28,001 - 36,300 | 25% | 3,775 |
| 36,301 - 60,000 | 30% | 10,885 |
| Over 60,000 | 35% | - |

- Capital gains up to 20%
  In the case where the real estate transaction is not considered as of a revenue nature (e.g. disposal of a residence or transactions not falling under business activity), any gain would be subject to capital gains tax at 20%.

The capital gains tax is also applicable on gains from the disposal of shares in companies not listed in a recognised stock exchange which:

- directly own real estate in Cyprus;
- indirectly own immovable property in Cyprus and at least 50% of the market value of the said shares derive from the market value of such immovable property. In computing the above percentage any balance sheet liabilities are not taken into account.

It is important to note that only properties situated in Cyprus are subject to capital gains tax. Disposal of any property situated abroad is not subject to capital gains tax in Cyprus.

**Rental income**

Rental income from properties is subject either to corporate tax or personal tax, depending on the owner (i.e. legal entity or individual), plus an additional 2.25% withholding tax on the gross rental income for Cyprus tax residents (for individuals, they need to be resident and domiciled to be subject to such withholding tax).

2. What is the tax depreciation period for real estate in Cyprus?
   Are there depreciation categories? Which depreciation method is used?

The tax depreciation (capital allowances) is 3% for commercial buildings (e.g. shops, offices, etc.) and 4% for hotels, agricultural and industrial buildings (e.g. factories). The said rates apply only for new buildings, as for second-hand buildings different rates apply.

It is worth mentioning that for industrial and hotel buildings acquired during the tax years 2012-2018 (inclusive), an accelerated tax depreciation at the rate of 7% per annum applies.

The straight-line method of depreciation is used to calculate the capital allowances figure.

### 3. When is a foreign investor subject to limited tax liability in Cyprus?

A non-tax resident individual or company is subject to tax only on income derived from Cyprus, such as (i) income from a permanent establishment located in Cyprus, (ii) income from an office or salaried services in Cyprus, (iii) rent, royalties or other income from property (including intellectual property) in Cyprus and (iv) capital gains.

Therefore, the gain from the sale of property (directly or indirectly owned by the investor) or the rental income emanating from property situated in Cyprus will be subject to tax in Cyprus either under capital gains tax or income/corporate tax as explained above.

### 4. Are asset deal and share deal possible in Cyprus? What are the main consequences?

Real estate can be acquired either through direct purchase of the property (asset deal) or indirectly through acquiring shares in a company owning the property (share deal). In both cases, disposal of property will lead to capital gains tax.

Profit from the sale of shares is not taxable in Cyprus, unless the company whose shares are sold holds (directly or indirectly as explained above in B.1.) immovable property situated in Cyprus, thereby triggering capital gains tax.

The reason is that disposal of shares in a company owning real estate triggers a capital gains tax calculation on the market value of the real estate on the date of disposal. In most of the cases, the cost in the above calculation is the acquisition cost of the property indexed for inflation. However, in certain cases such as:

- the disposal of immovable property that was directly or indirectly held by a company/ies during a previous share disposal, or;
- the disposal of shares of a company directly or indirectly owns shares in another company/ies

where in such disposal tax was imposed and paid, the value considered as the "cost" of the immovable property is the sale value that was used for the purposes of computing the gain in the previous disposal of the immovable property in hand.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

In regards to limitation of interest deduction this is applicable in cases where interest expense relates to the acquisition of a non business asset (i.e. an asset not generating taxable income) and in cases where the deductible interest cost exceeds the amount of taxable interest income and other economically equivalent taxable income generated (effective as from 1 January 2019). In a nutshell, the exceeding borrowing cost is restricted to the lower of the actual amount of exceeding borrowing cost or the 30% of EBITDA (taxable income/earnings before interest, tax, and wear and tear allowances). In certain cases, a Cyprus company may be eligible to deduct fully the exceeding borrowing cost. Also there are specific cases where the interest limitation does not apply, including amongst others a safe harbor threshold of EUR 3 million.

### 6. Can acquisition costs/financing fees/interest be deducted?

In calculating the capital gains tax, the cost of acquisition (indexed to take inflation in consideration) and interest on loan to acquire the property are allowable.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

**Tax group**

Under the Cyprus tax legislation each company is considered as a single tax entity; therefore there is no possibility to consolidate income. The possibility exists however for group relief by way of surrendering tax losses to another Cypriot company, member of the same group (two companies are deemed to be members of a group if one is the 75% subsidiary of the other or both, each one separately, are 75% subsidiaries of a third company).

**Merger**

A possible way to achieve debt push-down is by a merger between the target company and the acquisition vehicle having the debt.

8. Is there a withholding tax on interest payments paid by local company to creditor?

There is no withholding tax on interest payments from a tax resident company to a non-tax resident person.

In case that the recipient is a tax resident person, such interest income will be subject to tax as follows:

- If interest income arises from the ordinary carrying on of the business (i.e. it's considered as active interest), it is taxed under corporate tax (as business profit) at the rate of 12.5%, after allowable deductions.
- Other types of interest income (i.e. considered as passive) are taxed under special defence contribution (SDC) at the rate of 30% on a gross basis.

NB: SDC is a form of withholding tax on specific sources of income, i.e. passive interest, dividends and rental income. SDC is not applicable for non-tax resident persons and for Cyprus tax resident individuals which are not Cyprus domiciled.

9. Is a loss carry forward or loss carry back granted and what are the restrictions?

For capital transactions a carry forward of losses is allowed against future capital gains. A carry back of losses is not allowed.

In case the transaction is considered of a revenue nature any loss for tax purposes is also carried forward.

In the case of a loss for tax purposes falling under corporate tax, it may be carried forward for five years. For capital gains tax the losses can be carried forward indefinitely.

## C. Real Estate Taxes

1. Does Cyprus levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

In the case of transfer of immovable property, the land registry transfer fees are applicable at the following rates:

| Value of property (EUR) | Tax rate | Fee (EUR) | Accumulated fees (EUR) |
|---|---|---|---|
| Up to 85,000 | 3% | 2,550 | 2,550 |
| 85,001 - 170,000 | 5% | 4,250 | 6,800 |
| Over 170,000 | 8% | | |

However:

- No land transfer fees are payable if VAT is applicable upon purchasing the immovable property.
- The above transfer fees are reduced by 50% in case the purchase of immovable property is not subject to VAT.

The above rates are applicable for direct transfer of ownership. Transfer of shares in a company owning real estate is not subject to land registry transfer fees.

2. Is real estate subject to any real estate tax? At which rate?

Immovable property tax has been abolished as from 1 January 2017. Until tax year 2016, the owner of immovable property situated in Cyprus was liable to pay an annual real estate tax based on the market value of the property as at 1 January 1980, at the varying rates as noted in the table below, which apply per owner and not per property.

| Value of property (EUR) | Tax rate | Accumulated tax (EUR) |
|---|---|---|
| 0 - 40,000 | 6% | 240 |
| 40,001 - 120,000 | 8% | 880 |
| 120,001 - 170,000 | 9% | 1,330 |
| 170,001 - 300,000 | 11% | 2,760 |
| 300,001 - 500,000 | 13% | 5,360 |
| 500,001 - 800,000 | 15% | 9,860 |
| 800,001 - 3,000,000 | 17% | 47,260 |
| Over 3,000,000 | 19% | |

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

In general, the supply of land is a transaction being exempt from VAT, unless it relates to the sale of non-developed building land. In accordance with the amended VAT Law came into force as of 2 January 2018, the sale of non-developed building land (defined as any land intended for construction of one or more structures in the course of carrying out a business activity) is subject to VAT at the rate of 19%. It is important to note that, no VAT is imposed on the purchase or sale of land located in a livestock zone or areas which are not intended for development (such as zones/areas under environmental protection, as well as archaeological and agricultural protection).

New buildings or buildings that obtained a building planning permit after 1 May 2004 are subject to VAT at the standard rate currently being 19%. In the case the building is used in a business registered for VAT purposes, the purchaser can claim refund of the input VAT.
In the case where the building is a house, there may be the possibility of the reduced rate of 5%, subject to the use by the beneficiary as his/ her main and permanent place of residence for the next 10 years. The reduced rate of 5% applies for contracts concluded from 1 October 2011 and is applicable only for the first 200 square meters. For the remaining square meters, the standard rate applies as determined based on the building coefficient. Renovations and repairs of private residences could also be subject to reduced rate of 5%, subject to certain conditions.

For an applicant to be considered a beneficiary of the reduced rate of 5%, the following requirements must be met:

- be a physical person of legal age (18);
- be a citizen of Cyprus or EU Member State;
- be a permanent resident of Cyprus.

### 2. What are the VAT consequences of renting/leasing of real estate?

The leasing or letting of immovable property is subject to VAT at the standard rate (currently being 19%) when the lessee is a taxable person and is engaged in taxable activities by at least 90%. The lessor has an one-time obligation (at the time of concluding the lease agreement) to evaluate the proportion of taxable/non-taxable supplies of the lessee and apply VAT if the percentage of taxable supplies is more than 90%. Finally, the lessor has the right to opt (irrevocably) not to impose VAT on the specific property, subject to certain conditions.

As from 1 January 2019, in the case that the lease of an immovable property results to the transfer of the risks and rewards of ownership on such immovable property, VAT applies at the standard rate. This is because the transfer of risks and rewards is considered as to be supplies of goods.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Authorized share capital is the total of the share capital which a limited company is allowed to issue at any time. Issued share capital is the part of the authorized capital actually issued to shareholders.

Capital duty is payable upon the registration of a limited liability company either by shares or by guarantees to the Registrar of Companies. Capital duty paid upon incorporation of a company amounts to EUR 105 in relation to the authorized share capital. In case of a future increase of the authorized share capital, no capital duty is paid.

Upon incorporation, if a company chooses to issue shares at a premium, there is a flat duty of EUR 20.00. For any subsequent issuance, a flat duty of EUR 20.00 is paid irrespective if the shares are issued at nominal value or at a premium.

### 2. Is there a stamp duty on debt granted to a local company?

Some documents relating to assets and/or transactions taking place in Cyprus may be subject to stamp duty.

Whether a document/contract is subject to stamp duty depends on various factors that have to be examined.

Stamp duty is calculated on the value of the contract at a rate of 0.15% for amounts between EUR 5,000 to EUR 170,000 and at 0.2% for any amounts over EUR 170,000. Amounts below EUR 5,000 are exempt.

The stamp duty is capped to a maximum of EUR 20,000 per contract. In case that a contract is accompanied with secondary documents, only the main document is subject to stamp duty. Copies and secondary documents are stamped with EUR 2,00 each.

In case of a pledge or surcharge agreement on Cyprus bank account in connection with granting of loan for the finance of an asset, the stamp duty in such agreement is EUR 35,00 subject to certain conditions.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There is no special regime for Real Estate Investment Trust (REIT) in Cyprus.

An alternative to the investment in a REIT could be the investment in an Alternative Investment Fund (AIF) or a Regulated AIF (RAIF) in Cyprus, investing in real estate properties according to a defined investment policy. Cyprus legislation provides for two types of AIF:

- AIF with limited number of investors (up to 50 persons), with no investment restrictions and minimum share capital requirements;
- AIF with unlimited number of investors which may be subject to investment restrictions (depending on the type of investors) for the purpose of reducing the investment risk and is subject to minimum share capital requirements (at least EUR 125,000 or EUR 300,000, where it is formed as a self-managed investment company).

The choice of a Cyprus AIF could provide significant advantages to investors such as flexibility regarding the number of investors, the minimum share capital requirements and the investment restrictions, full transparency through frequent reports to the regulator and the investors, management of the investment risk through diversification by setting-up an umbrella fund with multiple compartments allowing the management of different asset pools with separate investment policies etc. Also, the investment in an AIF could provide significant tax incentives including among others, no withholding tax on dividend distributions for foreign investors, access to the wide double tax treaty network of Cyprus for AIFs having the form of an investment company etc.

Real Estate Investment in

# Czech Republic

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in the Czech Republic? Does the acquisition have to be carried out by a Czech corporation?

The amendment to the Foreign Exchange Act effective 19 July 2011, has created new rules for acquisitions of real estate by non-residents. By the amendment, Section 17 of the Foreign Exchange Act (which regulated the position of foreign nationals when acquiring real estate in the territory of the Czech Republic) has been repealed. By harmonising Czech national legislation and EU law, the Czech real estate market has entirely been liberalized. Now non-residents can acquire Czech real estate in the same way as Czech residents.

### 2. Which importance does the land register have?

The new Act on Public Registers of Legal Entities and Individuals, effective from 1 January 2014, has strengthened the material publicity principle protecting good faith that the records of legal relations in the land register are complete and true. If the right with respect to property is entered in a public register, it shall be assumed that it was recorded in line with the actual legal status. The new regulation thus obliges real estate owners to see that their rights are entered in the land register in a correct manner.


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The new Civil Code, effective from 1 January 2014, has reintroduced the principle that constructions built on a plot of land are deemed to be a part of such plot of land (excepting, for instance, temporary constructions, distribution system, etc.). The prerequisite for this, however, is that the owner of the construction and of the plot of land are identical persons (if there are different owners, they have the right of first refusal against each other). This principal change in the approach of property's ownership and parts thereof is reflected in legal regulation of the land register. In the land register only those buildings are included that are not parts of a plot of land or a right to build *(see below)*. The new owner of the plot of land becomes automatically owner of the construction being a part of the relevant plot of land.

The ownership of the real estate being transferred under the contract passes over to the buyer as soon as the ownership right is registered with the Land Registry ("Katastr nemovitostí"). The registration of the ownership will be made by the Land Registry Office based on its decision with retroactive effect from the day at which the application for the ownership's registration (charged with the administrative fee of CZK 2,000) has been submitted.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- corporate income tax rate: 19%;
- personal income tax rate: 15%; annual income exceeding CZK 1,672,080 (starting 1 January 2020) shall be subject to 7% tax surcharge/tax free income: CZK 165,600.

There is no special income tax rate for real estate.

Since 2014, inheritance and gift tax are classified as income taxes. Tax on acquisition of real estate is governed by a separate act starting 1 January 2014 (Act on Real Estate Acquisition Tax), *see section C.1*.

**Participation exemptions**

Under the domestic participation exemption regime, any income from a transfer of shares and profit distributions derived by a resident corporation (s.r.o. or a.s.) or a cooperative from a participation in another Czech corporation or cooperative is exempt from corporate income tax, provided that it holds a share of at least 10% (in share capital) for a minimum holding period of twelve months. The twelve-month period may be fulfilled subsequently. However, the domestic participation exemption does not apply to income from a transfer of shares and to profit distributions where a Czech subsidiary is in liquidation.

The international participation exemption applies to specific income *(see below)* derived from a participation in a foreign company. The requirements differ depending on whether a foreign subsidiary is located in the EU or in a third country.

Requirements in the case of EU subsidiaries are:

- equity participation of at least 10% in the EU subsidiary for a minimum holding period of twelve months;
- listing of the legal form of the EU subsidiary in the Annex to the EC Parent-Subsidiary Directive, see Annex II;
- Czech parent company is a beneficial owner of the income.

As regards EU subsidiaries, the participation exemption applies to dividends received by Czech parent companies and Czech permanent establishments of companies resident in another EU Member State. Further, income from a transfer of shares in EU subsidiaries derived by Czech parent companies is also tax-exempt. However, the participation exemption does not apply to income from dividends, where the EU subsidiary is in liquidation.

The international participation exemption also covers profit distributions and income from the transfer of shares derived by an EU parent company in connection with its shareholding in a Czech subsidiary. In addition, the fact that a Czech subsidiary is in liquidation does not preclude the application of participation exemption rules to profit distributions (in contrast, income from transfer of shares may not be tax-exempt if the Czech subsidiary is in liquidation).

Additional requirements (to the above-mentioned) in case of third-country subsidiaries are:

- Czech Republic has concluded a tax treaty with the third country;
- legal form's comparability of the third-country subsidiary to Czech corporations (s.r.o. and a.s.) or cooperatives;
- subsidiary is subject to corporate income tax of at least 12% in its residence country and is neither tax-exempt nor eligible to opt for tax exemption.

As regards third-country subsidiaries, the participation exemption applies to dividends and income from a transfer of shares derived by Czech parent companies. However, the participation exemption does not apply to income from dividends where the third-country subsidiary is in liquidation.

**Group**

Except for the VAT-group regime, there is no special corporate income tax regime for groups of companies.

## 2. What is the tax depreciation period for real estate in Czech Republic? Are there depreciation categories? Which depreciation method is used?

Permanent buildings are to be depreciated over 30 years. From 1 January 2004, certain buildings such as office parks, shopping malls and hotels are to be depreciated over 50 years. A taxpayer may choose to use either the straight-line or the accelerated depreciation method. The method chosen may not be changed over the entire period of tax depreciation. For permanent buildings, a taxpayer is not obliged to claim depreciation and may even interrupt tax depreciation. In the case of interruption of the tax depreciation, the useful life of the assets will be automatically prolonged. When the taxpayer starts writing off again, it must be done as if the tax depreciation had not been interrupted. Plots of land may not be depreciated for tax purposes. Once the plot of land is sold, the possible loss realized upon this sale can be deducted from the tax base (this does not apply to natural persons).

## 3. When is a foreign investor subject to limited tax liability in Czech Republic?

The foreigners (the non-Czech residents) who derive income from Czech sources are subject to limited tax liability in the Czech Republic. Income from Czech sources represents inter alia income from a Czech permanent establishment, capital gains from the sale of Czech real estate or from the sale of the share held in a Czech company and certain payments received from Czech resident taxpayers, e.g. lease payments.

This income derived by non-Czech residents (with limited tax liability) falls within the scope of the Czech Income Taxes Act. It must, however, be reviewed under the relevant double tax treaty, whether the right of taxation with respect to the particular cross-border transaction is attributable to the Czech Republic as the source state. If the right of taxation is vested in the Czech Republic, the Czech-sourced income of the non-residents will be subject to either the corporate income tax of 19% or to withholding tax of 15% (unless reduced under the relevant double tax treaty).

The final taxation in a foreign country depends on the method of preventing double taxation that is applied by the foreign country as the state of residence.



## 4. Are asset deal and share deal possible in the Czech Republic? What are the main consequences?

The real estate investor can acquire Czech real estate by way of an asset deal (e.g. a direct acquisition of real estate or the acquisition of a tax-transparent partnership owning real estate. Czech real estate can also be acquired by way of a share deal (e.g. acquisition of a corporation owning real estate), whereby further reorganization steps to achieve a debt push-down may be required, *see section B.7*.

**Asset deal**

- Direct acquisition of real estate:
  A Czech corporation can directly acquire Czech real estate. Interest expenses for a debt-financed acquisition may be deducted from the real estate's income if the real estate is rented out or used for its own business. However, the tax-deductibility of interest is limited by the arm's-length and thin capitalization rules, *see section B.5*.
- Acquisition of a partnership interest:
  If the seller holds the real estate via a Czech partnership (i.e. as a partner of a v.o.s. or a general partner of a k.s.), the acquirer can step into the Czech partnership in place of the seller. Czech partnerships are in general tax transparent (except for income attributable to a limited partner of a k.s.) and the partnership's income is taxed at the partner's level. Please note that income derived by a partner of Czech partnership is considered to be derived through a Czech permanent establishment and as such is subject to Czech taxation. Interest expenses for the debt-financed acquisition of a partnership interest should be deductible from the income of the partner being a legal entity. Partners who are individuals are not entitled to deduct any expenses related to their Czech permanent establishment constituted by reason of their participation in Czech partnerships.

**Share deal**

All financing costs, including interest on loans for the acquisition of shares, are not deductible for tax purposes. Any loan taken out six months prior to the acquisition of shares is considered to be a loan for acquisition of shares, unless it is proven that this loan has been used otherwise. Tax-deductibility of the interest can be achieved by implementation of any debt push-down strategy, whereby acquisition debt and business activity will be on the same level. *For other tax consequences (VAT, capital tax, property tax etc.) see the questions below.*

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Thin capitalization rules (non-tax deductible financial costs) shall apply to all financial costs (i.e. interest including, for instance, loan procurement and processing costs, guarantee fees, etc.) if the creditor is a related party to the debtor (due to capital or other relations) and if the aggregate of loans and credits from these parties exceeds six times the equity capital in case of banks and insurance companies or four times the equity capital in case of other recipients. Therefore, financial costs in the amount by which the aggregate of loans and credits in a tax period exceeds six times or four times the equity capital are considered not deductible for tax purposes.

Thin capitalization rules shall not apply to:

- loans and credits the interest of which are included in the input price of property;
- demonstrably granted interest-free loans and credits;
- individuals, non-profit organizations and organizers of regulated market (formerly Stock Exchange).

Apart from the thin capitalization rules the market price must be taken into account – i.e. arm's-length interest in case loans and credits are granted/accepted between related parties.

In the course of 2019, the amendment to the Income Tax Act came into effect, implementing Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("ATAD"), in the Czech law. It aims to restrict the possibility of profit shifting within a group of companies and applies to all EU Member States. Among other things, it imposes restrictions on eligibility of excessive borrowing costs (difference between generally tax-deductible borrowing costs and the taxable borrowing income) up to a certain defined limit: the higher of the amount corresponding to 30% of EBITDA and the amount of CZK 80 million. However, excessive borrowing costs which were disallowed in one tax period might be carried forward to the following periods, which means that a taxpayer who was obliged to increase its tax base due to excessive borrowing costs incurred in previous periods should be entitled to decrease the tax base by this amount again in the following periods.



## 6. Can acquisition costs/financing fees/interest be deducted?

In general, interest on a share acquisition loan (please note that any loan agreed within the six months preceding the acquisition is deemed to be an acquisition loan, unless proven otherwise) is not deductible for tax purposes. According to the ITA, all direct as well as indirect costs incurred in connection with the shareholding in the subsidiary, including interest on an acquisition loan, are non-deductible only where corporations (a.s. or s.r.o.) act as the parent company under the Parent-Subsidiary Directive. The indirect costs related to the shareholding amount to 5% of the dividends, unless lower costs are proven to the tax authorities. In other cases, where interest payments are related to the acquisition loan, interest is not tax deductible due to the general provision stipulating the non-deductibility of expenses relating to income that is subject to a final withholding tax (i.e. dividends) or that is tax-exempt (under the participation exemption).
Interest on an asset acquisition loan is in general deductible, unless the interest is non-tax deductible under the transfer pricing rules (applicable only to related persons) and/or the thin capitalization rules and/or "ATAD" rules *(see above)*.

## 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

If the real estate is held by a Czech corporation (target) and the purchaser acquires the target, Czech law allows strategies in order to generate a debt push-down. Common debt push-down concepts are a merger of the Czech target (the corporation holding real estate) with a Czech NewCo (the corporation acquiring shares in the share deal) or a conversion of the target into a (tax-transparent) partnership.

**Merger**

A NewCo receives an acquisition loan to acquire the target and afterwards these companies are merged. A merger is generally tax neutral for corporate income tax purposes and is not subject to VAT. The remaining company may deduct the interest from its taxable base (e.g. rental income), since interest on the acquisition loan is not linked to any shareholding after the merger (i.e. the business activity and the loan are at the same level). It is important that the merger can be supported by sound business reasons. However, the merger allows the assets of the target to be used for securing the acquisition loan, which might be seen as a business reason to justify the debt push-down strategy. There is no tax on real estate acquisition upon the acquisition of the target corporation. Mergers and other corporate reorganizations are exempt from real estate acquisition tax.

**Conversion**

This alternative requires another company to join the target company as a second partner prior to the conversion of the target into a limited partnership (k.s.). Subsequently, the target is converted into a partnership of which the NewCo is the general partner and the newly-entered company is a limited partner. Profits of a k.s. are divided into two parts for tax purposes. One part attributable to a limited partner is taxed at the level of a partnership (i.e. the standard tax regime for a corporation and a limited partner receiving dividends from a partnership). Usually the limited partner holds a minor share in the partnership. Another part attributable to the general partner is taxed in the hands of this partner (tax transparency). Interest on the acquisition loan is tax deductible, if this expense serves a general partner in generating taxable income derived from a partnership; which is applicable only for corporate investors.
There is no real estate acquisition tax upon acquisition of the target. Under Czech civil law, a conversion is not treated as a transfer of any assets, and thus it is not subject to real estate acquisition tax.

## 8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest income of a non-resident taxpayer (corporations and individuals) is subject to Czech withholding tax at a rate of 15%. However, double tax treaties usually prevent Czech taxation. The withholding tax rate on interest is 0% applying the EU Interest and Royalty Directive for group purposes (minimum participation 25%, minimum holding period 24 month). The withholding tax rate for dividends is 15%, but may be reduced under an applicable double tax treaty or even avoided by application of the EU Parent-Subsidiary Directive for group purposes. The rate of withholding tax amounts to 35% in case of interest income the taxpayers receive from non-EU/EEC countries with which there is no double taxation agreement or tax information exchange agreement.

## 9. Is a loss carry forward or carry back granted and what are the restrictions?

Generally, losses from business and independent (professional) activities and losses from rental activities may be set off against other income categories, but not against employment income (Sec. 6 ITA) and other income (Sec. 10 ITA). Remaining losses may be carried forward, provided that the loss was not only entered in the tax return but also assessed, i.e. the tax administrator approved the tax loss in the tax return. A loss carry forward is limited to five years; for losses generated prior to 1 January 2004 this period was seven years.



Losses incurred in other categories may neither be set off nor carried forward.
The tax loss can be deducted from the tax base which arose and was assessed for the previous tax period or a part thereof, within not more than five tax periods following the tax period for which the tax loss is assessed.

The tax loss cannot be deducted from the tax base if there was a significant change in the structure of persons having direct share in capital or control ("significant change"). A change of members or a change of their share in capital or control over the company shall be deemed a change in the structure of persons. A significant change shall mean the acquisition or increase in the share concerning in total more than 25% of the registered capital or voting rights or changes by which the member gains decisive influence. Whether there was a significant change has to be checked by comparing the conditions in the period for which the tax loss shall be deducted and the period for which the tax loss was assessed. If, however, the company in which there was a significant change proves to the Tax Authority that at least 80% of revenues from own performances and goods showed as revenues in this period have been generated by the same activity which the company carried out in the period for which the tax loss has been assessed, the tax loss can be deducted from the tax base.

In general, a tax loss cannot be carried over to third parties. The only exception to this rule is the possibility of carrying forward the tax loss that arose in a legal entity during a transfer of business or a separate part thereof to the company or during mergers and splitting of the company (if the mentioned conditions are fulfilled).

Taxable persons and entities can apply loss carry-backs in their additional tax returns by setting off the 2020 loss against the positive tax bases of 2018 and 2019. The tax authority will refund the excess income tax. This can be applied after the 2020 tax return with a tax loss is filed, i.e. not before the beginning of 2021.

## C. Real Estate Taxes

1. Does Czech Republic levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfer of real estate and comparable rights**

The real estate acquisition tax has been completely abolished on the basis of a bill approved on 26 September 2020 with retroactive effect from 1 December 2019.

2. Is real estate subject to any real estate tax? At which rate?

The real estate tax (the land tax and the building tax) covers lands, buildings, residential apartments and non-residential (business) premises. The taxpayer is in general the owner registered in the Land Registry. If the plot of land is encumbered by a right to build, the builder is the taxpayer relating to the land tax. For the purposes of the tax calculation, the status as per 1 January of the relevant calendar year is to be taken into account as the decisive date.

All Czech land registered in the Land Registry (except for the built-up lands) are subject to the land tax. The building tax is levied on Czech buildings (constructions under the Land Registration Act), civil engineering works and units. For the purposes of the land tax, the tax base is derived from the land type and the land area (in square metres). The highest tax rate applies to hard-surface areas of plots of lands being used for industry, building, power industry, transport, etc. and amounts to CZK 5 per square metre. The tax rate for building plots amounts to CZK 2 per square metre and is multiplied by the municipal coefficient (ranging from one to five).
For the purposes of the building tax, the tax base of buildings is determined as the built-up area in square metres. The building tax rate ranges from CZK 2-10 per square metre depending on the type of the building. The highest tax rate of CZK 10 applies to buildings which are used for business activities. The basic tax rate is to be increased by CZK 0.75 per each floor. The increased tax rate must further be, as in the case of the land tax, increased by the above-mentioned municipal coefficient.



## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

With effect from 1 January 2014, legal regulation of sale of real estate has been changed significantly, giving rise to numerous disputable interpretations which remain partly unresolved. There have been large limitations to tax exemptions on land transfer. In principal, only the transfer of mere plot of land i.e. a land plot without constructions or distribution systems and without building permit is subject to tax exemption.

The transfer of buildings, apartments, heritable building rights and commercial premises is VAT-exempt after five years from the issuance of first occupancy approval or an occupancy approval after a significant change to the completed building, unit or civil engineering works.

However, taxpayers can decide to claim tax even if they are legally entitled to exempt the transfer of a plot of land or a building. If the recipient of the supply is a VAT payer, this is subject to his prior consent. In the case of such supply of real estate to a tax payer, the VAT payer shall use the so-called domestic reverse-charge mechanism.

Should the transfer occur within a five-year period, it would be subject to VAT of 21% or 15% in the case of family houses and/or residential buildings with the given size.

2. What are the VAT consequences of renting/leasing of real estate?

The lease of real estate is VAT-exempt; however, some exceptions exist, e.g.a short-term lease of real estate (maximum 48 hours continuously) or the lease of premises for car parking. Nevertheless, the lessor has the option to levy the lease with VAT (21%) provided that the tenant is liable to pay Czech VAT and uses the leased real estate for his/her economic activities. However, this option will be prohibited for leasing apartments and single-family detached homes with effect from 2021.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no capital tax for equity injected into a local company in the Czech Republic.

### 2. Is there a stamp duty on debt granted to a local company?

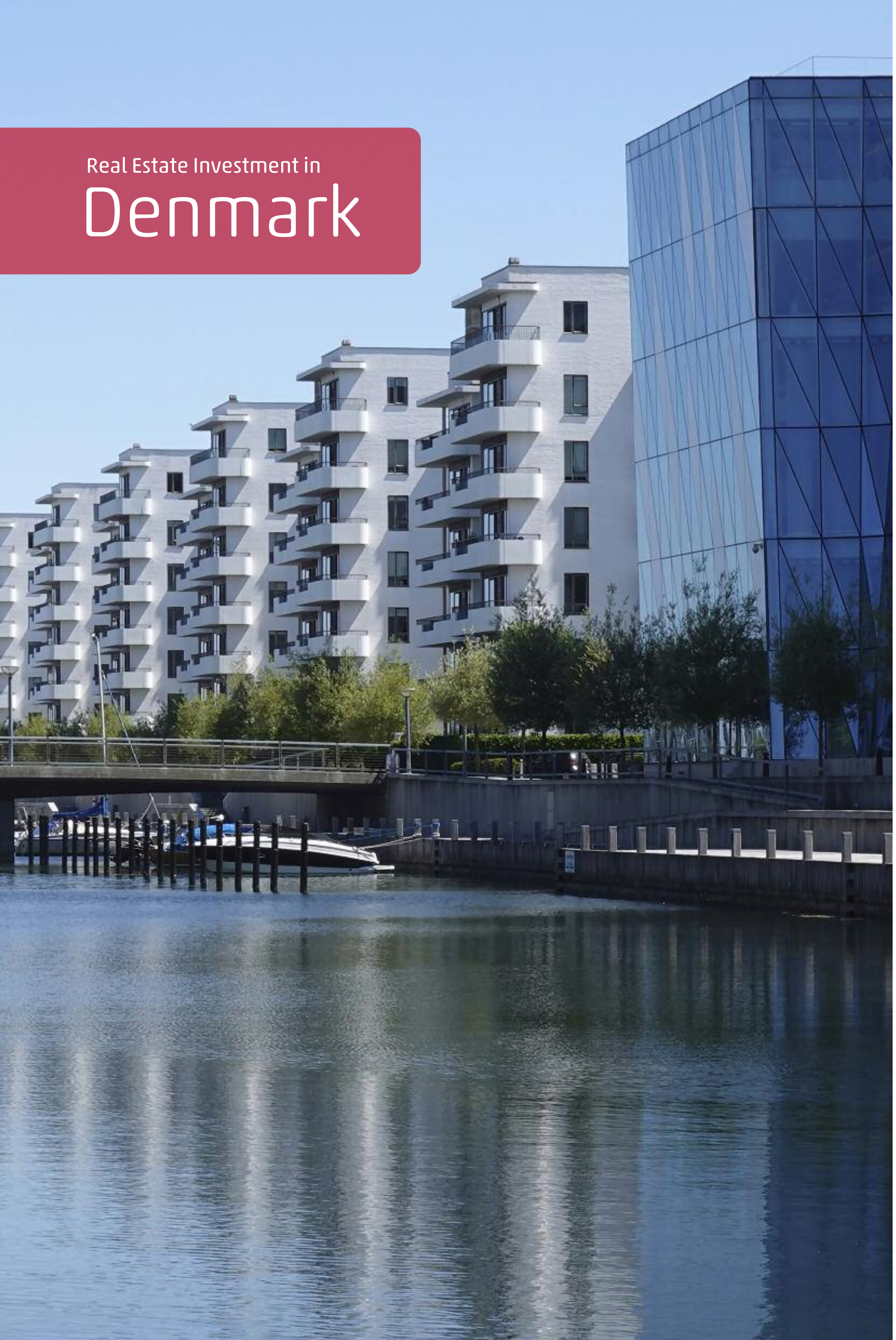
Stamp duties are levied on certain legal transactions during administrative or court proceedings. Court fees vary between 1% and 4% of the amount in dispute, whereas the minimum and maximum fees are stipulated or levied as fixed amounts. Administrative fees are usually levied as fixed amounts.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There is no special regime for Real Estate Investment Trusts in the Czech Republic.

Real Estate Investment in

# Denmark



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Denmark?
   Does the acquisition have to be carried out by a Danish corporation?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Non-residents are restricted in their access to acquire real estate in Denmark. The Danish legislation on real estate states that non-residents in Denmark, who have not had residency in Denmark earlier, are only allowed to acquire real estate located in Denmark with permission from the Danish Minister of Justice.

Companies incorporated in an EU/EEA Member State, are, under certain circumstances, able to acquire real estate in Denmark without permission from the Danish Minister of Justice.

This also applies for companies, associations e.g. which do not have residency in Denmark.

2. Which importance does the land register have?

Rights relating to real estate in Denmark may be, if desired, registered in the Danish land register.

The registration is not a requirement for the sales agreement to be valid but the acquirer is not protected against third party rights until an ownership registration in the Danish land register has been made. Thus, the registration of ownership is considered a perfection of security interest.

The registration fee for a deed is 0.6% of the purchase price or the public property value (the highest). Furthermore, a fixed duty on DKK 1,750 is imposed.

For the registration of rights regarding ownership reservation and mortgage a registration fee of 1.5% of the ensured amount + DKK 1,750 is imposed.
For the registration of other property rights than owner and mortgage rights (easements, right of use e.g.) a registration fee of DKK 1,750 is imposed.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate:
  The Danish corporate income tax rate is 22% (2020).

- Personal income tax rate[1]:
  - up to DKK 46,500: 0%;
  - DKK 46,501 - DKK 513,000: municipality tax (24.0% – average) + state tax (12.11%) + church tax (0.87% – average);
  - above DKK 513,000 (2020-level): additional 15%;
  - a tax ceiling of 52.06% (2020-level) exists, whereby the marginal tax rates cannot exceed 52.06%.

Taxable income from real estate in Denmark is as a starting point taxed as capital gains in the hands of individual and corporate owners.

**Individual owner**

The gain on a sale of real estate is as starting point taxable as income from property for an individual. However, Danish law provides an exception hereto, as an individual owner may be exempt from taxation on a sale of Danish real estate, if the individual has lived in the real estate for a period of time prior to the sale. As a result, most private sales of real estate in Denmark are tax-exempt.

Income deriving from real estate (such as rental income) may be taxed taxed differently in the hands of an individual depending on the length of the rental period with up to 52.06%.

**Corporate owner**

For corporate owners of real estate in Denmark, income deriving from real estate in Denmark, including upon a disposal, will be taxed at 22%.

[1] Note that the income tax is calculated after deducting labour market contribution that is taxed with a rate of 8%.



- Participation exemptions:
  For corporate shareholders, a distinction is made between "subsidiary shares", "group shares" and "portfolio shares" with respect to taxation of dividends and gains on shares:
  - "Subsidiary shares" are generally defined as shares held by a shareholder holding 10% or more of the share capital of a company.
  - "Group shares" are generally defined as shares in a company in which the shareholder of the company and the company are jointly taxed or meet the criteria for national or international joint taxation, usually implying that the shareholder controls, directly or indirectly, more than 50% of the votes or are otherwise deemed to have a controlling influence; and
  - Tax-exempt "portfolio shares" are defined as shares in an unlisted company held by a shareholder holding less than 10% of the capital of the company.
  - Taxable "portfolio shares" are shares not falling within the definitions as subsidiary shares or group shares and tax-exempt portfolio shares.

Special rules apply to certain holding companies (in Danish: "mellemholdingselskaber") which are established to prevent avoidance of the 10% holding requirement.

1) Dividends and gains on subsidiary shares and group shares are tax-exempt irrespective of the length of the ownership period.[2] Any loss on the shares may not be deducted for tax purposes.
2) For tax-exempt portfolio shares dividends are taxable, but only including 70% of the dividend, while capital gains are tax exempted (note that certain anti-avoidance rules apply). Losses on the shares may not be deducted.
3) Dividends and gains on taxable portfolio shares are taxable, and any losses on the shares are deductible.

If a Danish corporate investor holds shares in a taxable portfolio company, gains are taxable according to the mark-to-market principle. According to the mark-to-market principle, each year's taxable gains and losses are calculated as the difference between the market value of the shares at the beginning and the end of the tax year.
Thus, taxation will take place on an accrual basis even though no shares have been disposed of and no gains or losses have been realized.

It should be noted that a change of status from subsidiary shares/group shares to portfolio shares, and vice versa will be treated as a disposal and reacquisition of the shares at the market price of the shares at such time.

[2] Note that for non-Danish subsidiaries, the subsidiary must be tax resident (without exemption) in a state with whom Denmark has concluded a double tax treaty and an agreement to exchange tax information.

**Tax group**

The Danish rules on national joint taxation are mandatory and will apply for all Danish companies, associations and permanent establishments etc. under the same group. The Danish parent company will have to include Danish subsidiaries and Danish permanent establishments in the Danish national joint taxation. Only entities in which the parent company has a controlling interest on the financial and operational decisions are to be included in the joint taxation. Such controlling interest is deemed to exist if the parent company directly or indirectly holds more than 50% of the voting rights in the entity unless it can be established that such ownership interest does not constitute controlling interest.

If a parent company holds less than 50% of the voting rights in an entity, controlling interest will still exist provided the parent company has:

- access to more than half of the voting rights through agreement with other shareholders;
- authority to control financial and operational decisions under the articles of associations or agreement;
- authority to appoint or dismiss the majority of the members of the supreme decision-making body which holds a controlling interest; or
- access to more than half of the voting rights at the general meeting or a similar body and thus in fact holds a controlling interest.

The top Danish entity will be under an obligation to act as administration company and will be responsible for the filing of the income tax return and the payment of the tax payment for the entire group under the joint taxation.

The jointly taxed income is calculated as the sum of each company's taxable income. Tax costs, including interests, are fully allocated to the individual companies in the joint taxation group. If a loss in one company is used by another company, the company utilizing the loss must pay the administration company an amount equal to the tax saving. The administration company must, however, refund the same amount to the loss-making company.

The administration company and fully owned entities within the international and national joint taxation group are jointly and severally liable for payment of taxes relating to all entities within the joint taxation group. For partly owned/controlled companies within the joint taxation group, a secondary and limited joint liability exist. It is possible to select to include the entire global group in a Danish international joint taxation whereby all upstream and downstream entities will be included in the Danish joint taxation.

2. What is the tax depreciation period for real estate in Denmark? Are there depreciation categories? Which depreciation method is used?

The Danish rules on depreciations only allow for depreciation on building and installations in buildings used for commercial purposes. Certain exemptions apply and as a main rule, depreciation is not allowed on office buildings, buildings used within certain financial activities, buildings used for postal service activities, buildings used for accommodation, certain hotel activities and buildings used within certain areas of the healthcare sector.

Depreciation is not allowed on the land.

Depreciation may be made at a rate of up to 4% of the acquisition costs using a linear depreciation method. Thus, the standard depreciation period for Danish real estate is 25 years. A higher depreciation rate may be used if it can be established that the building etc. will despite normal maintenance in any event have lost its value within 25 years of construction.

3. When is a foreign investor subject to limited tax liability in Denmark?

An individual is considered a non-resident of Denmark if the individual has no domicile or habitual place of abode in Denmark and does not stay in Denmark for at least six months during a calendar year.

A corporation is considered a non-resident of Denmark if the corporation is not a registered Danish company and provided the foreign corporation does not have its effective place of management in Denmark.

Non-residents are subject to limited tax liability in Denmark as provided for in Section 2 of the Danish Act on Taxation at Source (individuals) and Section 2 of the Danish Corporation Tax Act (corporations). Non-resident investors of real estate in Denmark will be subject to limited tax liability in Denmark provided:

- activities are carried on through a permanent establishment in Denmark (Denmark generally interprets the term “permanent establishment” in accordance with the OECD Model Tax Convention); or

- non-resident investor holds Danish real estate and has income related to the real estate, including capital gains on a sale.

Several other rules on limited tax liability for non-resident individuals exist, including limited tax liability on salaried work performed in Denmark, hiring-out of labour, dividends, consultancy fees and royalties. There is no Danish limited tax liability on interest payments to non-resident individuals.

Non-resident corporations will also be subject to limited tax liability on certain dividend payments, certain payment of controlled debt, consultancy fees, royalties and gains on certain claims and debt. Non-resident shareholders are as a main rule not subject to a limited tax liability on capital gain on the sale of shares. However certain anti-avoidance rules apply which entails that in some cases, capital gain on the sale of shares will be re-qualified and taxed as a deemed dividend payment.

Non-resident corporations will as a main rule not be subject to limited tax liability on dividend payments from Danish companies provided the foreign investor holds so-called subsidiary shares or group shares, cf. section B.1. above. The tax exemption presupposes that taxation of the dividends must be waived or reduced under the provisions of the Parent-Subsidiary Directive (Directive 2011/96/EC) or under a double tax treaty with the Faroe Islands, Greenland or the state in which the corporation is resident. With respect to group shares, it is also a condition that the corporation receiving dividends is resident in the EU/EEA. Note that beneficial owner requirements may apply.

Dividends in respect of portfolio shares, including qualified portfolio shares, cf. section B.1. above, are always subject to taxation irrespective of the length of the ownership period. The company paying the dividends is generally obligated to withhold tax at the rate of 27%. However, according to recent changes of the tax legislation, dividends distributed to companies domiciled abroad is taxed with a rate of 22% (however, 27% is still levied as a withholding tax and the excessive part of 5% may be reclaimed).

If the corporation is resident in a state which has a double tax treaty with Denmark or any other agreement on the exchange of information between the tax authorities of the countries, and if the corporation holds less than 10% of the shares, the withholding tax rate may be reduced to 15% on request. The rate of withholding is still 27%, but a refund of the tax withheld is available.
Danish limited tax liability always presupposes a Danish source of payment.

### 4. Are asset deal and share deal possible in Denmark? What are the main consequences?

In Denmark, real estate can be acquired both as an asset deal and a share deal.

**Asset deal**

If the real estate is sold out in an asset deal separately from the business, the transaction is viewed as a taxable disposal of real estate in the hands of the seller at 22%. However, the buyer receives a step-up in the tax basis of the real estate.

**Share deal**

If real estate is acquired as a share deal, the buyer assumes any historic risks of the company acquired and the real estate at written down tax value. However, the sale of the real estate does not trigger any taxation at the level of the seller.

All foreign investors can sell shares in real estate companies without Danish tax, if the shares are not part of a permanent establishment. However, those share deals are subject to certain anti-avoidance rules, cf. above.

No registration duty on the real estate is imposed.

It is often beneficial to acquire real estate as a share deal. However, when acquiring shares in real estate companies all liabilities, including tax liability, in the real estate company are taken over. Moreover, when requiring assets, a "step up" in the depreciation base for tax purposes is available. Hence, it must always be analysed in detail on a case-by-case basis, whether an asset or a share deal is more beneficial.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Interest payments made by a Danish company are generally deductible for Danish corporate income tax purposes.

However, Denmark has imposed rules entailing that deduction of interest in some cases are reduced. These rules also apply for real estate.

### Thin capital rules

The thin capitalization rule applies to Danish companies and permanent establishments that have inter-company debt (controlled debt) to a related company or individual, which:

- directly or indirectly owns more than 50% of the share capital or controls more than 50% of the votes in the Danish company; and
- the debt-to-equity ratio of the Danish company exceeds the ratio 4:1.

If these conditions are met, tax deductibility for the interest and debt losses on the controlled debt, which exceeds the debt-to-equity ratio of 4:1, is disallowed. The interest is not recharacterized as a dividend and is still treated as an interest with respect to withholding tax, etc.

If the Danish taxpayer can prove that the debt is on market terms, i.e. on the same terms as if the loan was provided by a third party, the thin capitalization rule will not apply.

The term "controlled debt" includes both debt directly provided by a related company and debt where a related party has provided a guarantee to a third party in order to obtain the loan.

It is worth noting that:

- the thin capitalization rule only applies if the controlled debt exceeds DKK 10 million;
- the limitation of interest deductibility only applies to the part of the controlled debt that would need to be converted into equity in order to meet the 4:1 debt-to-equity ratio;
- special consolidation rules apply when assessing the assets and debt of Danish group companies;
- the 4:1 ratio is calculated on the fair market value of the company's assets (including non-booked goodwill).

### Other limitations of interest deductions

Besides the rules on thin capitalization Denmark has other restrictions on tax relief for interest payments. In addition to the thin capitalization rules, the following two tests have to be made to determine the actual level of deductibility of interest payments:

- "Interest ceiling" test; and
- "EBITDA" test.

The interest ceiling test only applies if net financing costs exceed DKK 21,3m in 2020 (i.e. currently approximately EUR 3m) per fiscal year, while the EBITDA test applies if net financing costs exceed DKK 22,313,400 (i.e. currently approximately EUR 3m). In the case of two (or more) affiliated Danish companies, the amount of DKK 21,3m/DKK 22,3m applies to the aggregate net financing costs of the affiliated companies (i.e. the tests apply if the companies' aggregate net financing costs exceed DKK 21,3m/DKK 22,3m [2020]).

If the net financing costs exceed DKK 21,3m per year, there will be an interest cap limiting the tax deductibility of any net financing cost exceeding the taxable value of the qualifying company's (or jointly taxed companies') assets at year-end, multiplied by a standard interest rate (in 2020: 2.5%). The part of the net financing costs that are in excess of the interest cap are lost and cannot be carried forward.

The EBITDA rule applies alongside the above interest cap rule. Even if the interest ceiling test (in 2020: 2.5% test) is met, net financing costs can only reduce taxable income with 30% of taxable EBITDA (earnings before interest, taxes, depreciation and amortization). Any excess net financing cost can be carried forward to reduce taxable EBITDA in subsequent years.

Please note that only net financing costs exceeding DKK 21,3m/DKK 22,3m (2019) will be capped.

The above restrictions do not apply, if the non-resident owner of real estate only owns real estate in Denmark, i.e. no permanent establishment exist in Denmark.

### Other restrictions

As regards a non-resident owner of real estate interest on non-mortgage loans is only deductible when the loan relates only to property acquisition, operation and improvement in buildings.

## 6. Can acquisition costs/financing fees/interest be deducted?

If real estate activity qualifies as business income, the general principles of business taxation apply. Expenses such as interest are in general tax deductible.

Acquisition costs must as a main rule be capitalized as part of the acquisition price and for buildings such acquisition costs may be depreciated.

Financing fees are also deductible if the costs are used for business purposes.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

The possibilities for the company structures to use a debt push-down method is restricted by the Danish rules on thin capitalization, the "interest ceiling" test and the "EBITDA" test. *See B.5. above.*

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

As a general rule, a Danish resident company is not required to withhold Danish tax in respect of interest payments on loans granted by a third party. Interest payments on loans granted by a group company may give rise to a 22% withholding tax, but generally only if the recipient of the interest is a resident of a tax haven country (a recipient is taxed at a rate considerably lower than the Danish tax rate, i.e. three fourths of the Danish corporate tax).

Payments to group companies in the EU or a country with which Denmark has concluded a double tax treaty are normally not liable to withholding tax, however subject to beneficial owner requirements.

The specific rules are that a 22% withholding tax on interest payments should be paid if one of the following conditions are not met:

1) Interest payment is related to a permanent establishment in Denmark.
2) Taxation of interest is comprised by the EU interest/royalty directive, and the paying company and the receiving company have been affiliated for a continuous period of not less than one year.
3) Taxation of interest is reduced under a double tax treaty.
4) When the Danish parent company has a controlling interest in the receiving company for a period of at least one year and the payment takes place in this period.
5) Furthermore, Danish companies are not subject to withholding tax:
   (i) if a parent company resident in a state which has a double tax treaty with Denmark has a controlling interest in the receiving company; and
   (ii) if, under the rules of that state, the receiving company is subject to CFC (controlled foreign corporation) taxation on interest payments, provided that the conditions are met under these rules.
6) Moreover, Danish companies are not subject to withholding tax if the receiving company etc. substantiates that the foreign corporate tax on interest payments constitutes at least three fourths of the Danish corporate tax and that such interest payments are not transferred to another foreign company being subject to a corporate tax rate which is lower than three fourths of the Danish corporate tax.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses from business activities that could not be deducted from other positive income in the same year may be carried forward without time limit. Denmark has however imposed rules on loss carry forward, which entails a restriction in the possibility to utilize the carried forward tax loss. Companies can deduct losses for DKK 8,573m (2020) from previous income years in the income, while any exceeding tax loss carried forward only can be deducted in 60% of the remaining income.

Furthermore, certain restrictions on the right for a company to utilize tax losses apply when more than 50% of the share capital or voting rights at the end of the financial year are owned by different shareholders than those that held control at the beginning of the income year in which the tax loss was incurred. Certain exceptions apply regarding intra-group transfers

Carry back cannot be granted in Denmark.

## C. Real Estate Taxes

### 1. Does Denmark levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Denmark does not have a specific real estate transfer tax at such. However, if the ownership of Danish real estate is transferred, the fee for the registration of the legal title document is DKK 1,750 plus 0.6% of the purchase price or the public assessment value, whichever is higher. If the real estate is residential the fee will be calculated solely on the purchase price. The parties to the transfer are free to negotiate how the costs shall be allocated between them.

Accordingly, the abovementioned fee will not apply in a share deal, where the real estate remains owned by a company.

Gains and losses realized by sale of real estate are included in the taxable corporate income or taxable individual income.

If the real estate has been subject to depreciation and the selling price of the real estate exceeds the written down value of the real estate when it is sold, the depreciation carried out has been higher than the actual decrease in the value of the real estate in question. This gain (recaptured depreciations) is subject to taxation.

Any further gain realized by sale of real estate is subject to taxation as laid down in the Act on Taxation of Profit from Disposal of Real Property (in Danish "Ejendom-savancebeskatningsloven"). The gain is calculated as the difference between the acquisition price and the sales price. It should be noted that these two amounts (the acquisition price and the sale price) are calculated and modified in accordance with a detailed set of rules and regulations in the act.

Furthermore, capital gain on the sale of shares are not taxable for foreign investors, cf. above.

2. Is real estate subject to any real estate tax? At which rate?

In Denmark real estate is generally subject to two types of taxation, namely: (1) municipal land tax ("grundskyld") at a rate of 1.6% to 3.4% of the taxable value of the land varying from municipality to municipality; and (2) real estate tax ("ejendomsvaerdiskat") at 1% of the taxable value up to DKK 3,040,000 and 3% of the taxable value exceeding DKK 3,040,000. Only private individual owners of residential real estate have to pay the real estate tax.

The municipality can apply a special property tax on commercial property up to 1% of the value of the buildings.

New Danish legislation regarding real estate tax will be effective as of 1 January 2021. As a result hereof, new property valuations will be made and the municipal land tax and the real estate tax rates are decreased



## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

A sale of real estate with an existing building is VAT-exempted. A building is deemed "existing" after 5 years from completion and taken into usage.

A commercial sale of new buildings and building sites are VAT taxable at a VAT rate of 25%. An existing building, which has been considerably renovated is considered a new building and therefore also subject to VAT.

**Asset deal**

Rental property is considered a business for VAT purposes. Consequently, the sale of a rental property, is considered a transfer of going concern which is out-of-scope for VAT.

**Share deal**

The transfer of new immovable property executed as a sale of a company, i.e. as a share deal is exempt from VAT except to very specific situations.

**Immovable property with no VAT recovery**

The sale of immovable property is exempt from VAT when it has solely been used for VAT exempt activities or where the purchase and usage did not allow a VAT recovery.

A sale of real estate normally involves a transfer of rights and obligations to adjust input VAT on investments (capital goods scheme). The owner is responsible for adjusting input VAT on investments for ten years from the time of the investment. The seller of real estate is required to issue a document that specifies the necessary adjustment information. The document is used by the acquirer if adjustment of input VAT has to be reported to the Danish Tax Agency before the end of the 10-year adjustment period of each investment.

Should the rights and obligations to adjust input VAT on investments not be transferred, or not be possible to transfer, the sale of the real estate will result in VAT adjustment.

## 2. What are the VAT consequences of renting/leasing of real estate?

**VAT exemption and voluntary VAT registration for rental of real estate**

Rental of real estate is exempt from VAT without credit.

However, commercial (non-residential) leasing may opt for a voluntary VAT taxation leading to a VAT taxable profile for the lessor, i.e. VAT neutrality with the right to recover input VAT.

**VAT taxable rental of real estate**

The following types of renting of real estate are always VAT taxable:

- commercial renting of real estate on hotel-like terms;
- renting of real estate located on company property for less than one month;
- renting of camping area;
- renting of parking space; except for parking space as an ancillary to exempt rental of residence;
- renting of advertising space;
- renting of storage space.

# E. Other Taxes

## 1. Is there a capital tax for equity injected into a local company?

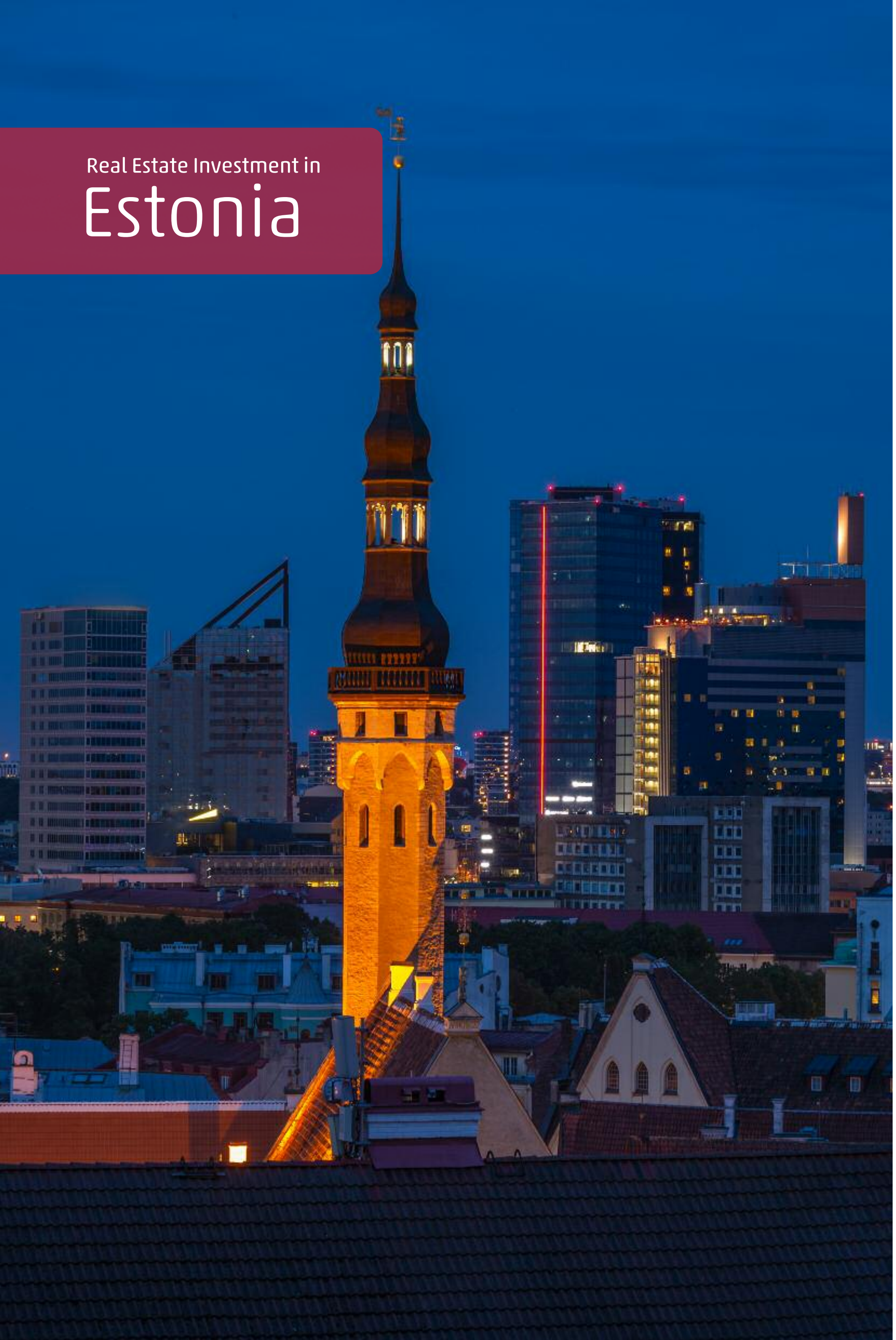
N/A

## 2. Is there a stamp duty on debt granted to a local company?

There is no stamp duty on loan documents, however as mentioned above duty is imposed on mortgage deed.

## 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

N/A



Real Estate Investment in

# Estonia

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Estonia?
   Does the acquisition have to be carried out by an Estonian corporation?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Generally, resident natural persons of the EU/EEA and OECD may freely acquire real estate in Estonia.

Legal persons resident in EU/EAA and OECD may also freely acquire real estate in Estonia. However there is an exception for these legal persons – forest or agricultural land exceeding ten hectares may be acquired only if the acquirer has conducted forestry or agricultural activities during three years preceding the acquisition.

Other foreigners from third countries generally require the authorisation from a local municipality or the Estonian Government. There are also restrictions for non-EU/EEA persons to acquire real estate in some municipalities close to the border and smaller islands.

2. Which importance does the Estonian land register have?

The Estonian land register is a register of immovable property, which includes all the information and encumbers regarding the property.

Rights in immovable property are created, amended or extinguished by making a respective entry in the land register and they can be relied on upon making transactions. The land register is legislative.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Estonia does not have special tax rates for real estate and thus, general taxation rules apply.

- Corporate income tax rate: 20% from gross basis (20/80 from net basis).
- Corporate income taxation system: resident companies do not pay income tax for retained or reinvested earnings. The income tax obligation is deferred to the moment of distributing the profits. The corporate income tax is levied on the profit distributions (dividends and gifts, fringe benefits and other non-business expenditures) made by companies at the rate of 20/80 on the net amount (25%). Tax rate applicable to dividends can in some circumstances be reduced to 14% upon paying regular dividends.
- Personal income tax rate: flat rate of 20%, several tax free allowances are available.
- Participation exemptions: an Estonian company is exempted from Estonian CIT on distribution of dividends that are received from a qualifying legal person and the payer is a resident of the EU or Switzerland and subject to corporate income tax or the dividend received was taxed or subject to withholding. A qualifying legal person is a resident or non-resident, in which the Estonian company holds at least 10% of the shares or votes, and which is not located in a low tax territory.
- Tax-grouping: there is no tax-grouping possibility for CIT purposes in Estonia.

2. What is the tax depreciation period for real estate in Estonia?
   Are there depreciation categories? Which depreciation method is used?

Due to the specifics of the Estonian CIT system there is no need for tax depreciation/ amortization rules. However the outcome is the same as if there was unlimited depreciation for tax purposes.



3. When is a foreign investor subject to limited tax liability in your country?

A limited tax liability at the rate of 20% may arise to non-residents on sale or rent of immovable property located in Estonia, also in cases where the foreign investor sells a share in an Estonian real estate company or real estate fund. In case of individuals, residency rules are similar to those described in OECD model tax convention. Corporations are resident in Estonia if they are entered into the Commercial Register (incorporated) here.

4. Are asset deal and share deal possible in Estonia?
   What are the main consequences?

Both an asset deal and a share deal are possible in Estonia.

**Asset deal**

Capital gain realized upon the sale of real estate by resident natural persons and non-residents would generally be subject to Estonian income tax at the rate of 20%. No income tax is payable on gains from transfer of immovable property if an essential part of the immovable is a dwelling which was used by a natural person as his or her permanent or primary place of residence until transfer (Estonian Income Tax Act § 15 (5)). If the dwelling is used as the taxpayer's residence, the tax exemption is not applied to more than one transfer in two years.

Estonian legal persons and non-resident legal persons who have a permanent establishment in Estonia do not pay income tax on income or annual profits, income tax liability is deferred up to the moment of making profit distributions, certain other taxable payments or transactions which can be seen as hidden profit distributions.
There are also some exclusions from taxation if the ownership of land was received in the course of ownership reform.

**Share deal**

The capital gains derived by natural persons from the alienation of shares in a company are subject to an income tax rate of 20%. Estonian legal persons and non-resident legal persons who have a permanent establishment in Estonia do not pay income tax on income or annual profits, income tax liability is deferred up to the moment of making profit distributions, certain other taxable payments or transactions which can be seen as hidden profit distributions.

As a general rule, capital gains derived by a non-resident from the sale or return of shares in an Estonian company are not taxable in Estonia. An exception to this rule is income derived from the sale or return of shares in a real estate company. A real estate company is a company, investment fund, or any pool of assets where at any time over the period of two years prior to the sale or return, at least 50% of all assets have been comprised of real estate located in Estonia. The precondition for taxation is at least a 10% participation in the real estate company. The capital gain thus derived is taxable at 20%.

If an Estonian company buys its own shares, then payments that exceed contributions are taxed (at the rate of 20/80) at the level of the company making the payments (the taxable proceeds). On the level of a shareholder, income tax (rate 20%) is charged only on the amount by which the payment exceeds the acquisition cost and the taxable proceeds. For other tax consequences (VAT, capital tax, property tax, etc.) *see the questions below*.

5. Are thin capitalization rules applicable?
   Are there other limitations of interest deduction applicable?

In Estonia there are no thin capitalization rules. Under the excess interest payments rules, interests may become taxable, if annual interest payments exceed EUR 3,000,000. Transfer pricing rules mainly follow the OECD guidelines and the most common methods used are comparable price, resale price, expense (cost plus), distributed profit, and transaction yield (transactional net margin). If the circumstances related to the transaction do not allow for using these five methods, another method may be used for determining the market value of the transfer price. Justifications must be given for such use of another method.

6. Can acquisition costs/financing fees/interest be deducted?

The Estonian CIT system does not use the concept of tax deductibility for the acquired property. Acquisition costs, as long as these are related to business, do not increase the tax base. There is no income tax obligation as long as financing fees and interest are related to business. Individuals may set off acquisition costs as well as costs related to the sale, against gains directly without depreciation.

7. Are there any possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

**Merger**

A debt push-down can be achieved by merging companies. Mergers are regulated by the Commercial Code. The Estonian Tax Authorities have recently attacked debt push-down structures based on anti-avoidance provisions, therefore careful planning of the implementation of debt push-down is highly advisable.

There are no transfer taxes applicable other than unsubstantial registration duties.

**Group**

In Estonia each corporate entity is regarded as a separate entity for corporate income tax purposes and there are no group tax benefits.

There is no possibility under Estonian tax law to be taxed on the basis of consolidated income or as a fiscal unity. Investors can participate in real estate investment funds which are regulated by the general rules regarding investment funds.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Estonian domestic tax legislation does not impose withholding tax on this type of interest payments.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Due to Estonian specific CIT system there is no need for special loss carry forwards or carry backs for tax purposes. However, the outcome is the same as if losses could be carried forward for an unlimited period of time in a conventional CIT system.

## C. Real Estate Taxes

1. Does Estonia levy a real estate transfer tax on sale of real estate or shareholdings?

There is no real estate transfer tax in Estonia. Still, as all of the real estate is registered in the General Land Register a state fee for entry is due.

2. Is real estate subject to any real estate tax? At which rate?

Estonia applies land tax. The taxation object is land without any buildings etc. and the taxable value is determined by the potential profitability. Land tax is paid by the owner of the land, in certain cases also by the user of the land.

Land tax rate is 0.1%-2.5% of taxable value of the land. The tax rate is set by municipalities by 31 January each year. Land where economic activity is restricted by law is either exempted from tax completely or by 50% of the standard tax rate, depending on the nature of restriction. Tax is paid once or twice a year on 31 March and 1 October.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The asset deal with real estate is usually VAT-exempt.
The VAT exemption is not applied to

- participation a new building (building that has not been taken into use yet);
- participation an immovable if an essential part thereof is a construction which has been significantly improved (the value of the immovable has increased more than 110%); and
- participation to building land.

If the supply is VAT-exempt, the seller may also opt for 20% VAT taxation if the tax authority is notified in writing beforehand. In case of option to tax, reverse charge VAT may apply. Still, VAT cannot be voluntarily added to dwellings.

A share deal is usually VAT-exempt. Shares of a real estate company is subject to VAT if that company owns the immovable property what would be subject to VAT on sale and it grants to the shareholder thereof the right of ownership of the immovables or parts thereof or the right to use and dispose of the aforementioned as an owner.

2. What are the VAT consequences of renting/leasing of real estate?

The renting/leasing of real estate is generally exempt from VAT. Still, the lessor may opt for 20% VAT taxation in case of rent/lease of real estate, following the same rules and requirements as in case of real estate transfer. The option to tax is not applicable to renting/leasing of dwellings.



## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

N/A

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist?
If yes, what are the requirements?

There is no specific special regime for the Real Estate Investments Trusts in Estonia. There are some look-through provisions for trust funds that are incorporated for the purposes of the Estonian Investment Funds Act. According to these the profit of the trust fund is not taxed at the level of the trust fund.

It is also possible to establish a contractual investment fund in Estonia which is not a separate legal entity and which is taxable only in relation to some Estonian-based profit.

Real Estate Investment in

# Finland

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Finland?
   Does the acquisition have to be carried out by a Finnish corporation?

There are no restrictions for non-resident individuals or corporations as regards the acquisition of real estate in Finland. The acquisition can be carried out by both individuals and corporations. However, specific requirements apply to the acquisition of real estates which are situated in the autonomous municipality of the Åland island.

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Apart from direct investments to real estates, the real estate investments can for instance be carried out through a Finnish real estate company, mutual real estate company or real estate holding company as explained below in section B. As of 1 January 2020, a special permission has to be applied in case a person/entity situated outside of EU/EEA is to buy real estate in Finland. In such cases, the Finnish Government has a pre-emptive right to purchase such real estate.

2. Which importance does the land register have?

The ownership and other basic information on real estate located in Finland is registered in the public land register maintained by the National Land Survey of Finland. Registered as real properties in the land register are real estates, plots of land, public areas, state forest land, conservation areas, expropriation units, areas separated for common purposes and jointly owned water areas. The land register includes identification information on real estates, such as identification number, location, formation, area, historical real estate data etc. Further, information on property owners, mortgages, encumbrances and special rights concerning real estates is registered in the public title and mortgage register also maintained by the National Land Survey of Finland.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Tax rates and applicable law**

**Tax reporting and compliance**

Income taxes are assessed on yearly basis, i.e. for each financial year ("FY") or calendar year as applicable. The tax authorities may make a re-assessment of the income taxation before the end of the third year following the assessment year. Thus, in practice, the limitation period for tax claims in Finland is four years. For example, the re-assessment of FY 2018 expires by the end of FY 2022. Upon re-assessment, late payment interest will also become due. In addition, the tax authorities may impose a tax increase up to 50%, if the income tax return is deemed to be filed intentionally incorrectly or due to gross negligence.

**Corporations**

Income received by corporations is taxed either under the Income Tax Act (1535/1992, as amended) or under the Business Income Tax Act (360/1968, as amended). As a general rule, companies engaged in industrial and commercial activities are taxed under the Business Income Tax Act while real estate companies, mutual real estate companies, housing companies and pure (passive) real estate holding companies are taxed under the Income Tax Act. Under both acts, the applicable statutory corporate income tax rate is 20% as of 1 January 2014.

Capital gains received by corporations are also subject to the above 20% corporate income tax rate unless specific exemptions apply (e.g. corporations are not in general liable to pay tax on certain qualifying capital gains). Capital losses of real estate and real estate companies cannot be offset against income from other sources, but only against capital gains arising from the same source and in the same year and the following five years. However, ordinary tax losses carried forward may be offset against capital gains provided that any confirmed capital gains are deducted first.

Companies within a group cannot be consolidated for corporate income tax purposes. However, via group contributions, group companies may even out their taxable profits and losses, which leads effectively to the same result as consolidation would. It should be noted, however, that the possibility of utilizing group contributions is not available for real estate companies, mutual real estate companies, housing companies and real estate holding companies that are taxed under the Income Tax Act.

From FY 2020 onwards, group contribution is available for ordinary real estate companies and real estate holding companies as these will be taxed under the Business Income Tax Act.

**Individual taxpayers**

Taxes paid by individual taxpayers consist of progressive state tax, fixed rate municipality tax defined separately by each municipality, mandatory pension insurance and social security contributions and church tax for the members of the evangelic Lutheran or Orthodox churches. The overall tax burden for individual taxpayers on earned income varies between 8.3% and 55.8% in FY 2019. This includes the mandatory pension insurance and other social security contributions.

The applicable tax rate for capital income of individual taxpayers is 30% for capital income up to EUR 30,000 and 34% for the capital income exceeding EUR 30,000. For instance dividends, interest income and sales proceeds (capital gains) are considered capital income.

Capital losses confirmed prior to FY 2016 cannot be offset against other capital income, but only against capital gains arising in the same year and the following five years. Any capital losses confirmed as of FY 2016 may be offset also against other capital income as well as capital gains.

**Real estate investment structures**

In Finland, real estate is generally held either by an "ordinary" real estate company or a mutual real estate company. Both are by definition limited liability companies and their governance are, at the outset, organised as with any Finnish limited liability company. However, the tax aspects at the company level and at the level of a corporate shareholder differ considerably.

Separate real estate holding companies are also customarily used for structural and structuring purposes.

**Real estate company**

A real estate company is, as mentioned above, an "ordinary" Finnish limited liability company and the object of the company is generally to own or possess and manage real estate including the building(s) located thereon.

As opposed to a mutual real estate company structure *(as explained below)*, a lease contract regarding a certain flat or business premises in the building(s) owned or possessed by the real estate company is concluded between the real estate company and the tenant. The lease income from the lease of such flats/business premises is thus allocated directly to the real estate company. The business purpose of a real estate company is to make profit as any "ordinary" limited liability company. The shareholders of a real estate company can repatriate profits from the real estate company generally in the form of dividend distributions or interest payments.

Real estate companies must file a tax return for each FY and they are generally taxed under the Income Tax Act. From FY 2020 onwards, real estate companies (excluding mutual real estate companies) are taxed under the Business Income Tax Act.

From a company law point of view, real estate companies are governed by the Limited Liability Companies Act (624/2006, as amended).

**Mutual real estate company**

A mutual real estate company is conceptually also a Finnish limited liability company, but under the Articles of Associations of a mutual real estate company, the shareholder is entitled to possess and manage a certain flat or business premises in the building(s) owned or possessed by the mutual real estate company. Accordingly, the Articles of Association of a mutual real estate company sets out the flats/business premises in the possession of the shareholders and the details of the shares entitling to possess such flats or business premises.

Based on the above, a lease contract regarding certain flat or business premises is concluded between the shareholder of the mutual real estate company and the tenant. Accordingly, the lease income from the lease of the flats/business premises in the building(s) owned or possessed by the mutual real estate company is allocated directly to the shareholder.

Under the Articles of Associations of a mutual real estate company, the shareholder is obliged to pay the mutual real estate company a fee for the maintenance and management of the real estate and the building(s) located thereon. However, a mutual real estate company does not normally show any profit as the maintenance and management fee payable by its shareholders is, as a rule, sized to cover the operating costs and expenses of the mutual real estate company (including normally also any possible interest costs and annual loan installments of the mutual real estate company).

Mutual real estate companies are generally required to file a tax return for each FY and they are taxed under the Income Tax Act. From FY 2020 onwards, real estate companies (excluding mutual real estate companies) are taxed under the Business Income Tax Act.

From a company law point of view, unless otherwise stipulated in the Articles of Association, mutual real estate companies are governed under the Limited Liability Housing Companies Act (1599/2009, as amended).

**Real estate holding company**

A real estate holding company is a Finnish limited liability company that owns shares in real estate companies or mutual real estate companies. As mentioned above, real estate holding companies are typically used for structural and structuring purposes. Real estate holding companies may own larger portfolios of shares in real estate companies or mutual real estate companies. Real estate holding companies that are passive, i.e. companies that only let premises, are taxed under the Income Tax Act (from FY 2020 onwards, real estate companies excluding mutual real estate companies are taxed under the Business Income Tax Act). If the real estate holding company holds a large portfolio of (mutual) real estate companies and is an active agent in the process of letting the premises and if it maintains and develops the real estates possessed by it, the real estate holding company may under certain circumstances, also be taxed under the Business Income Tax Act.

Real estate holding companies must file a tax return for each FY.

From a corporate law point of view, real estate holding companies are governed by the Limited Liability Companies Act (624/2006, as amended).

### Housing company

A housing company is a company where more than one half of its premises are used as residential apartments. Otherwise the structure of housing company is similar to that of a mutual real estate company.

A housing company is a Finnish limited liability company governed by the Limited Liability Housing Companies Act (1599/2009, as amended).

**Taxation of real estate income**

There is no special tax rate for real estate income. Lease income received from real estate is subject to capital income taxation for individual taxpayers and taxable corporate income for corporations. However, real estate companies and mutual real estate companies and real estate holding companies are generally taxed under the Income Tax Act which means that they are subject to somewhat different tax rules than companies which are taxed under the Business Income Tax Act. However, from FY 2020 onwards, real estate companies (excluding mutual real estate companies) are taxed under the Business Income Tax Act. For instance, companies taxed under the Income Tax Act cannot apply group contribution regime. As of FY 2019, they are, however, subject to the Finnish interest deduction limitation regime the same way as companies taxed under the Business Income Tax Act.

**Participation exemption**

### Resident corporations

In general, income derived from the sale of shares constitutes part of a Finnish limited liability company's taxable corporate income. The acquisition cost of the shares and any sales related expenses are generally deductible for tax purposes upon disposal.

Notwithstanding the above, capital gains on the sale of shares is tax-exempt for Finnish business conducting limited liability companies in certain circumstances (i.e. the participation exemption regime). The tax exemption is subject to the following conditions:

(i) the shares to be sold are part of the fixed assets (i.e. generally assets other than current and financial assets) of the selling company;
(ii) the selling company has directly and continuously owned the shares for at least one year;
(iii) the selling company has owned at least 10% of the share capital in the company whose shares are sold (and which shares are so sold);
(iv) the company whose shares are sold is an EU company (as specified in the EC Parent-Subsidiary Directive) or resident in a country with whom Finland has concluded a tax treaty; and
(v) the company whose shares are sold does not qualify as a real estate company, mutual real estate company or a housing company or a company, the activities of which mainly consist of owning or managing real property.

### Individual taxpayers

Individual taxpayers are exempted from capital gains taxation for selling off real estate or shares in a housing company if the said asset has been used as his/her permanent place of residence for a minimum period of two years. If the exemption does not apply, the incurred capital gains are taxed in accordance with the applicable tax rate for capital income.

Alternatively, individual taxpayers may, in lieu of applying the actual acquisition cost, choose to apply a so-called presumptive acquisition cost, which is equal to 20% of the sales price or, in the case of assets which have been held for at least ten years, 40% of the sales price. If the presumptive acquisition cost is used instead of the actual acquisition cost, any sales expenses are deemed to be included therein and may, therefore, not be deducted in addition to the presumptive acquisition cost.

2. What is the tax depreciation period for real estate in Finland? Are there depreciation categories? Which depreciation method is used?

The acquisition costs of buildings, machinery and equipment as well as long-term expenditures are deducted in taxation through annual depreciations. No depreciations can be made from the acquisition cost of land areas or shares. The owner of the assets is allowed to make annual depreciations on the acquisition price for tax purposes. Tax depreciation may not exceed the depreciation made for accounting purposes.

The acquisition price of machinery and equipment is depreciated annually as a combined item using the declining-balance method. The depreciation base consists of the net book value of all such assets added with the acquisition value of new items less any sales proceeds for such assets. The maximum annual tax depreciation on machinery and equipment is 25% of their aggregate residual tax value. However, during tax years 2020 to 2023, a double depreciation is allowed for machinery acquired and taken into use during these years. As regards buildings, the applicable depreciation rate varies depending on the purpose of use of the building. The depreciation is made according to the declining-balance method, and is calculated separately for each building.

**Depreciation principles for tax and accounting purposes**

| Class of assets | Taxation | Accounting |
|---|---|---|
| Machinery and equipment | 25% of the residual tax value of all assets. | Straight-line or declining-balance depreciation during the economic life time of each separate item in accordance with the depreciation plan. |
| Buildings | 7% of the residual tax value of warehouse buildings, warehouses, factories, workshops and power stations or similar buildings; and 4% of the residual tax value of office building, residential buildings and other similar buildings; 20% of the residual tax value of tanks for storage of liquid fuel and acids and other similar storage buildings and constructions; 20% of the residual tax value of light constructions made of wood or similar material; 20% of the residual tax value of buildings or parts of buildings used exclusively for research and development. | Straight-line or declining-balance depreciation during the economic life time of each separate item in accordance with the depreciation plan. |
| Long-term expenditures and intangible rights | Straight-line depreciation during the economic life time of each separate item, maximum 10 years, or, if shorter than 10 years, for the economic life time of the asset. | Straight-line or declining-balance depreciation during the economic life of each separate item in accordance with the depreciation plan with maximum of 20 year. |

## 3. When is a foreign investor subject to tax in Finland?

Under the Finnish Income Tax Act, non-residents of Finland are liable to tax in Finland on Finnish source income only. Finnish source income include, inter-alia, lease income derived directly from Finnish real estate as well as gains derived by a non-resident from the sale of Finnish real estate as well as shares in a Finnish limited liability company, provided that the assets of the company consist more than 50% of real property situated in Finland.



The provisions of an applicable double tax treaty must naturally be observed, but most double tax treaties concluded by Finland still give Finland the right to tax lease income derived directly from Finnish real property as well as gains derived from the sale of Finnish real property (immovable property). In addition, under most double tax treaties, Finland is also entitled to tax gains derived from the sale of shares in a Finnish mutual real estate company, but not necessarily gains derived from the sale of shares in an "ordinary" Finnish real estate company. *For the definition and as to the concept of a real estate company and a mutual real estate company, please refer to section B.1. above.*

### Dividends

#### Non-resident corporations

Dividends paid by a Finnish private limited liability company to non-resident corporations are, in principle, subject to Finnish withholding tax of 20%. However, in reality, such withholding is prevented by the provisions of the EC Parent-Subsidiary Directive or the relevant double tax treaty. According to the EC Parent-Subsidiary Directive, no withholding tax is currently levied on dividends paid to an EU company that directly holds at least 10% of the capital of the distributing Finnish company.

Finland has entered into tax treaties with a large number of countries pursuant to which the withholding tax rate is reduced to 0-15% on dividends paid to persons entitled to the benefits under such treaties. A further reduction in the withholding tax rate is usually available to corporate shareholders for distributions on qualifying holdings (usually direct ownership of at least 10% of the capital of the distributing company). The withholding tax relief generally requires that Finland is notified of the domicile of the ultimate recipient of the dividend.

Dividends paid to non-resident corporations are tax-exempt also when the tax domicile of the recipient of the dividends is in the EU/EEA, and:

- the legal form of the recipient is similar to that of a Finnish; and
- a corresponding dividend would have been exempt for a Finnish recipient; and
- full credit cannot be obtained in the recipient's country of domicile under the provisions of the tax treaty between Finland and the recipient's country of tax residence.

### Non-resident individual taxpayers

Dividends paid to non-resident individuals are subject to withholding tax. The applicable withholding tax rate on dividends paid to a non-resident individual taxpayer is 30%. A lower rate is generally applied where a double tax treaty is applied. When the dividend is distributed by a non-listed Finnish company, the tax authorities accept, upon request of the non-resident individual taxpayer, that the taxation is carried out as if the recipient of the dividend were a resident of Finland for tax purposes, under the following preconditions:

- the non-resident individual taxpayer's tax domicile is within the EU/EEA; and
- a full credit for the Finnish tax at source is not available in the tax residence of the individual taxpayer.

### Lease income for non-residents

*Please refer to section B.3. above.*

Lease income is considered taxable Finnish source income for non-resident corporations and individuals and subject to tax at the rate of 20% for corporations and 30/34% for individuals.

### Capital gains for non-residents

*Please refer to section B.3. above.*

However, since in Finland shares in an "ordinary" Finnish limited liability company (such as a pure real estate holding company) are considered by definition as movable property, the gain derived from the sale of such shares should generally not be covered by the provisions of an applicable double tax treaty. Accordingly, the shares in an "ordinary" real estate holding company should formally not qualify as immovable property the same way as shares in a real estate company or mutual real estate company. Thus, in principle, Finland should not have the right to tax any gains deriving from a sale of shares in an "ordinary" real estate holding company. This view has also been supported by the Supreme Administrative Court (KHO 2013/101).

Therefore, it is generally advisable for a non-resident to invest in a Finnish real estate, a real estate company or mutual real estate company through a pure real estate holding company.



## 4. Are asset deal and share deal possible in Finland? What are the main consequences?

### Asset deal

Both asset deals and share deals are possible in Finland. An asset deal usually results in an increase in the base cost of the acquired assets (i.e. step-up in the value of the assets). This increase in asset value is considered as taxable corporate income for the seller. The historical tax and contractual liabilities generally remain with the seller and are not transferred with the assets. Further, the seller can utilize any incurred tax losses against any capital gains incurred from the future sales of assets.

The purchase price of the assets must be allocated separately to each asset item since this allocation is the basis for future tax depreciations. The part of the purchase price that is not attached to specific asset items is considered goodwill. Goodwill can be depreciated by using the straight-line method during its economic life time for a maximum period of ten years. If the purchased assets include real estates located in Finland or shares in Finnish limited liability companies, the purchaser of such assets is liable to pay transfer tax as explained below in section C.1.

### Share deal

The purchase of shares in a target company does not result in an increase in the value of the target company's assets. No annual depreciation is available on the value of the acquired shares of the target company. However, the acquisition price of the shares is deducted at the time when the shares are disposed of. Confirmed tax loss carry forwards of the target company may be forfeited in a share deal as explained below in section B.9. Further, the purchaser of the shares is liable to remit transfer tax on the purchased shares as explained in section C.1.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Finnish legislation does not include any specific thin capitalization provisions. Interest expenses are generally fully deductible in the borrower's taxation, provided that the interest rate is at arm's-length and the loan is taken for business purposes. The general anti-avoidance clause or transfer pricing adjustment rules can become applicable if there is no reasonable economic basis for the transaction or the interest rate is not at arm's-length.

The new Finnish interest limitation regime, applicable for the first time for FY 2014 for companies taxed under the Business Income Tax Act and as of FY 2019, for companies taxed under the Income Tax Act, is applied if the net interest expenses paid by a company on intra-group loans which exceeds EUR 500,000 annually. Net interest expenses under the limitations regime, when applicable, are deductible up to 25% of tax EBITDA of the company (adjusted taxable income based on Finnish tax principles).

Both third party and related party interest paid by the company will be taken into account in the calculations. To the extent that interest deductions are made on third party debt, the amount of net interest deductions on such external debt is included within the 25% limit for available deductions, and consequently, may limit the amount of related party interest deductions. Under a specific safe harbor rule, companies whose equity ratio (equity to assets ratio confirmed in the balance sheet) is equal to or larger than the equity ratio of the group are exempt from the limitation regime.

In addition, from FY 2019 onwards, interest limitations apply to net interest expenses from third party loans exceeding EUR 3,000,000.

It should be noted that from FY 2019 onwards, real estate companies, mutual real estate companies, real estate holding companies and housing companies taxed under the Income Tax Act are also subject to the interest limitation regime.

### 6. Can acquisition costs/financing fees/interest be deducted?

Acquisition costs of the assets are added to the acquisition price and depreciated according to the applicable depreciation rules related to each relevant asset item as explained above in section B.2.

Deduction of interest and certain fees (e.g. financing fees) may be limited under the interest limitation regime as explained above in section B.5.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Debt push-down is possible under Finnish legislation and it is usually structured through intra-group financing. In general, it is more safe to introduce debt financing at the time of the acquisition than afterwards, as post-acquisition debt push-down structures have been successfully challenged in the Supreme Administrative Court (KHO 2016:71 and 2016:72). However, there is no specific legislation which would prevent post-acquisition debt push-down.

Prior to introducing an interest limitation regime in FY 2014 Finnish corporations had very extensive possibilities to deduct interests paid to related parties. However, the introduction of the new interest limitation regime *(see section B.5.)* is likely to have an effect on debt push-down structures and therefore local advice is recommended. As stated above, real estate companies, mutual real estate companies, housing companies and real estate holding companies are also subject to the interest limitation regime as of FY 2019.

Further, debtor companies taxed under the Business Income Tax Act may offset deductible interest against taxable profits allocated to the debtor company by utilizing group contributions. However, it should be noted that the possibility of utilizing group contributions is not available for real estate companies, mutual real estate companies, housing companies and real estate holding companies that are taxed under the Income Tax Act.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

No withholding is applied when the interest is paid on a loan which is not regarded an equity investment in the debtor company.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses can be carried forward for ten FYs, counted from the FY when the loss incurred. Carry back of losses is not possible in Finland.

The right to utilize tax losses carried forward is, as a rule, forfeited if:

(i) more than 50% of shares in a loss making company have changed ownership (direct change of ownership) subsequent to or during the FY in which the losses were incurred; or if
(ii) more than 20% of shares in a company holding at least 50% of the shares of the loss making company have changed ownership (indirect change of ownership) subsequent to or during the FY in which the losses were incurred.

With respect to indirect change of ownership, a company will forfeit its tax losses carried forward only if there is an ownership change at the level of its direct parent company (i.e. if the shares in the parent company change owner). Any ownership changes that occur at a level above have no effect on the losses carried forward of the company.

The tax authorities may upon an application grant a dispensation to use the tax losses carried forward. In order to receive dispensation, the company must be able to show that the purpose of the change of ownership is not solely to utilize the carried forward tax losses and that the utilization of carried forward tax losses is important for the continuance of the company's business activities. As a result of the Supreme Administrative Court ruling from FY 2013, the tax authorities have updated their guidelines with the effect that loss carry forward applications made by a mutual real estate company should not be evaluated differently than applications made by other companies.

Further, the right to utilize tax losses carried forward is forfeited in a merger unless the receiving company has owned more than 50% of the shares in the merging company from the beginning of the FY during which the losses were incurred.
No dispensation may be granted to use the tax losses carried forward that will be forfeited due to a merger.

## C. Real Estate Taxes

1. Does Finland levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Purchase of shares**

The acquisition of shares in a Finnish private limited liability company is generally subject to transfer tax at a rate of 1.6% or 2% on the purchase price (or other consideration). The value of any payments that the buyer makes on behalf of the seller to a third party in connection with the sale or any commitments by the buyer to make such payments in the future for the seller's benefit, such as any seller's debt assumed by the buyer, is added to the purchase price for purposes of calculating the transfer tax.

Normally, transfer tax is, however, not levied if both the seller and the purchaser are non-residents of Finland for tax purposes. However, this exception does not apply to the acquisition of shares in a Finnish real estate company, mutual real estate company, housing company or a real estate holding company.

**Direct real estate investments**

If real estate is acquired directly, the applicable transfer tax is 4% of the purchase price of the real estate. The purchaser is required to apply for registration of title within six months from the date when the title was passed to the purchaser under the agreement. The applicable transfer tax must be paid when filing the application for registration of the title, however, at within six months from the date when the title was passed to the purchaser under the agreement. Under certain rare circumstances an application for the title does not have to be filed. In these cases, transfer tax must also be paid within six months from the date when the title was passed to the purchaser under the agreement.

**Indirect real estate investments**

If the acquired company is a real estate company, mutual real estate company, housing company or a real estate holding company, the applicable transfer tax rate is 2% of the purchase price (including the amounts described above). As mentioned above, there are no exceptions in this respect.

2. Is real estate subject to any real estate tax? At which rate?

The owner of real estate is obliged to pay an annual real estate tax equal to a fixed percentage of the calculated value of the real estate (i.e. the land area) and the buildings located thereon. The real estate tax value differs, as such, from the tax base value, the book value and the market value of the real estate and the buildings.

The rate of real estate tax is set by the municipality in which the real estate is located. However, the Real Estate Tax Act (654/1992, as amended) defines the minimum and maximum tax rates that municipalities may apply. The general real estate tax rate is between 0.93% and 2.00%. Apartment buildings are taxed at rates between 0.41% and 0.90%. Undeveloped construction sites are taxed at a higher rate of between 2% and 6%.

The value of the land area is in principle intended to reflect the fair market value of the land area taking into account the location of the real estate, its purpose of use as well as the infrastructure available on the location. The value of buildings located on the real estate is in principle the estimated cost to reconstruct the building ("base value") reduced by a fixed percentage (varying from 1%-10% depending on the type of the building in question and material used in the construction) multiplied with the age of building.

The applicable reduction percentage for instance for apartment buildings is 1% if the building is made of stone and 1.25% if the building is made of wood.

As long as the buildings on the real estate are in use, the reduction is capped to 70% of the reconstruction value irrespective of the age of the building. However, the base value is not based on actual construction costs, but on the average construction costs for a building with such area or volume, depending on the type of the building.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

**VAT implications of sale of real estate**

The sale of real estate and the sale of shares in a real estate company are exempt from VAT. The exemption from VAT covers the land area, buildings, structures and parts thereof located on the real estate. Structures include constructions such as containers, silos and sheds that are built for permanent use lasting several years on a solid foundation (i.e. cannot be relocated without significant effort). The sale of buildings is exempted from VAT even if the land area on which the building is located is not sold in connection with it. Machinery, equipment and furniture located on the real estate are not considered as part of the real estate and thus are generally charged with VAT of 24% even if sold in connection with the sale of real estate.

**Deduction of input VAT**

Input VAT for the cost related to real estate is generally deductible provided that the premises are used for activity that entitles to VAT deduction.

Input VAT for costs incurred in connection with renovation or construction works that have to be capitalized in the accounts as part of the buildings' residual value, real estate investments are deductible only to the extent the building remains in use for purposes qualifying for VAT deductions after the renovation or construction works have been completed. Full deductibility requires that the building remains in use qualifying for VAT deductions for a period of ten years after completion of the renovation or construction if the real estate investment has been completed in 2008 or later. If the premises cease to be used for purposes qualifying for VAT deductions before the end of the ten year adjustment period, any VAT deductions made based on real estate investments will be reversed to the extent they correspond to the remaining part of the ten year adjustment period. For example, if a renovation has been carried out and completed in 2008 in a building that at that time was used for purposes qualifying for VAT deductions, but the building is subsequently used for non-VAT purposes from 2011 onwards, 7/10 of input VAT deductions would be reversed.

### 2. What are the VAT consequences of renting/leasing of real estate?

**Lease of premises**

Leasing or renting real estate is generally not subject to VAT. If real estate is leased without any VAT, the lessor does not have a right to deduct input VAT paid for costs relating to the real estate such as maintenance and construction costs. The lessor may also be liable to pay VAT for the value of his private use of construction services and location management services that relate to the real estate such as cleaning and administration costs if he performs such services himself.

**Voluntary VAT registration**

The Finnish VAT system allows lessors to register themselves as VAT liable for the transfer of rights to use real estate, i.e. for leasing real estate. Such voluntary registration is only possible when the lessee uses the lease premises for activity that entitles it to input VAT deduction. It is possible to apply for only a part of the real estate (such as a certain office space) to be registered for VAT liability.
Thus, the lessor can charge rent including VAT for premises which are used for business activities, and rent without VAT for other premises such as premises which are used for VAT-exempt business activities. Although the registration process is initially voluntary, it is not possible for the lessor to deregister himself unless the premises in question are sold or are no longer used for an activity that entitles the lessee to input VAT deduction.

The benefit of voluntary VAT registration is that the lessor will have a right to deduct input VAT related to costs incurred by the real estate. In addition to being able to deduct input VAT for costs such as maintenance and renovation work, the lessor will not be liable to pay VAT for private use of construction and location management services that the lessor himself has performed. If the real estate is only partially leased for VAT liable use, only the input VAT of costs relating to VAT liable premises may be deducted. For overhead costs that cannot be assigned to certain premises, a partial deduction that corresponds to the proportion of VAT liable lease space can be made. This proportion is usually based on either the area or volume of leased space.

The ten year real estate investment review period must also be taken into consideration when leasing real estate. If the proportion of VAT liable lease space decreases in a given year, the input VAT of real estate investments will be reversed for that year in proportion to the decrease in VAT liable lease space. Consequently, if the proportion of VAT liable lease space increases, the deductible input VAT of the real estate investment will increase for the year under review.

**Reverse VAT charge of construction services**

It should also be noted that the reverse charge mechanism is applied for the purchase of construction services related to the real estate. Under the reverse charge mechanism, the buyer of construction services may be liable to account for and remit VAT instead of the seller. The reverse charge mechanism will apply when the buyer is a business selling construction services on an ongoing basis and such services are supplied in Finland, i.e. when construction work (including installation) is performed in Finland or when individual persons are contracted by a Finnish company to perform construction work. The lessor will therefore also have to carry the administrative burden related to VAT returns even if he has not registered himself as VAT liable for real estate.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no capital tax applicable for equity injections.

### 2. Is there a stamp duty on debt granted to a local company?

There is no stamp duty applicable on debt.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

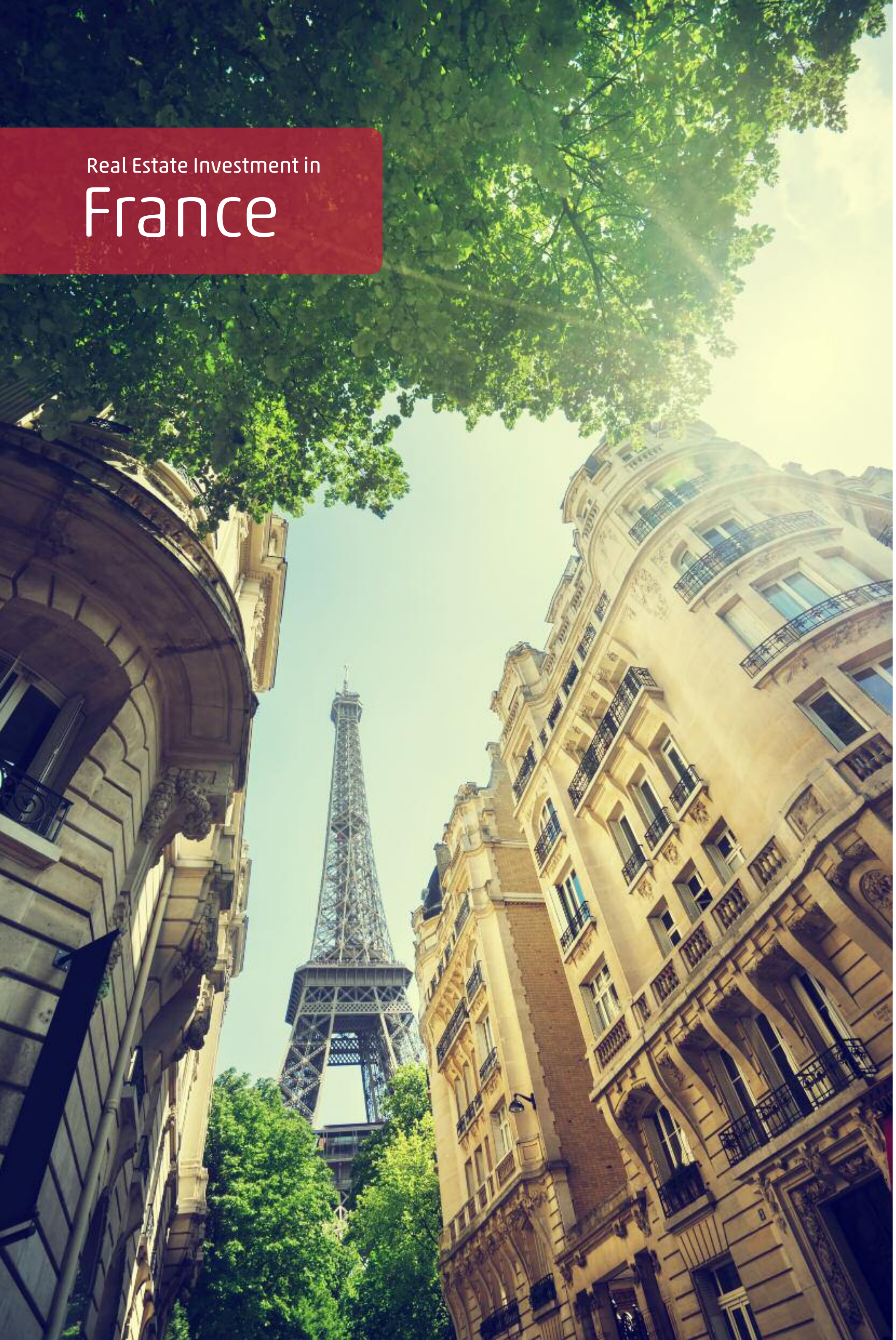
Under Finnish law, forming a tax-exempt listed company with a structure resembling a real estate investment trust is possible only for companies investing in residential rental property. In order to maintain this tax-exemption, such company must, e.g. pay 90% of its relevant annual profit as dividends and be listed within three years of its foundation. However, the special regime for REITs has not been very popular as there has been only one listed company to which the tax-exemption was applied to.

In 2018, the said listed company reorganized as an ordinary investment company.

The Real Estate Fund can also act as a limited partnership. If so, the company may apply to be within the scope of the Real Estate Funds Act (1173/1997, as amended). The limited partnership is not a taxable entity and is considered as fully transparent for Finnish tax purposes.

Real Estate Investment in

# France



## A. Legal/General

1. Are non-residents entitled to acquire real estate in France?
   Does the acquisition have to be carried out by a French corporation?

In France there is no restriction with regard to the acquisition of real estate. Residents as well as non-residents are entitled purchase real estate.

Consequently, the acquisition of a French real estate does not have to be effected by using a French corporation.

2. Which importance does the land register have?

Rights relating to real estate in France have to be registered in the French land register. The official system of land registration in France is called the "cadastre", maintained by the French public land registry, under the authority of the French tax authority (FTA), the "Direction Générale des Finances Publiques" (DGFiP).

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The title plans are called "plans cadastraux", a graphical plan of the boundaries of land parcels in France. The plans show numbered plots on which the ownership of land is based. The plans themselves do not provide details of the owner of a property or (necessarily) all the land parcels in a single ownership.

A land register's fee is payable.

Moreover, when a real estate is sale, an original of the deed of sale is filed by the notary in the French Department Archives, and a true copy is published in the corresponding land registers of French Land Publicity Administration (notifications of all landed property transactions). The FTA will then return the true copy bearing the official indication of its publication, and this copy will thus become the ownership title for the purchaser. This formality is required to be protected against third party rights.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporations**

- French corporate income tax (CIT) rates:
  - For FYs starting on or after 1 January 2020, a 28% CIT rate will apply for all entities.
  - For FYs starting on or after 1 January 2021, a 26.5% CIT rate will apply for all entities.
  - For FYs starting on or after 1 January 2022, the 25% CIT rate will apply for all entities.
  - A reduced tax rate of 15% is applicable to Small and Medium Enterprises for the first EUR 38,120 of taxable income, provided that: (i) the revenue of the entity does not exceed EUR 7,630,000; (ii) the share capital of the entity is fully paid up; and (iii) the entity is held at least up to 75% by individuals or other entities which meet the above conditions.

- Social contribution ("contribution sociale additionnelle") of 3.3% is levied on the part of the CIT exceeding EUR 763k. This contribution only applied to companies with a turnover of less than EUR 7,630,000 and held directly or indirectly by individuals for at least 75%. Thus, the resulting effective rate will be: 32.02%, 28.41% in 2021, and 25.83% in 2022.

- Foreign entities and bodies are subject to a 31% capital gain tax in 2020, 27.5% in 2021 and 25% in 2022, on capital gains realized upon the sale of French properties, or shares in companies whose assets mainly consist of French properties.

- A 19% withholding tax can apply when listed shares are sold (when the shares are held for at least two years).
  The 31% and 19% withholding taxes can be offset against CIT due on the capital gains. If the amount of the withholding tax exceeds the CIT charge, the excess is then refundable

- Participation exemptions:
  - Parent-subsidiary regime: dividends received by French corporations are – upon option – exempt from taxation if the participation rate is minimum 5% and the participation is held for a minimum of two years. The parent company and the subsidiary have to be subject to CIT. French listed Reit's share ("SIIC") are not eligible to the French parent-subsidiary regime.
    An amount equivalent to 5% of the received dividend is deemed to be a non-deductible business expense and remains taxable to the CIT. So 95% of the dividend is actually tax-exempt.
    There is a 99% exemption on dividends received by a member of a tax group from another member of the same group or a company:
    - subject to a tax equivalent to French CIT in another member state, or in an EEA Member State that has concluded an administrative assistance agreement with France to fight against tax fraud and tax evasion, and;
    - that fulfils the conditions to participate in a French tax consolidated group if it is established in France (other than being subject to CIT in France).
  - Subject to tax treaties, French corporations paying dividends must deduct withholding tax if dividends are paid to non-resident shareholders at a rate of 12.8% for individuals, 15% for non-profit organizations, or 28% for all others. Exemptions apply for instance under the EU Parent-Subsidiary Directive which provides an exemption of withholding tax under conditions. If the corporation is resident of a country considered as non-cooperative, the withholding tax rate is increased to 75%.

Capital gains resulting from the sale of shares held by a French corporation are exempt from CIT. 12% of the gross capital gain is treated as non-deductible business expense, so that 88% of the capital gain is effectively exempt. The application of the exemption depends on the accounting qualification of the shares, they must be qualified as controlling interest (specific class of shares for accounting purposes that enables the shareholder to have a controlling interest[1]) and applies only if the shares are held since more than two years.

Capital gains on the disposal of shares of real estate companies are excluded from the participation exemption regime. A real estate company is defined as being a company whose assets comprise for 50% of (or have comprised at any time during the year preceding the time of the transfer) properties in France or shares in real estate companies. Capital gains on the disposal of shares of real estate companies are taxed at the standard CIT rates, except for French listed Reit's shares ("SIIC") that are subject to a 19% rate.

[1] Presumption if the company holds at least 10%.

- Tax groups:
  - French companies can opt for a tax group under the following conditions:
    - participating companies are subject to French CIT;
    - controlling company is not held at a minimum of 95% by a French corporation;
    - participation quotes between the participating companies are directly and indirectly at a minimum of 95%;
    - the income and losses of the group members are offset at the level of the controlling company which is the only company liable for CIT. Some intra-group operations are neutralized.
  - For FYs beginning on or after 1 January 2015, it is possible for the companies subject to CIT to adopt horizontal tax consolidation. The creation of a horizontal tax consolidation between French companies' subsidiaries of the same parent located in an EU Member State, or Iceland, Norway, and Liechtenstein, and subject to a tax equivalent to CIT ("non-resident parent entity") is now permitted, allowing one of its subsidiaries (called "parent company") to be solely liable for CIT. This regime applies, optionally.
  - A tax group can also be formed for payment of VAT only. So, it is not a true VAT group. The controlling company has to hold directly or indirectly a minimum of 50% of the share capital of the participating companies. Each company belonging to the group has to file VAT-returns. In addition, the controlling company has to file a summary VAT-return. Payments or refunds are made only on the base of this summary VAT-return. This option allows companies to consolidate into a single payment the payment of VAT. This formality lies to the head of the group.

**Individuals**

- Personal income tax rates:
  - Up to EUR 10,064: 0%; more than EUR 10,064: between 11% and 45%.
  - Minimum tax rate for non-residents: 30%. However, the taxpayer can demonstrate that if he/her had been resident in France, his/her effective rate of taxation on his worldwide income would have been lower than 30%.

- Special contribution payable on high income ("Contribution exceptionnelle sur les hauts revenus"):
  - Up to EUR 250,000: 0%; more than EUR 250,001: 3% to 4%.
    (These thresholds are doubled if you are declaring income as a couple.)

- Capital gains from the sale of real estate:
  Gains made on the disposal of real estate by individuals are taxed with flat-rate definitive withholding tax at 19%.
  This income tax covers gains from private disposal transactions carried out by individuals either directly or indirectly by means of civil property companies ("sociétés civiles immobilières", "SCI") or property funds.
  Real estate in which the transferor resides himself as his main residence ("résidence principale") at the time of transfer can be disposed of tax-free as regards taxation on gains. Disposal of a second residence might be tax-exempt under certain conditions.

  For personal income tax purposes, a tax rebate applies on the capital gain amount in consideration of the holding period of the real estate. The discount is, for property other than building lands, as follow:
  - 6% per year of holding from the fifth year to the twenty-first included; and
  - 4% from the twenty-second leading to a full exemption of personal income tax after 22 years of holding.

  An additional tax, at a rate ranging from 2% to 6% of the capital gain, is applicable on capital gains above EUR 50,000 for the sale of real estate other than building lands.

  A temporally rebate of 75% or 85% is applicable under specific conditions on the capital gains realized until 31 December 2020 for the cession of real estates or building lands.

- In addition to personal income tax, social contributions of currently 17.2% apply. These social contributions are also applicable to non-French tax residents but the rate went down to 7.5% since incomes earned in 2018 or capital gain realized in 2019.

  For social contributions, the tax discount for holding period is:
  - 1.65% per year from the fifth to the twenty-first included;
  - 1.60% for the twenty-second; and
  - 9% from the twenty-third year of holding, leading to a full exemption after 30 years.

**Business tax**

Contribution based on the added value ("Cotisation sur la valeur ajoutée des entreprises") applies to companies and individuals with a professional activity having a turnover higher than EUR 500,000.

The CVAE rate has a progressive rate, which go from 0.5% for turnover of EUR 500k up to 1.5% for turnover exceeding EUR 50m.

For determination of the progressive rate purposes, a company which fulfils the tax group conditions (Article 223 A of the French Tax Code, FTC), even if it is not member of a tax group, has to take into account the turnover of the tax group, whether or not these companies have actually formed a tax group.

## 2. What is the tax depreciation period for real estate in France? Are there depreciation categories? Which depreciation method is used?

Depreciation period for real estate depends on the useful life of the real estate. The following depreciation periods are generally accepted:

- Commercial buildings: 20 to 50 years;
- Industrial buildings: 20 years;
- Residential buildings: 40 to 100 years;
- Office buildings: 25 years.

Depreciation is based on the acquisition cost of the real estate except for land which is not depreciable. In general, the straight-line method is the allowed depreciation method.

## 3. When is a foreign investor subject to limited tax liability in France?

**Individuals**

According to French domestic law, individuals are considered to be subject to unlimited taxation in France if one out of the four following alternative situations is given:

- The person himself or his family disposes of a permanent home (foyer) in France;
- The person has his habitual place of abode in France;
- The person carries out a professional activity in France (the managing executives of a company  having its registered office in France and whose turnover exceeds EUR 250 million would be considered as exercising their professional activity mainly in France and would be taxable in France on their worldwide income. However, in order not to be considered as a French tax resident, the managing executives can demonstrate that he does not carry out his main activity in France);
- The person has the center of his economic interests in France.

Persons which are not in one of the situations above are considered as non-residents and are only liable to French tax for French-sourced income, like income from French real estate (rental income and capital gains).

**Corporations**

Corporations are liable to French CIT only on income deriving from a French business.

These principles are subject to those of any applicable tax treaty for the avoidance of double taxation, in the case of a non-resident of a State with which France has entered into such a treaty.

Generally speaking, in the case of many treaties, treaty provides that real estate income and capital gains are taxable in the State where the property is located.

A case-by-case analysis will determine if France has the right to tax or not and there are still few exceptions, especially in the case of old treaties.

## 4. Are asset deal and share deal possible in France? What are the main consequences?

The investment of real estate in France is possible either by asset deal (direct acquisition) or share deal (acquisition of a company holding real estate).

**Asset deal**

In case of an asset deals the seller realizes a capital gain. The book value of the assets transferred in the buyer's balance sheet corresponds to the relevant purchase price. Appreciable assets are depreciated over their useful lives *(see above section B.2.)*.

**Share deal**

The book values of the assets and liabilities at the level of the target company remain unchanged.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

Certain restrictions are imposed:

- Interest paid to related entitiesis only deductible:
  - if the capital is fully paid (only for direct sahareholders); and
  - tax deduction of interest paid to related parties is limited to the higher of (i) the average annual interest rate applied by credit institutions to companies for medium-term variable rate loans; or (ii) the interest that the borrowing company could have obtained from independent banks under similar circumstances.

- The net financial expenses incurred during a financial year (that is, the financial expenses reduced by financial income) is deductible from the taxable income of a company only to the extent that they do not exceed the higher of the two following thresholds: (i) EUR 3 million (ii) 30% of the taxpayer's EBITDA (i.e. earnings subject to standard corporate income tax before interest, tax, depreciation and amortization).
  - a safeguard clause allowing an additional 75% deduction by a consolidated group (beyond the amount allowed under the thresholds discussed above);
  - lower thresholds (10% of EBITDA or EUR 1 million) for companies that are thinly capitalized; and
  - specific rules for tax consolidated groups.

- Implementation of the anti-hybrid rules under the EU ATAD
  Elimination of mismatches in relation to payments as a result of different legal characterization (between Member States of the EU or with third jurisdictions) of an instrument or an entity between two jurisdictions:
  - in the case of a double deduction outcome: the deduction in the investor jurisdiction shall be denied or, if not, the payer jurisdiction shall have the right to deny the deduction;
  - in the case of deduction without inclusion outcome: the payer jurisdiction shall deny the deduction or, if not, the investor jurisdiction shall have the right to tax the payment up to the deduction obtained in the payer jurisdiction.

6. Can acquisition costs/financing fees/interest be deducted?

If real estate activity qualifies as business income, the general principles of business taxation apply. The acquisition costs must be capitalized and are depreciated over the useful life of the building.

Financing fees can be immediately deductible or, if the company opts to do so, they can also be spread over the duration of the loan.

Besides the limitation rules mentioned above *(section B.5.)*, interests are in general deductible.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In case of a share deal (acquisition of a target corporation holding the real estate), a debt push-down may be achieved by a merger of the French target into a French holding acquiring the shares of the target financed by loans or the setting up of a tax group between the two companies *(see above section B.1.)*.

Profits arising from the merger are tax-exempt under certain conditions. Loss carry forward at the level of the transferring company may be transferred to the absorbing company upon advanced approval by the tax authorities. Restrictions in case of considerable modifications of activity and/or staff apply.

8. Is there a withholding tax on interest payments paid by local company to creditor?

In France, there is no withholding tax applying on interests paid to non-resident individuals or corporations, except if interests are paid to a resident of a non-cooperative state (a few states) which bear 75% of withholding tax.

9. Is a loss carry forward or carry back granted and what are the restrictions?

**Corporate income tax**

Ordinary tax losses may be carried forward indefinitely, but may be offset against taxable profit of a given year only up to an amount to EUR 1m plus 50% of the taxable result in excess of this amount for the FY.

Losses may be carried back for one year in certain cases, up to EUR 1m. Additional limitations apply to the deduction of capital losses on the sale of shares between related parties.

A change of ownership of a corporation does not affect the loss carry forward. Nevertheless, in case of a considerable change of activity and/or staff of the loss making corporation, the loss carry back and forward will generally be lost.

**Individual income tax**

The general principle is that losses from one category of income may offset profit from other categories and may be carried forward for six years.

However, this principle is subject to limitations.

- Losses from the disposal of shares may be offset only against income from the same category of income in the time limit of ten years.
- Tax losses resulting from rental income other than resulting from financial charges can be offset against the global income in the limit of EUR 10,700. The remaining fraction of losses including the financial charges may only be offset against the future rental income in the time limit of ten years.
- Capital losses on property sales cannot be set off against either capital gains of the same kind or overall income. Exceptionally, capital losses and gains may be set off in certain exhaustively specified cases, such as where the sold property was acquired by successive fractions.

Tax loss carry back is not possible.

## C. Real Estate Taxes

1. Does France levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfer of real estate**

Transfer of real estate located in France triggers registration duty based on the acquisition price (or of the fair market value (FMV) if higher than the purchase price) of the real estate at a tax rate of 5.80%. The deed of sale must be executed before a notary. Notary's fees are calculated by reference to the purchase price, plus VAT:

- from EUR 0 to EUR 6,500: 3.945%;
- from EUR 6,500 to EUR 17,000: 1.627%;
- from EUR 17,000 to EUR 60,000: 1.085%; and
- over EUR 60,000: 0.814%.

Notaries' fees are negotiable above EUR 80,000.

There is a preemptive right of the town where the estate is located which applies to the sale of real estate located in France.

**Transfer of shares in corporations holding mainly real estate**

Transfer of shares in companies holding mainly real estate triggers registration duty based on the acquisition price of the shares at a tax rate of 5%. Then, if it has liabilities, the value of the asset of the transfer duty is lower than the value of the real estate.

The acquisition of a real estate company is not compulsorily executed through a notary deed. Then, the purchaser can avoid the notary. A notary deed is only required when the acquisition deed is passed abroad.

The preemptive right of the town where the estate is located does not apply to the sale of real estate companies shares.

Both, the seller and the purchaser are jointly and severally liable for stamp duty but in practice generally the buyer bears the duty.

2. Is real estate subject to any real estate tax? At which rate?

We can distinguish three main real estate taxes: property tax ("Taxe foncière"), Residence tax ("Taxe d'habitation") and Business premises contribution ("Cotisation foncière des entreprises").

These taxes are assessed on a property's cadastral rental value ("valeur locative cadastrale") which represents hypothetical rent that could have been obtained from the property as determined by the authorities.

Tax rates are levied for the benefit of the regions, departments and municipalities (i.e. public bodies that have administrative and taxing powers), so the global tax rates are then very different from one site to another.

- Property tax is levied annually on owners (individuals or corporations) of real estate located in France. The tax is payable by the owner of the property at 1 January of the year of taxation. The tax base is equal to 50% of the cadastral rental value of the property.
- Residence tax is levied annually on the occupier (individuals) of furnished residential premises and their dependencies. The tax is payable by any person (owner, tenant, free occupier) who, on 1 January of the year of taxation, has taxable premises at their disposal whatever their status. Certain premises are exempt from residence tax, either by nature or on a decision of the local authorities. In zones where there is a shortage of residential premises, local authorities may increase up to 20% the residence tax on furnished accommodations not used as primary residence.
- Business premises contribution concerns individuals or legal entities carrying on a regular non-salaried business activity in France. The business premises contribution tax base is comprised of the rental value (less 30% for industrial plants) solely for property liable to property tax in France.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The VAT regime applicable to the sale of real estate depends on the VAT status of the seller.

- If the vendor performs a VAT-able activity, the sale is subject to VAT at the current standard rate of 20%.
- Conversely, except in limited cases, no VAT would be mandatorily due if the seller is not a VAT taxpayer.
- Sales subject to VAT:
  - the disposal of building land by a VAT taxpayer;
  - the purchase of a building to be demolished or to be entirely reconditioned;
  - the purchase of a new building within the first five years from the date on which it was built (registration duty at the rate of 0.71498% would also be payable by the buyer).
- VAT exemption:
  - the property is not a building land; in that case, the seller may opt for VAT;
  - the property is completed for more than five years, the seller may opt for VAT;
  - the seller is not a VAT taxpayer.



If VAT applies, it can be recovered under certain conditions if the asset is used for a VAT-able activity (e.g. the building is rented under the VAT regime). VAT is recovered by offset against the VAT collected on the VAT-able activity or by claiming a reimbursement of VAT credit to the FTA.
The transfer of shares in real estate corporations is VAT-exempt but is subject to registration duty at a tax rate of 5% *(see above)*.

### 2. What are the VAT consequences of renting/leasing of real estate?

The lease of unfurnished real estate is VAT-exempt.
In the case of the lease of unfurnished real estate for business purposes, it is possible to opt for VAT at the current rate of 20%.

## E. Other Taxes

### 1. Is there a capital tax for equity injected in to a local company?

Stamp duty applies in the case of a capital contribution to an existing company amounting to EUR 375 for companies with a share capital of less than EUR 225,000 or EUR 500 with a share capital of more than EUR 225,000.

### 2. Is there a stamp duty on debt granted to a local company?

N/A

### 3. Wealth tax

As of 1 January 2018, wealth real estate property (IFI), which replaces the former wealth tax (ISF), applies on real estate and real estate rights located in France held directly or indirectly, meaning:

(i) real estate and real estate rights; and
(ii) the units or shares of companies or organizations (established in or outside France), in the amount of the fraction of their value representing real estate and real estate rights held directly or indirectly by the company or organization (the "real estate coefficient").

The IFI applies to real estate property which is not attributed to the professional activity of the owner.

Individuals whose real estate assets exceed EUR 1.3m on the respective reference date of 1 January of the relevant tax year are liable to a wealth tax. For residents the tax is based on their worldwide real estate assets. For non-residents, the wealth tax will only cover their real estate located in France. Deviations can result from double tax treaties.

The wealth tax is calculated from the net assets of the fiscal household: spouse, children (minors), and partner (common-law couple).

Individual taxpayers who have not been domiciled in France during the five years preceding the transfer of their domicile to France are only taxed on the property located in France, until 31 December of the fifth year following the year of arrival in France.

The deductible expenses are limited to the taxes related to the taxable real estate property excluding income tax.

A general ceiling applies to the deduction of debt when the value of the taxable assets exceeds EUR 5m and when the amount of debt is more than 60% of this amount; the amount of debt exceeding this threshold is only deductible up to 50% of the excess.

Tax rates are as follows:

- Net real estate assets until EUR 800k: 0%
- Net real estate assets between EUR 800k and EUR 1.3m: 0.50%
- Net real estate assets between EUR 1.3m and EUR 2.75m: 0.70%
- Net real estate assets between EUR 2.75m and EUR 5m: 1%
- Net real estate assets between EUR 5m and EUR 10m: 1.25%
- Net real estate assets exceeding EUR 10m: 1.50%

If wealth tax is applicable, i.e. assets exceed EUR 1.3m, the rates of tax listed above apply accordingly from EUR 800k.

If the asset value exceeds EUR 1.3m without crossing the threshold of EUR 1.4m, a tax reduction is calculated as follows: EUR 17,500 - 1.25% x V (with V equal to the assets value).

The total of the wealth tax and of the French and foreign taxes are capped at 75% of the income of the precedent year.



### 4. The 3% annual tax

French or non-French entities, with or without legal personality, including trusts and similar vehicles, owning either directly or indirectly (and whatever the number of companies interposed between the building and the ultimate shareholders) real estate properties located in France, which do not perform a professional activity other than a rental one, fall within the scope of a 3% property tax levied annually, for assets owned on 1 January, on the fair market value of the real estate property located in France.

- The tax does not apply to:
  - sovereign states, public bodies and entities with or without legal personality held for more than 50% by a sovereign state or a public body;
  - entities with or without a distinct legal personality (including trust and similar entities) owning directly or indirectly real estate properties located in France where the fair market value is below 50% of the total value of the French assets held directly or indirectly by the entity. The French properties that are allocated to a professional activity (other than a pure real estate activity) are not included for purposes of computing the 50% ratio, including where the professional activity is carried out by a related party;
  - entities with or without a distinct legal personality (including trust and similar entities) where the stocks are admitted to negotiation on a regulated market and are regularly and significantly traded and their wholly owned subsidiaries (held directly or indirectly);
  - the following entities with or without separate legal personality (including trusts and similar entities) having their registered office in France, in an EU Member State or in a country that has concluded a double tax treaty (DTT) with France that includes an administrative assistance or a non-discrimination clause:
    - entities owning directly or indirectly French properties, where the share ownership value in said French properties does not exceed either EUR 100k or 5% of the fair market value of the French properties;
    - pension funds (or charities publicly recognised as fulfilling a national interest) whose activity supports the need to own French properties;
    - non-listed French open-ended real estate funds (SPPICAV and FPI) and foreign funds subject to equivalent regulations;
    - entities that file each year by 15 May, or undertake to disclose to the FTA at first request, information on shareholders owning more than 1% of share capital. The undertaking to disclose must be filed in principle upon the acquisition of the French property or upon the acquisition of a stake leading to indirect ownership in French properties;

- entities that file every year by 15 May, information on shareholders (owning more than 1%) about whom they have detailed information;
- in all cases, foreign entities must be able to produce tax residency certificates proving that the local tax authorities consider that they are genuine tax residents.

### 5. Real Estate Investment Trust legislation

Article 792 0 bis of the French Tax Code (FTC) defines the trust as follows:

*"[...] set of legal relationships that arise under the law of a State other than France when a person (the settlor) transfers, through a settlement between living persons (inter vivos) or upon death, certain assets or rights to an administrator (the trustee), for the benefit of one or more beneficiaries or for the accomplishment of a defined purpose".*

The definition of the trust by the FTC is very broad and can incorporate Trust, Foundation.

- Disclosure obligations exist in France with regard to trusts:
  - The trustees are required to declare the creation, modification and revocation of any trust if the constituent or any beneficiary is French resident or if any trust asset is situated in France.
  - Declarations are also required when assets are added to or removed from the trust.
  - The declaration must be made within 30 days of the event.
  - On 15 June each year the trustees must declare the market value of the assets held by the trust as at 1 January. The trust assets to be declared will be the worldwide trust assets if the settlor or any beneficiary who is deemed to be the settlor is French resident. Otherwise, the trust assets to be declared will be the French situs trust assets.

- Fine of EUR 20k for non-declaration:
  - The settlor should declare the trust assets and makes the relevant wealth tax return as if the assets were their own.

- Sui generis 1.5% taxation assessed on the market value of all the real estate assets and rights located in France in the trust applies in the case of non-compliance with the French wealth tax requirements and/or the above trust reporting obligations.



## F. Focus on SPPICAV tax regime

A SPPICAV is a "société anonyme" or "société par actions simplifiée" with a variable share capital.

- SPPICAVs are exempt from the annual 3% tax on real properties.

- SPPICAVs are exempt from French CIT on all income and profits derived by the company from the activities that are within the scope of its declared purpose (additional contributions on corporate income tax are not applicable to SPPICAVs either):
  - dividends, capital gains and rental income are exempt; but
  - this exemption is subject to the following distribution obligations imposed by Article L.214-81 (II) of the French Monetary and Financial Code:
    - 85% of the results of the previous period (rental income that they receive directly or indirectly);
    - 50% of the net capital gains from disposals of real estate assets during the current or previous period, directly or indirectly through partnerships that are not liable for corporate income tax;
    - 100% of the fraction of net results of the previous period derived from products distributed by share companies that are more than 95% owned by their parent company and that have opted to be exempted from corporate income tax on their real estate activities.

- Income distributed by the SPPICAV qualifies as dividends:
  - French individual investors are subject to personal income tax:
    - option between flat tax withholding tax ("PFU") at the global rate of 30%, including a flat-rate of 12.8% for income tax and an overall rate of 17.2% for social contributions, or progressive tax scale up to 45% plus 17.2% for social contributions;
    - the profits derived from disposals for remuneration or from redemptions of SPPICAV shares are taxable in the same way as capital gains on stocks and shares by individuals, and are chargeable to PFU at the total rate of 30% or it is possible to opt to the progressive tax scale plus social contributions[2]. In that situation, if the shares are holding at least two years, 50% of the gain is tax free, and if the shares are holding at least eight years 65% of the gain is tax free;
    - exceptional contribution on high income is also due, at the rate of 3% or 4%, according to the tax household's (base income for fiscal purposes, which includes dividends and capital gains);

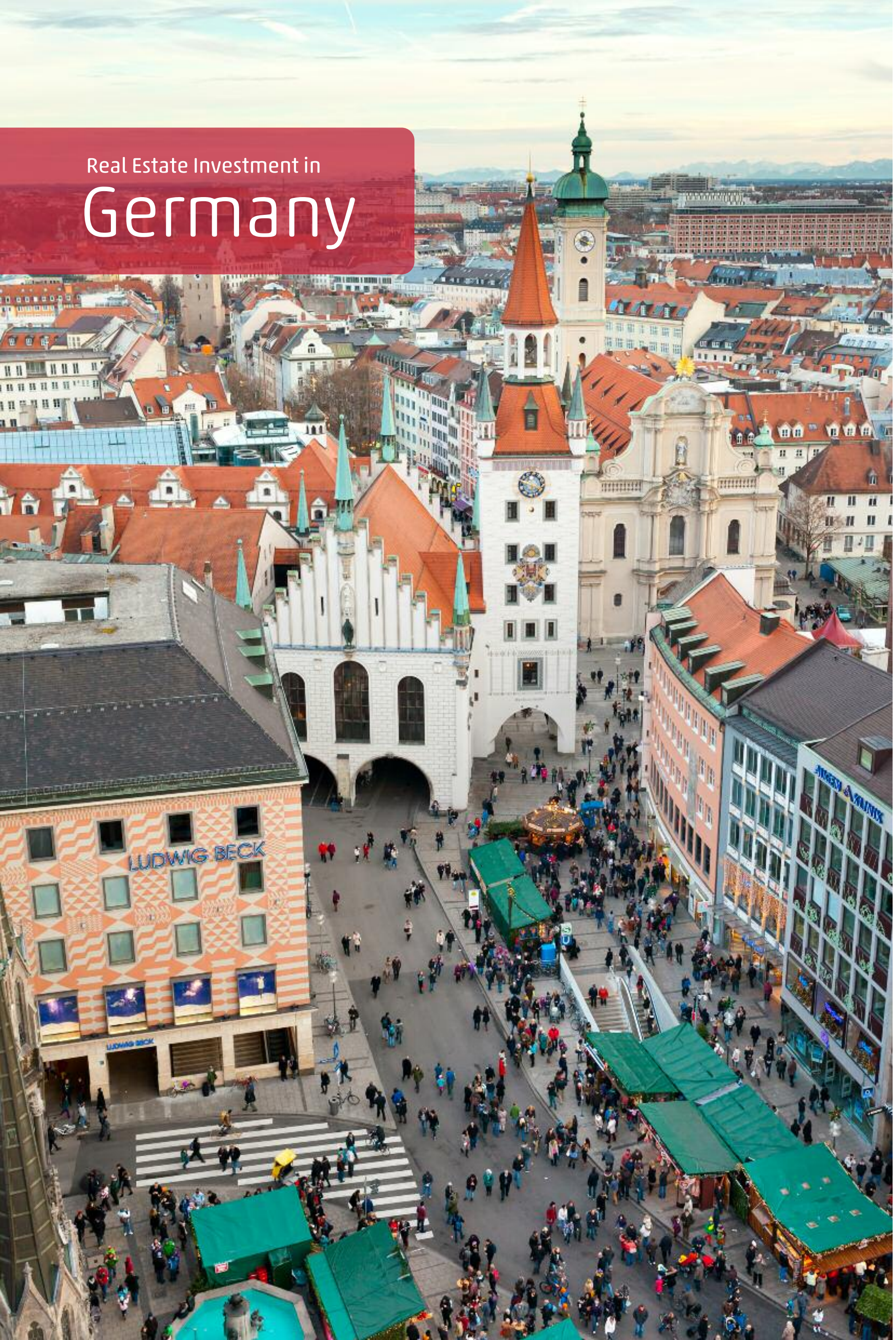
[2] This option is only possible for shares acquired before 1 january 2018.

- French corporate investors are subject to CIT at standard rate (income is excluded from the special regime applicable to parent companies). Gains recorded from disposals or redemptions of SPPICAV shares are also liable for CIT at standard rate.
- Non-resident investors: subject to the terms of tax treaties, income distributed by SPPICAVs to non-resident individuals or companies is taxed at source as income distributed by French companies liable for corporate income tax, at the rate of:
  - 12.8% for individuals;
  - 30% for companies;
  - 75% if the investor is domiciled or established in an ETNC (non-cooperative state or territory or NCST);
  - capital gains realized by non-residents from redemptions or disposals of shares in a SPPICAV are taxable in France when the disposer owns, directly or indirectly, at least 10% of the capital of the company whose shares are being disposed of, at the following rates:
    - either at CIT standard rate if the seller is a company;
    - or at the rate of 19% (plus social contributions at the rate of 17.2%) if the seller is an individual, on the basis of the capital gains reduced by tax rebate.

**COVID-19 pandemic update**

French parliament adopted the following temporary measure:

**Accelerated refund of carryback receivable for 2020** (third Amending Finance Bill for 2020 adopted on 23 July):
as losses may be carried back, this creates a receivable from the French Tax authorities (FTA) equal to the tax surplus previously remitted. The receivable can be used to offset corporate income taxes incurred during the five following fiscal years. After the five-year period, the fraction of receivables that was not used against the payment of corporate income tax is refunded to the taxpayer. **The third 2020 finance law exceptionally allows companies to apply for the immediate refund of their carryback receivable balance in 2020, both for past fiscal years and FY 2020.**




Real Estate Investment in

# Germany

## A. Legal/General

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1. Are non-residents entitled to acquire real estate in Germany?
   Does the acquisition have to be carried out by a German corporation?

In Germany there is no restriction with regard to the acquisition of real estate. Residents as well as non-residents can purchase real estate. Therefore, the acquisition of German real estate does not have to be effected by using a German acquisition company.

2. Which importance does the land register have?

Rights with respect to real estate are to be recorded in the German land register as such rights only come into existence upon registration. In general the expenses of acquisition (i.e. notary costs, land register costs, registration of land charge) should amount to about 1% to 1.5% of the purchase price.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist ? If yes, what are the requirements ?

→ Corporate income tax rate:
15% corporate income tax plus 5.5% solidarity surcharge (15% plus 5.5% of 15% = 15.825%).

→ Trade tax rate:
» The trade tax rate is on average 14% but varies from municipality to municipality depending in which municipality the resident company is located or where a permanent establishment of the non-resident corporation is located (8% to 17%). Since 1 January 2008 trade tax is no longer a tax deductible business expense.

- » Trade income is determined by the taxable income for corporate income tax purposes modified by certain add-backs and deductions. The add-backs include 25% of the sum of the following items (the list is not complete) when computing income for trade tax purposes:
  - › interest payments;
  - › 20% of rental and leasing payments for movable fixed assets;
  - › 50% of rental and leasing payments for immovable fixed assets;
  - › 25% of license payments.

  The deductions include for example 1.2% of 140% of the assessed fiscal value of real property for companies owning real property.
- » Real estate companies being subject to trade tax can apply for the extended trade tax exemption for mere real estate companies, if the following applies:
  - › The extended trade tax exemption is applicable for companies exclusively administrating own real estate property. This means that these companies may only conduct pure property administration (real estate letting) activities.
  - › These companies may not have additional activities other than income from capital. In particular no fixtures or movable assets must be let, these companies must not act as real estate trader and the real property must not be used by any shareholder for his business.
  - › Furthermore the landlord must not render (commercial) services such as cleaning, surveillance or running a public parking garage.

    The requirements must be met by the taxpayer throughout the entire fiscal year.

  If the requirements are met, the taxpayer may deduct the real property income (i.e. rental income and under certain circumstances capital gains from disposing of real estate assets) from the trade tax base. Thus the real estate income will finally be tax free for trade tax purposes for mere real estate companies.

➔ Personal income tax rate:
Marginal tax rate (as of 2016):
- » up to EUR 8,652: 0%
- » from EUR 8,652: between 14% and 45%

➔ Participation exemptions:
The distributed profits received by German corporations are exempt from taxation. However, an amount equivalent to 5% of a corporation's dividend income is treated as a non-deductible business expense. Therefore, 95% of the dividend income received is effectively tax-exempt. Costs incurred are deductible without limit. This regulation applies to dividends that are paid by domestic or foreign corporations.
The German corporation paying the dividend must deduct withholding tax on the dividend paid to German corporations, generally at a rate of 26.375% (withholding tax at a rate of 25% plus 5.5% solidarity surcharge), and transfer this tax to the tax authorities. The shareholder can offset the amount withheld against its ultimate corporate tax liability in the annual tax return.
Capital gains from the sale of shares held by a corporation are also exempt from corporate income tax. Similar to the treatment of dividends 5% of the capital gain is treated as a non-deductible business expense. Hence, capital gains arising from the alienation of shares are effectively 95% tax-exempt. Losses on the sale of shares and write-downs to impaired values are likewise not tax deductible. The same applies for loans granted to subsidiaries.

➔ Tax group:
Under the German tax group system the income or loss of a controlled company ("Organgesellschaft") is attributed to a controlling company ("Organträger"). In order to qualify as a tax group, the following conditions have to be fulfilled:
- » the controlling and the controlled company have to enter into a profit and loss pooling agreement (for a minimum period of five years);
- » the controlled company must financially be integrated into the controlling company;
- » the controlling company can be a corporation with its place of management in Germany or a registered branch of a foreign corporation.

**Corporate income tax and trade tax**

The tax group system applies to corporate income tax and trade tax. The corporate income and the trade income of controlled and controlling entities are combined. The corporate income tax and the trade tax are assessed at the level of the controlling entity.

**Earnings stripping rules (limitation of interest expenses)**

For purposes of the earnings stripping rules the controlling company and controlled companies of a tax group are treated as one single entity.

### Value added tax

For German VAT purposes a tax group of several VAT taxpayers can be formed. The prerequisites for a VAT group are financial, organizational, and economic integration of the controlled company into the controlling company. As soon as the prerequisites are fulfilled, the VAT tax group will come into existence by default; i.e. no formal application has to be filed. In this case the controlling company is considered to be the sole entrepreneur for VAT purposes. Intra-group supplies of goods and services are disregarded for VAT-purposes.

## 2. What is the tax depreciation period for real estate in Germany? Are there depreciation categories? Which depreciation method is used?

Depreciation is based on the acquisition or production cost of the asset. Depreciation rates for the buildings are fixed by statute.

According to current tax law, the depreciation rate (straight-line method) for business real estate generally is 3% p.a. The depreciation rate for real estate held in private property generally is 2% p.a. Land is not depreciable. Tax effective write down to the lower market value if market value is below tax book value is possible but the requirements are very strict. The impairment for fixed assets is only possible if at the balance sheet date the fair market value is lower than the future book value after 50% of the remaining useful economic life and the impairment thus qualifies as durable.

## 3. When is a foreign investor subject to limited tax liability in Germany?

An individual having neither a domicile nor habitual place of abode in Germany (herein-after non-resident) is subject to limited tax liability only. Tax liability is limited to German-source income as listed in Sec. 49 ITA (Sec. 1 (4) ITA). Non-resident individuals may carry on a business in Germany as sole entrepreneur through a German permanent establishment or as a partner of a German partnership (a German partnership basically constitutes a permanent establishment of the partners to the partnership).

Income derived from the activities listed in Sec. 49 ITA is subject to income tax at the same rates as applicable for resident taxpayers. Trade tax is only levied if the non-resident individual has a permanent establishment in Germany.

Non-resident corporations (i.e. neither the place of management nor legal seat is in Germany) are subject to limited German corporate income tax liability if a business is carried out in Germany through a German permanent establishment or a German partnership. In this case, tax liability is limited to the income attributed to that permanent establishment or partnership. Further, income from German real estate is subject to the limited tax liability if it belongs to the business of the foreign corporation.

Trade tax is only levied if the non-resident corporation has a permanent establishment in Germany. Non-resident corporations are subject to limited German corporate income tax liability for rental income generated by the letting of German real estate according to domestic law. The German tax treaties allocate the right of taxation to the situs country of the property. This income will only be subject to trade tax if the non-resident company has a permanent establishment in Germany. The real property itself in general does not constitute a permanent establishment in Germany. Therefore, rental income will then only be subject to corporate income tax and solidarity surcharge.

Assumed the respective double tax treaty allocates the right of taxation to Germany, a non-resident investor will be subject to limited tax liability in Germany. In this case, the sale of real estate is subject to regular corporate income tax. Capital gains realized by a non-resident corporation are only subject to German trade tax if the corporation has a permanent establishment in Germany or in case the investor does not qualify for the extended trade tax exemption for mere real estate companies *(see above)*.

## 4. Are asset deal and share deal possible in Germany? What are the main consequences?

A real estate investor can acquire German real estate by way of an asset deal (e.g. direct acquisition of real estate) or a share deal (e.g. acquisition of a company owning real estate). In a share deal, further reorganization steps to achieve a debt push-down may be required.

### Asset deal

In case an investor purchases a German property, the book values of the assets transferred are stepped up to the acquisition cost of the investor. The seller realizes a capital gain equivalent to the difference between the purchase price and the tax basis of the assets. Depreciable assets are depreciated over their useful lives (based on the official tax depreciation tables). Land is not subject to scheduled depreciation. *For other tax consequences (RETT, VAT, etc.) see the questions below.*

**Share deal**

The book values of the assets and liabilities at the level of the target company remain unchanged.
*For other tax consequences (RETT, VAT, etc.) see the questions below.*

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

The previous German thin capitalization rules were replaced by the interest barrier rule, effective 1 January 2008. The new rules apply to all types of debt financing (shareholder or third party debt) and for all kind of entities. Under the interest barrier rule, net interest expense is deductible only up to a percentage of 30% of EBITDA for tax purposes. Interest expense is fully deductible to the extent positive interest income is available. The rules do not apply if the net interest expense does not exceed EUR 3m. The definition of interest here is "remuneration for granting a loan". However, it seems worth mentioning that all payments linked to financing should be checked in detail and may result in controversial discussions with the tax authorities (e.g. in a tax field audit). Unused EBITDA as well as non-deductible interest expenses can be carried forward.

6. Can acquisition costs/financing fees/interest be deducted?

If the acquisition is funded by debt, the interest expenses can be offset against the target's future profits.

Dividends distributed by a corporation to another corporation are generally tax-exempt. 5% of the dividend income is deemed to constitute a non-deductible business expense directly related to the tax-exempt income and is thus taxable. In return expenses actually incurred related to the income (interest expenses) are fully deductible.

The full offset of interest expenses against positive income is possible in the following ways:

- → To achieve deductibility of business expenses it is possible to establish a tax group ("Organschaft") between the target and the acquiring corporation. The target company's positive income may be offset against any negative income at the level of the parent company.
- → Another possibility to offset interest expenses is to push down the debt incurred into the acquired company itself. This can be done by a down-stream merger of the acquiring company into the target corporation.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

As mentioned above, the full offset of interest expenses against positive income is possible by creating a tax group or performing a down-stream merger. The applicable tax law for mergers is the German Reorganization Tax Act. Generally, mergers are executed at fair value. Upon application, a tax-neutral transfer of book values or any value between fair market value and book value is possible. Germany's right to tax any built-in gains of the assets transferred must be preserved.

Profits arising from the merger of corporations at the level of the absorbing corporation are in principle 95% tax-exempt. Loss carry forwards at the level of the transferring company are not transferred to the absorbing corporation. The absorbing corporation steps into the legal position of the transferring corporation, especially with regard to the book values of the assets transferred, depreciation and unrealized gains.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest paid to non-resident companies is generally not subject to withholding tax. The 26.375% including solidarity surcharge final interest withholding tax ("Abgeltungs-steuer") applies only to interest paid to residents.

Dividends, other profit distributions and income from silent partnerships are subject to withholding tax at a rate of 26.375% including solidarity surcharge. Payments to non-resident corporations are generally subject to taxation at a rate of 15.825% including solidarity surcharge. Under German national tax laws German withholding tax on dividends distributed by a corporation currently amounts to a tax rate of 26.375%. In general, non-resident corporate shareholders would be entitled to a 2/5 WHT refund on this rate so the effective WHT rate for corporate shareholders should effectively be reduced to 15.825%. Therefore, an effective WHT rate reduction to 15% plus 5.5% solidarity surcharge is applicable for dividends in favor of foreign corporations. The idea behind the 2/5 refund is an equal treatment of national and foreign corporations and a respective harmonization of WHT rates on the one hand and the German corporate income tax rate of 15% plus 5.5% solidarity surcharge on the other hand.

However, the refund is subject to the German substance requirements as per Sec. 50d ITA. According to this provision, an investor – in case of its own shareholders being non-EU companies – would need to fulfill a number of requirements in order to achieve a WHT-free dividend distribution.

Due to the previous potential violation against EU law, the German Sec. 50d (3) ITA has been amended as of 1 January 2012. According to the amended Sec. 50d (3) ITA, a foreign company shall only be entitled to (full or partial) relief from withholding tax under a EU Directive/Double Tax Treaty, to the extent

- the company is owned by shareholders that would be entitled to a corresponding benefit if they earned the income directly (shareholder test); or
- the gross receipts generated by the foreign company in the relevant year derive from the company's genuine own business activities (business income test).

If the foreign entity fails both the shareholder test and the business income test, it will only be entitled to the withholding tax relief if both of the following additional tests are passed

- there are economic or other relevant (i.e. non-tax) reasons for the interposition of the foreign company in relation to the relevant income (business purpose test); and
- the foreign company has adequate business substance to engage in its trade or business and it participates in general commerce (substance test).

The shareholder test, therefore, will determine the personal entitlement for withholding tax relief or reduction. The business income, business purpose and substance tests will determine the factual entitlement to withholding tax relief.

In case the taxpayer does not pass such test, withholding tax under the domestic provisions is due.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses that cannot be offset in the current year may be carried back one year up to an amount of EUR 1m for corporate income tax purposes. If the losses exceed EUR 1m or cannot be fully offset against the previous year's income, they may generally be carried forward indefinitely. These losses may be offset without restriction against profits only up to an amount of EUR 1m. Losses carried forward in excess of this amount may only be offset by 60% of the exceeding amount (minimum taxation). Trade tax losses can only be carried forward. They cannot be carried back. The minimum taxation also applies for trade tax purposes.

Changes of ownership (directly or indirectly) of a corporation can cause the forfeiture of tax loss carry forwards. If during a period of five years, more than 50% of the loss entity's shares are transferred, all tax loss carry forwards are lost. If more than 25% but not more than 50% of the loss entity's shares are transferred within a period of five years, tax loss carry forwards will be lost in the same ratio as the transferred share capital. The rules also apply where shares are transferred to a group of purchasers with convergent interests.

In case of a harmful change of ownership, one exception applies according to the so-called built-in gain clause. According to this clause, losses can be offset to the extent the loss company has built-in gains whose realization would be subject to German taxes.

## C. Real Estate Taxes

### 1. Does Germany levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfer or real estate and comparable rights**

Acquisition of real estate in Germany generally triggers real estate transfer tax (RETT). The tax base is the purchase price of the real property. The current tax rate is in the range of 3.5% and 6.5%, depending on the federal state in which the real estate is located. Both, the seller and the purchaser are jointly and separately liable for RETT unless otherwise specified in the sale and purchase agreement. It is common practice that the purchaser bears 100% of the RETT.

**Transfer of shares in partnerships**

With regard to real estate owning partnership a RETT triggering event occurs if at least 95% of the shares are transferred within 5 years to one or more new shareholders. In case of indirect transfer of shares there are special cases with no limitation of transfer period. Tax base is the value of the property according to the provision of the German valuation tax act. The tax has to be paid by the partnership itself.

**Transfer of shares in corporations**

The acquisition of shares in corporations owning German real estate is only subject to real estate transfer tax in case of a direct or indirect legal or commercial unification of 95% or more of the shares in the hand of one shareholder or in the hands of a group of affiliated shareholders. As for partnerships the tax rate of 3.5% to 6.5% is applicable on the separately assessed value of the target's total real property portfolio. The tax has to be paid by the person in which hand the unification occurs.

Please note that there are currently political discussions about fundamental changes in German RETT law.

In detail especially the following measures are subject of considerations:

- Decrease of thresholds:
  The harmless threshold for a RETT-free acquisition of a partnership or corporation should be reduced to 89.90% (instead of 94.9% ).

- Alignment of rules for partnerships and corporations:
  As far as shares in a corporation are concerned, based on current law, only the direct or indirect "unification" of at least 95% in the hand of one new shareholder is taxable, for shares in partnerships the transfer of at least 95% within 5 years to one or more new shareholders is taxable.

In the future these rules should be aligned. Not only "unification" but also the "transfer" of at least 90% of the shares in a corporation to one or more new shareholders within the holding period should be also subject to RETT. As a consequence, it would be no more possible to transfer a German property holding corporation to two unrelated co-investors in a RETT neutral way. Tax neutrality is only given if the founder or a co-founder remain in the structure with a minimum of more than 10% until the holding period ends.

- Extension of holding periods:
  According to alignment of the Ministers, the 5 years holding period should be extended to 10 years. In cases of the acquisition of a property holding partnership, it is currently very common to acquire 94.9% in a first step and after 5 years the remaining 5.1% in a second step. In this case, based on the existing law, RETT becomes only due at a level of 5.1%. Taking the extended holding periods and the changed thresholds into account, RETT will become due at a level 10.1% after ten years (instead of 5.1% after 5 years).



### 2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is levied on German real estate. The tax is assessed at a basic federal rate (generally 0.035%) and is multiplied by a municipal multiplier (depending on municipality); therefore, the tax rate amounts to about 0.5% to 3%. The tax base is the assessed value of property for tax purposes. This value should in average be about 50-60% of the market value.

Please note that there is a new real estate tax law, which will come into effect at 1 January 2025. In general the basic federal rate will change to 0.0035% in order to compensate the increasing of assessed value of property for tax purposes.

Real estate tax is a tax deductible business expense.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The transfer of real estate is generally not subject to VAT. The seller may opt for VAT treatment if both, the seller and the buyer are entrepreneurs for VAT purposes.
If the option is exercised, the purchase price is subject to German VAT at a rate of 19% (reverse charge). The purchaser can claim refund of the input VAT if he uses the real property for purposes that are subject to VAT. Any change in the use of the real estate property within a 10-year period requires a pro-rata adjustment of the input VAT claimed upon purchase.

The option for VAT is not possible if the purchase of the real property constitutes a transfer of an ongoing business ("Geschäftsveräußerung im Ganzen") according to Sec. 1 (1a) German VAT Code, since the transfer of an ongoing business is not subject to VAT. In such cases the buyer succeeds into the seller's legal position with regard to the input VAT correction and the relevant 10-year correction periods.

The transfer of shares in corporations is VAT-exempt. An option for VAT is possible.

### 2. What are the VAT consequences of renting/leasing of real estate?

The lease of residential real estate is VAT-exempt. The lease of real estate for business purposes is, in general, also VAT-exempt. However, if both parties are entrepreneurs for VAT purposes, it is possible to opt for VAT at the current rate of 19%.

The option for VAT is only possible if the tenant uses his part of the real estate leased to at least 95% for services or deliveries subject to VAT. The advantage of opting is the ability to deduct any related input VAT charged.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

N/A

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist ? If yes, what are the requirements ?

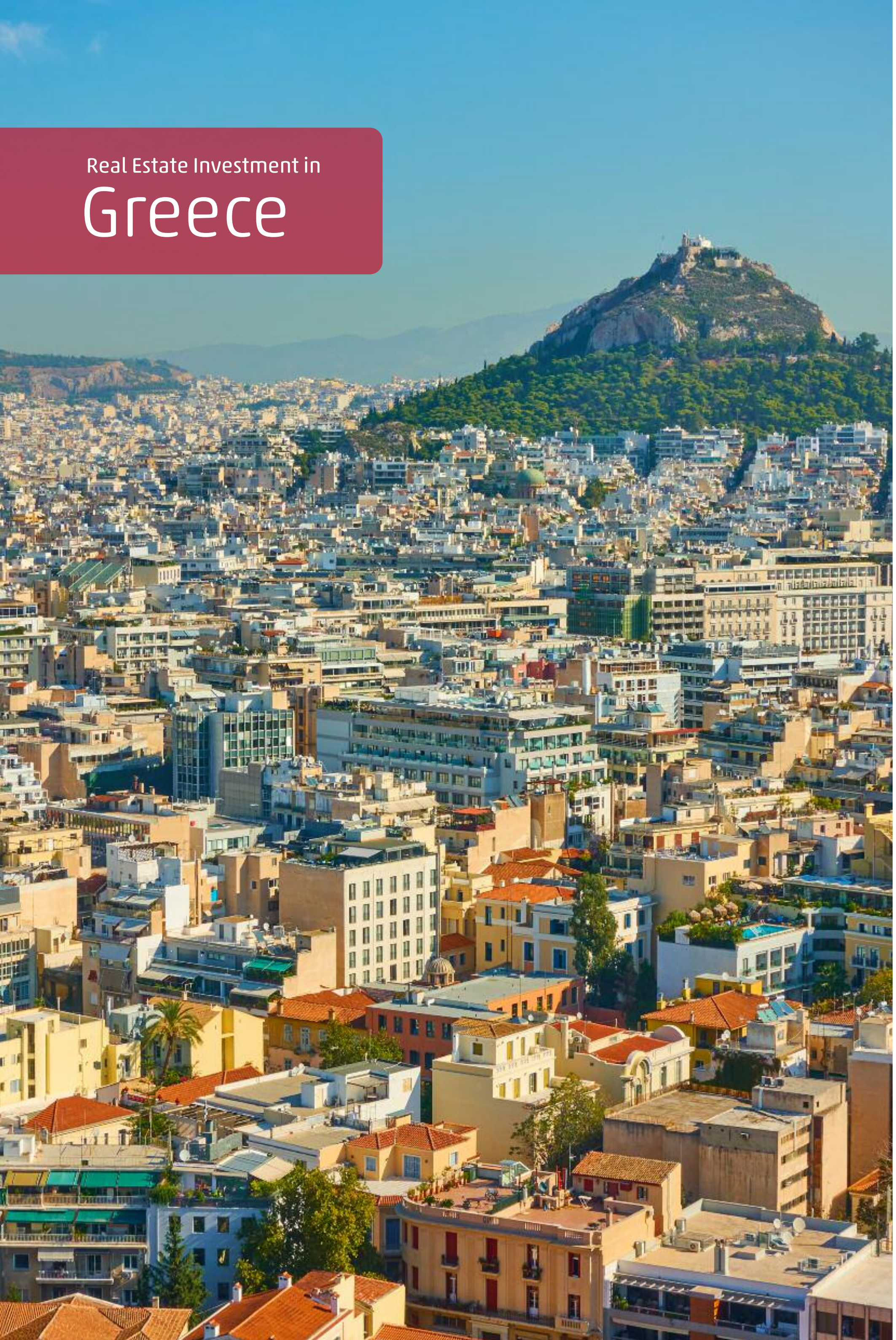
In Germany a special regime for Real Estate Investment Trusts (REIT's) exists since 2007. However, REIT's have not become very common in Germany.

German REIT's are not subject to corporation and trade tax. Only the dividends are taxable on shareholder's level:

- at a maximum tax rate of 25% plus solidarity surcharge in the case the shares are private assets of individuals; and
- approx. 30% in case the shares are business assets of a corporation or partnership.

To benefit from these special tax rules the German REIT has to meet the following requirements:

- shares of the REIT has to be listed at a stock exchange; shares of minimum 25% has to be at public float; one shareholder is only entitled to held at least 10% of the shares of the REIT;
- 75% of the assets should be real estate assets (and 75% should be real estate income; dwelling built before 1 January 2007 are not REIT compliant assets;
- a payout ratio fixed by law of at least 90% of the net income according to German commercial law;
- no disposal of more than 50% of the average value of the real estate assets within five years;
- authorized capital of minimum EUR 15m; minimum equity of 45% of the real estate assets.



Real Estate Investment in

# Greece

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Greece? Does the acquisition have to be carried out by a Greek corporation?

Generally in Greece, there is no restriction for the acquisition of real estate; both residents as well as non-residents can purchase real estate.

However, a special permission from the Ministry of Defense is required for the acquisition of real estate situated in border areas (even by Greek residents).

- For Greek and EU residents such permission is granted by a special committee.
- For non-EU residents, the definition of border areas is expanded and the procedure as well as conditions for obtaining permission is more burdensome.

The acquisition of real estate in Greece does not have to be carried out by a corporation.

From May 2013 non-EU residents are entitled to obtain a Resident Permission in Greece for up to five years (with the possibility of renewal) under the condition that property in the value of more than EUR 250,000.00 is bought or leased for more than ten years or a hotel accommodation is rented for at least ten years. The Resident Permission is also granted to the family members of the buyer.

It is possible that the property is obtained by a legal entity under the condition that the Resident Permission is granted only to the individual who is the entity's shareholder.

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The property buyer may be a member of the Board of Director's, a shareholder or a Chief Executive Officer of the entity but not an employee thereof.
Further, for business activities assessed by the Ministry of Foreign Affairs as Strategic Investments in Greece the legal representative and up to ten persons crucial for the investment as well as their family members are entitled to be granted a Resident Permission in Greece for up to ten years.

**Alternative taxation for high net worth individual regime**

New taxation method introduced for foreigners, who transfer their tax residence to Greece under the following conditions:

- the individual was not for the previous seven years of the eight years Greek tax resident;
- individual can be proved that invest at least in Greece EUR 500,000 in real estate or business or shares of legal entities either themselves or their relatives or a legal entity in which holds the majority of the shares.

The investment must be completed within three years period.

Individuals under this regime, will pay a lump sum tax of EUR 100,000 on an annual basis, irrespective of the amount of income earned abroad. Thus, there is exhaustion of tax liability for the rest income earned abroad.

This regime can be used for 15 years maximum.

If their relatives utilize the method they should pay a lump sum tax of EUR 20,000 on an annual basis.

Any tax paid abroad is not offset against any Greek tax liability.

In case the individuals who utilize this regime earn taxable income in Greece, this income will be taxed according the Greek tax scale.

The relevant application has to be submitted by 31 March of each tax year.

The above regime is in force since 12 December 2019.

2. Which importance does the Greek land register have?

The property rights are registered in the cadastre (so called "Ktimatologio" in Greek), which is under progress for several regions of the country.

Therefore, the acquisition of real estate is succeeded with the notary deed (for purchase, gift acceptance, parental or inheritance acceptance) under the austere requirement that this will be recorded either in the Hellenic cadastre "Ktimatologio", wherever applicable, or in the respective land register (so called "Hypothikofylakeio" in Greek, which has "parts" per property per region, to record the property rights), in cases where the cadastre is not yet applicable.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Legal entities**

- The corporate income tax rate is set at 24% since fiscal year 2019 and onwards.
- The dividend tax rate is set at 5% since 1 January 2020.
  Based on the provisions of the New Tax Law intercompany dividends received by a legal entity which is tax resident in Greece, are tax-exempt if several conditions are met (such as if the recipient of the dividend owns at least 10% of the value of the share capital or the voting rights of the legal entity distributing the dividend, this shareholding is retained for at least twenty four months, and the legal entity performing the distribution has not its registered seat in uncooperative states). The above apply also to legal entities having business activities in Greece through a permanent establishment.

**Individuals**

The current income tax rates for individuals since 1 January 2020 and onwards are presented in the table below:

| **Income** | **Tax rates** |
|---|---|
| Up to EUR 10,000.00 | 9% |
| EUR 10,000.01 - EUR 20,000,00 | 22% |
| EUR 20,000.01 - EUR 30,000,00 | 28% |
| EUR 30,000.01 - EUR 40,000.00 | 36% |
| More than EUR 40,000.01 | 44% |

A special solidarity tax is also imposed on total taxable income based on the following table:

| Income | Tax rates |
|---|---|
| Up to EUR 12,000.00 | 0% |
| EUR 12,000.01 - EUR 20,000.00 | 2.2% |
| EUR 20,000.01 - EUR 30,000.00 | 5% |
| EUR 30,000.01 – EUR 40,000.00 | 6.5% |
| EUR 40,000.01 – EUR 65,000.00 | 7.5% |
| EUR 65,000.01 - EUR 220,000.00 | 9% |
| More than EUR 220,000.00 | 10% |

Rental income obtained by individuals in Greece is taxed according to the following scale:

| Rental income | Tax rates |
|---|---|
| Up to EUR 12,000.00 | 15% |
| EUR 12,000.01 - EUR 35,000.00 | 35% |
| More than EUR 35,000.00 | 45% |

The rental income is defined by the gross rental income minus 5% applied on gross rental income (5% is regarded as expense of depreciation).

**Exceptions: Non-residents**

In general, the fundamental difference in the Greek tax regime between Greek and non-Greek residents is summarized as follows:

| | Greek tax residents | Non-Greek tax residents |
|---|---|---|
| Income subject to taxation | Worldwide income | Income arising in Greece |
| Entitles to avail of deductions and credits | YES | NO* |

* *Residents of EU Member States or the European Economic Area (EEA) are entitled to deductions and credits in case at least 90% of their worldwide income is generated in Greece or if they can prove to the Tax Authorities that their worldwide income is so low that they would have been entitled to the tax deductions if they were taxed in their resident country.*



**Other taxes/levies**

**Stamp duty**

Rental income is subject to stamp duty at a rate of 3.6% of the actual rental value of the property, except for rental income from buildings used for residential purposes. This tax is payable upon filing of the annual income tax return of the fiscal year and is applicable for all owners (either individuals or legal entities). Stamp duty could be substituted by VAT charge 24% for commercial buildings between legal entities *(please see section D.2. below)*.

2. What is the tax depreciation period for real estate in Greece? Are there depreciation categories? Which depreciation method is used?

Depreciation is calculated for fixed assets owned based on the data of the Fixed Assets Register. Further, the Income Tax Law provides that there is the right to calculate depreciation in case of a finance lease of property if the following conditions are met:

- the ownership of the asset passes to the lessee at the end of the lease term;
- the lease agreement contains advantageous terms for the acquisition of the property at a price below market value;
- the period of the lease is at least 90% of the economic life of the asset even if the ownership title is not transferred at the end of the lease;
- at the end of the lease agreement, the present value of the lease is at least 90% of the market value of the leased asset;
- the leased assets are of such a specialized nature that only the lessee is entitled to use them without making significant changes.

Depreciation is calculated on the acquisition or construction value including any improvements, re-evaluations and environment rehabilitation costs.

Depreciation is not applicable on land, fields, etc.

Depreciation is compulsory and shall be performed annually. The method of depreciation is in principle a straight-line method. The chosen rate must be applied consistently.

For property the following table applies regarding depreciation rates:

| Asset category | Depreciation rate (per year) |
|---|---|
| Buildings, structures, facilities, industrial and special facilities not characterized as buildings, depots and stations, including their outbuildings (and special vehicles dump) | 4 |
| Land to be used for mining and quarrying, unless used for mining support service activities | 5 |

Depreciation calculation shall begin in the month following the month in which the property was acquired or used for the first time.

New legal entities are given the possibility not to calculate depreciation for the first three years of operation.

### 3. When is a foreign investor subject to limited tax liability in Greece?

Individuals who fall under the following conditions are deemed to be Greek tax residents and therefore obliged to declare and be taxed on their worldwide income in Greece:

- Individuals whose domicile or place of residence, or place of personal and family bonds is in Greece residence is deemed to be in Greece, when the individual is in Greece for more than 183 daysaccumulated in any 12-month period, since the first day of presence. The period of 183 days does not take into account residency for tourist, medical, therapeutic or other private causes.
- Individuals whose domicile or habitual abode is not established in Greece but who gain Greek-sourced income are subject to tax in Greece on income arising therein.
- Individuals who file non-tax resident returns in Greece will be obliged to provide the required supporting documentation to the Ministry of Finance validating such a claim. If such documentation is not filed in a timely manner, the individual will automatically be deemed a Greek tax resident, subject to tax in Greece on its worldwide income.



In order for a Greek tax resident to obtain a tax credit for income earned in a foreign country, this country will have to be double tax treaty affiliated with Greece and the tax withheld therein will have to be in line with the Double Tax Treaty provisions. The deductible amount of tax may not exceed the one that would be normally due, if this income was subject to tax in Greece.

### 4. Are asset deal and share deal possible in Greece? What are the main consequences?

**Asset deal**

Generally, any profit or loss realized by the seller (legal entities) from the sale of the assets will be recorded as such in the P&L account and subject to income tax accordingly (tax rate 24% with the following provision for changes as in legal entities above).

When the asset deal relates to real estate there is a real estate transfer tax both for individuals and legal entities of 3%.

Regarding individuals, any capital gain is subject to taxation by 15%.

In case of sale of real estate property there  is 15% income tax (this provision has been suspended until 31 December 2022) on the surplus value that would arise from the transaction which is decreased according to the age of the property. Further, if the ownership of the property is retained for at least five years then a discount of EUR 25,000 on the taxable value is applicable. Furthermore, the capital gains tax liability is borne by the seller. However, the buyer is jointly and severally liable for this tax in case that the seller fails to pay that.

**Share deal**

In the case of transfer of shares the following applies:

A tax of 15% is imposed on the surplus value of the transferred shares. The surplus value on which the tax is imposed is calculated as the difference between purchase and sales price. In case of transfer of listed shares purchase and sales price is determined based on the documents of the respective transactions of the Stock Exchange. In case non-listed shares are transferred the sales price is determined based on the equity of the entity at the time of the sale or the contract sale, depending on which one is higher. The purchase price is determined based on equity at the time of purchase or the price as stated in the initial purchase agreement, which one is smaller. In case the purchase price cannot be determined it is considered to be zero if the shares were bought after 29 September 1999. In case shares were bought before 29 September 1999 then purchase price is determined by the Ministry of Finance.

Income from the surplus value of the transfer of shares obtained by individuals who are tax residents in countries with which Greece has in place a Double Taxation Convention is tax-exempt under the condition that documentation for the proof of tax residency abroad is provided to the Tax Authorities.

In case that the surplus value of the transferred shares is obtained by legal entities, the surplus value is regarded as profit from business activity and it is taxed with corporate income tax rate of 24%.

## 5. Are thin capital rules applicable? Are there other limitations of interest deductions applicable?

According to Greek legislation, interest expense is not recognized as tax deductible in case the net interest expense (interest expense – interest income) is greater than EBITDA according to the following percentages:

| | |
|---|---|
| % of net interest expense in excess of EBITDA: | 30% |
| Financial year: | from 1 January 2017 |

If the net interest expense is not greater than EUR 3,000,000 per year, then the total amount of interest expenses is considered tax deductible. Any interest cost that is not deductible, may be carried forward and it will be deductible in the future years.

Interest payable to foreign entities is subject to withholding tax at the rate of 15% or at the rate determined by the tax treaty for the avoidance of double taxation (wherever applicable).

## 6. Can acquisition costs/financing fees/interest be deducted?

In principle, all business expenses are deductible to the extent that they fulfill the criteria set by law.

- Legal entities:
  The acquisition costs may be deducted from the income (with the annual depreciation method or the loan amortization method). The financing interest and the acquisition expenses (notary public, legal costs, land registry, etc.) may be deducted as well.

- Individuals:
  The acquisition costs are not deducted from the individual's income but are declared as an element that proves economic ability.

Expenses, including interest, are not tax deductible from income when they are payable by a Greek entity to an individual or legal entity being a resident or having its registered seat or being established in a "non-cooperative" country or in a country with preferential tax regime, unless the Greek entity can prove that the expenses concern real company's expenditures.

According to Greek legislation, countries are divided as below:

- "Cooperative" countries:
  - countries that have signed a Double Tax Treaty with Greece;
  - countries that have signed an Administrative Mutual Assistance Agreement with Greece and twelve other countries.

- "Non-cooperative" countries:
  - countries that have not concluded an Administrative Mutual Assistance Agreement with Greece.

- Countries with preferential tax regime:
  - countries in which the tax rate is equal to or less than 60% of the Greek income tax rate (the current Greek income tax rate is at 24%) are determined to be preferential tax regimes.

## 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In Greece, there is no group taxation for tax purposes. Each company is regarded and taxed as a separate entity.

## 8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest remitted to non-resident entities is subject to withholding tax at the rate of 15% or to the rate applicable in the tax treaty for the avoidance of double taxation, which Greece may have signed with another country.

From 1 January 2014 the Greek legislation has adopted the provision of EU directive 2003/49/EC based on which there is full exception to the withholding tax on interest income for related parties of EU Member States under several requirements (EU directive 2003/49/EC). With such tax being withheld, there is no further tax liability for the foreign entities.

9. Is a loss carry forward or carry back granted and what are the restrictions?

In Greece, tax losses may be carried forward to be offset against future profits for five consecutive years.

There is no possibility to carry back losses in Greece.

## C. Real Estate Taxes

1. Does Greece levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

A real estate transfer tax is payable in Greece on the sale of real estate which is not subject to VAT.

At the sale of property, a real estate transfer tax at a rate of 3% is paid by the buyer on the property's "objective value" or contract value in case the latter is greater than the "objective value".

"Objective value" is the deemed value determined according to a formula set by the tax authorities. The "objective value" takes into consideration the different price zones of property in different areas/regions in Greece, the age of the property, etc. The "objective value" does not coincide with the book or market value.

The acquisition of the "first-home residence", for residential purposes in Greece, is exempted from the real estate transfer tax. The above exemption applies to purchases of a residence up to a value of EUR 200,000 by an unmarried person and up to a value of EUR 250,000 for a married person. The amount increases by EUR 25,000 for each of the first two children and by EUR 30,000 for each subsequent child. The above exemption is granted to Greek, EU-citizens, and citizens of Albania, Turkey and from the former USSR with Greek origin.

2. Is real estate subject to any real estate tax? At which rate?

**Individuals**

Individuals are liable annually for a basic property tax and an additional tax that is imposed on property (aggregated property tax or as per the Greek abbreviation "ENFIA").

Basic tax is calculated taking into account several variances such as the size of the property, its age, whether it is an apartment or a detached house, its location, whether there is additional space etc.

Additional tax is calculated in case the property is valued above EUR 200,000 according to a progressive scale varying from 0.1% to 1.15% (the rate 1.15% is applicable to properties valued at EUR 2,000,000).

**Legal entities**

The real estate tax for legal entities relates to a basic tax calculated based on several variance as for the property tax of individuals (aggregated property tax or as per the Greek abbreviation "ENFIA").

Additional tax is calculated for legal entities as 5.5% on total property value (the additional tax of legal entities for own-use property is at 1%). In the before mentioned property value the value of non-taxable property (i.e. special purpose buildings, areas used for public airplanes landing etc.) is not included.

For public or private entities, which are non-profit organizations additional tax is set at 3.5%.

**Special tax on real estate ("Eidikos Foros Epi Akiniton")**

On real estate belonging to legal entities, from 1 January 2010 a tax of 15% on the taxable value is imposed annually. There are exemptions where certain requirements should be met, e.g. the shareholders – the ultimate beneficiary owners – need to have a Greek tax identification number (AFM).

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

VAT is applicable on real estate sales only when:

- seller is subject to VAT;
- transfer will be made against a price and in money;
- property is a building;
- this will be the first time that the property is used, with building permission after 1 June 2006;
- property shall not be the first home for the buyer;
- transfers of below listed real estate are not subject to VAT:
  - land – fields;
  - old property;
  - new property, where the seller is not subject to VAT.

There is a three-year suspension of VAT charge on real estate's sale until 31 December 2022.

### 2. What are the VAT consequences of renting/leasing of real estate?

Generally, renting or leasing of real estate is not subject to VAT.

However, since July 2013 onwards entities and entrepreneurs can choose to be subject to VAT, in relation to the industrial facilities and safes and to all commercial and business purpose real estate leases. The property owners are eligible to VAT by submitting an application selecting the option to be subject to VAT to the competent tax office. Property owners are considered to be the entrepreneurs and entities owning the leased property or having any rights on the property (i.e. to sublease, usufruct).

After the submission of this application the lessor has the right to deduct VAT on purchases/expenses incurred relating to the construction or maintenance of the property and any other expenses relating to the property.

There is no VAT in cases of rental for residential purposes.



## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

When there is a capital increase, the capital concentration tax is imposed on the increase amount and is set at 1% and for SA entities an additional 1% competition committee duty.

No capital concentration tax is imposed on a company's establishment.

### 2. Is there a stamp duty on debt granted to a local company?

Stamp duty on loans/debts is set at 2.4%.

Stamp duty for cash deposits or withdrawals by shareholders/partners is set at 1.2%.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Real Estate Investment entities are companies with special tax treatment. The objective of the company is to invest in real estate and more specifically the acquisition and management of real estate. These entities typically distribute a percentage of profits as a dividend (Law 4141/2013 as this amends articles 21-31 of L.2778/1999).

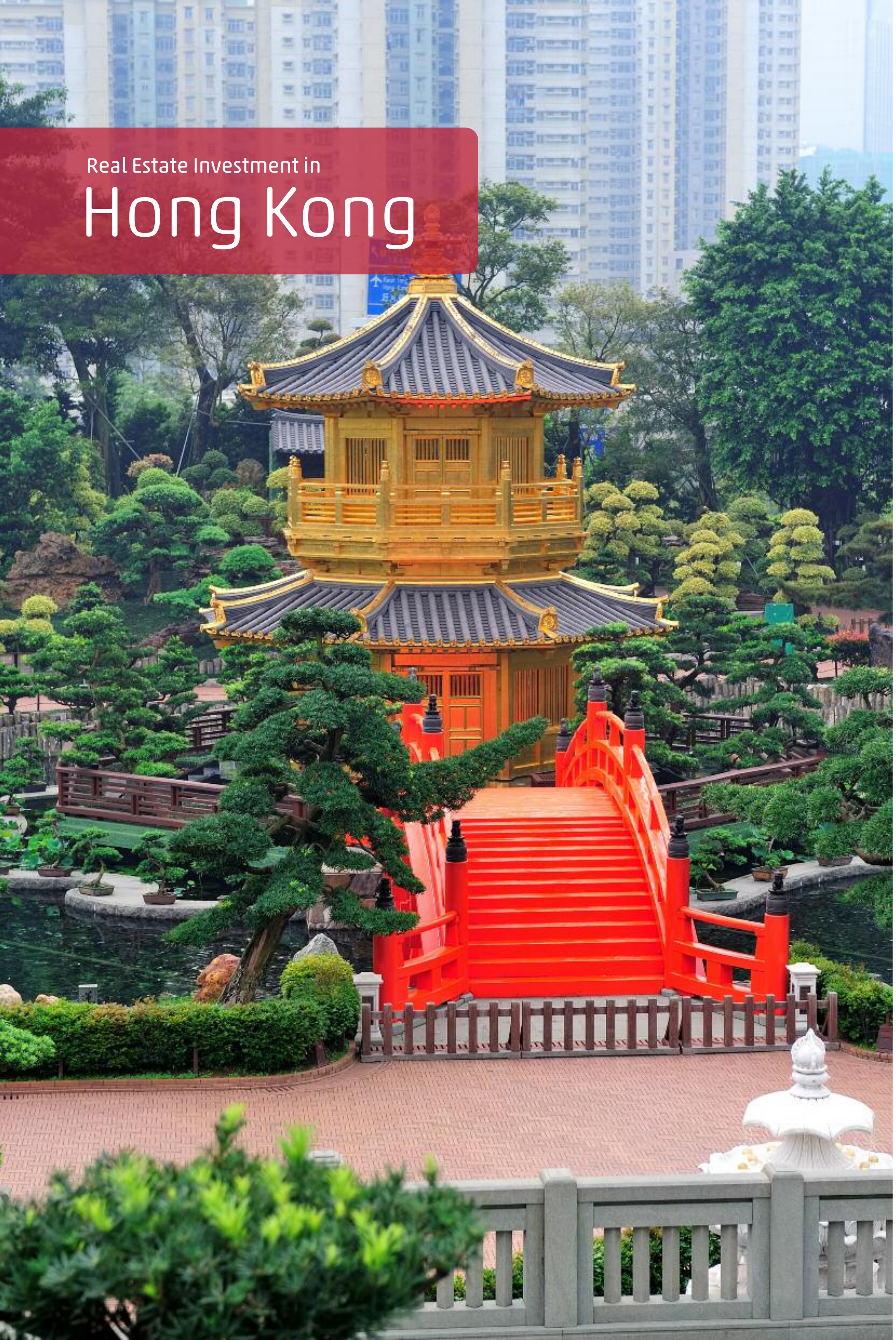
The company is supervised by the Hellenic Capital Market Commission.
The advantage of the company is the favorable tax regime and they have the following requirements:

- minimum capital EUR 25 millions;
- statutory seat in Greece;
- at least 80% of the assets must be invested in real estate or in Collective Investment on Transferrable Securities (UCITS) on real estate funds;
- development cost must not exceed 40% of the investment assets;
- assets for operating cannot exceed 10% of the total assets;
- in markets outside the European Union can invest up to 20% of the total investment;
- up to 75% of the assets may be borrowed;
- no property may exceed in value 25% of the total investments.

Taxation:

- annual income tax at 10% on the European Central Bank benchmark rate (EURIBOR) increased by one (1) percentage unit; there is exemption from the real estate transfer tax when buying a property;
- there is no capital gain tax;
- there is no advance tax;
- there is no dividend tax;
- the tax liability is exhausted both for legal entities and the shareholders.

Profit distribution at least 50% of the annual net profit. Capital gains do not need to be distributed.




## A. Legal/General

1. Are non-residents entitled to acquire real estate in Hong Kong?
   Does the acquisition have to be carried out by a Hong Kong corporation?

There are no restrictions on the acquisition of real estate in Hong Kong by non - residents. Both non-resident individuals and corporations can acquire real estate in Hong Kong.

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2. Which importance does the land register have?

The Hong Kong Land Registry has the following functions:

- registration of documents affecting land under the Land Registration Ordinance;
- provision of facilities for search and supply of copies of the information extracted from land registers and related records;
- registration of owner's corporations under the Building Management Ordinance.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Hong Kong's taxation is based on a territorial system. Therefore, only income arising or derived from Hong Kong is subject to tax. Profits from trade or business are subject to profits tax under a two-tiered regime.

Under the two-tiered regime, the profits tax rate for the first HKD 2 million of assessable profits of corporations and unincorporated businesses will be reduced to 8.25% and 7.5% respectively. Profits above that amount will continue to be

subject to the profits tax rate of 16.5% and 15% respectively. In order to prevent income splitting, the new law contains restrictive provisions prescribing that "connected entities" can only elect a single entity as eligible for the two-tiered regime for a given year of assessment.
Hong Kong does not have a tax consolidation regime. Hong Kong does not allow groups of companies to file consolidated profits tax returns. No group loss relief (e.g. loss consolidation, loss transfer) for taxpayers in group companies.

Although Hong Kong does not tax capital gains, net gains on certain transactions deemed speculative might be liable for profits tax as trading income.

Income from employment or office is subject to salaries tax. Salaries tax is charged at the lower of the standard rate of 15% applying to the net chargeable income (before personal allowances); and the progressive rates applying to the net chargeable income (after personal allowances) at the following rates:

| | |
|---|---|
| On the first HKD 50,000 | 2% |
| On the next HKD 50,000 | 6% |
| On the next HKD 50,000 | 10% |
| On the next HKD 50,000 | 14% |
| Remainder | 17% |

## 2. What is the tax depreciation period for real estate in Hong Kong? Are there depreciation categories? Which depreciation method is used?

There are two real estate asset classes which qualify for different types of depreciation allowances:

- industrial buildings;
- commercial buildings.

**Industrial buildings**

For the construction of industrial buildings which are to be occupied for the purpose of trade, taxpayers are entitled to an initial allowance and an annual depreciation allowance of the capital expenditure:

- The initial allowance is 20% for the year of assessment in which the expenditure was incurred. If the payment is split in more than one tax year the initial allowance will be granted for each payment separately.
- Additionally, an annual depreciation allowance of 4% of the initial capital expenditure is allowed for each year, starting from the year in which the expenditure was incurred until the residue of expenditure is nil.

In the case of purchase of industrial buildings from a person who has previously used the building, the future allowances are based on residual value of expenditure. This is the historical cost of construction less allowances granted prior to acquisition plus balancing charges made.

**Commercial buildings**

For commercial buildings there is no initial allowance available.

A depreciation allowance of 4% of the initial capital expenditure is allowed.

A taxpayer who applies the refurbishment deduction is not eligible for the above-mentioned capital allowances for industrial and commercial buildings. Capital expenditure on the renovation or refurbishment of business premises is deductible over a five-year period in equal instalments (i.e. 20% per year), commencing in the year in which the expenditure is made.

## 3. When is a foreign investor subject to limited tax liability in Hong Kong?

Under Hong Kong's territorial tax system, it is not a question of limited or unlimited liability to tax, but rather a question of where income has been generated.

Every "person" carrying on a trade, business or profession in Hong Kong is chargeable to profits tax. "Person" thereby includes both corporations and partnerships. Residence status is therefore – generally – irrelevant for Hong Kong tax purposes.

Due to Hong Kong's territorial tax system, the critical question is whether or not business is being carried on in Hong Kong which is a question of fact to be determined based on the circumstances of each individual case. A company does not need to have extensive activities in Hong Kong before it is considered to be carrying on a business here. Furthermore, the activities of a company's agent in Hong Kong may also be relevant.

The broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he has done it. In other words, the proper approach is to identify the operations which produced the relevant profits and ascertain where those operations took place. The source of profits must be attributed to the operations of the taxpayer which produce them and not to the operations of other members of the taxpayer's group. The place where the day-to-day investment/ business decisions take place is only one factor which has to be taken into account in determining the source of profits. It is not usually the crucial factor (as may be in some other jurisdictions).

### 4. Are asset deal and share deal possible in Hong Kong? What are the main consequences?

Both a share deal and asset deal are possible in Hong Kong. Hong Kong does not have any specific regulations for mergers and acquisitions or restructuring activities.

**Asset deal**

For the vendor, there is no indirect tax (e.g. VAT) on the sale of assets.

Ad valorem stamp duty on immovable property of up to 15% applies. There are different rates depending whether the property is residential or non-residential and the profile of the purchaser. Lower rates apply on the purchase of residential property by a Hong Kong permanent resident under specified circumstances.

The stamp duty has to be paid by both the vendor and purchaser.

Where residential property is sold within 36 months, an additional special stamp duty is applicable at rates ranging from 10% to 20%.

In addition, a Buyer's Stamp Duty (BSD) is payable on the acquisition of Hong Kong residential properties by any person other than a Hong Kong permanent resident. The BSD will be charged at a flat rate of 15% at the higher of consideration and market value.

**Share deal**

Hong Kong does not have a capital gains tax. Although Hong Kong does not tax capital gains, net gains on certain transactions deemed speculative might be liable for profits tax as trading income.
The stamp duty applicable is HKD 5 plus 0.2% of the value of the stock or market value (whichever is higher) to be transferred. It is to be borne by the vendor and the purchaser, in equal share.

A purchaser may prefer a share deal if losses can be carried forward. Also, if there is real estate in the target company, lower stamp duty applies under a share deal.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

No thin capitalization rules are applicable in Hong Kong.

Interest deduction is only allowed under certain conditions and depends on the purpose of incurring the interest expense. Financing cost for the acquisition of shares is a non-deductible expense. Interest expenses for the acquisition of assets are generally deductible if the funding has been received from a financial institution. Deduction is not allowed for interest paid to a non-resident (other than financial institution), unless the interest income is taxable under Hong Kong profits tax, which generally, would not be the case.

### 6. Can acquisition costs/financing fees/interest be deducted?

*See above.*

Whether or not expenses are tax deductible depends on the following circumstances: generally, expenses are deductible only if they can be characterized as revenue in nature. This means, they have to be incurred for the purpose of generating taxable income in Hong Kong.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

There is no possibility to be taxed on the basis of consolidated income or as a fiscal unity in Hong Kong.

As there are strict limitations on the deductibility of interest expenses, debt push-down is not commonly practiced.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Hong Kong does not withhold any taxes on interest.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Business losses can be carried forward. No restrictions apply. They can be offset against future profits.

Tax losses can be carried forward indefinitely until utilised. There are no loss carry back rules in Hong Kong.

## C. Real Estate Taxes

1. Does Hong Kong levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

There is no real estate transfer tax. Hong Kong levies Ad Valorem Stamp Duty, Special Stamp Duty and Buyer's Stamp Duty.

| Consideration/ Value of property | Scale 1 rates[1] | Scale 2 rates[2] |
|---|---|---|
| Up to HKD 2m | 1.5% | HKD 100 |
| HKD 2m - HKD 3m | 3% | 1.5% |
| HKD 3m - HKD 4m | 4.5% | 2.25% |
| HKD 4m - HKD 6m | 6% | 3% |
| HKD 6m - HKD 20m | 7.5% | 3.75% |
| Over HKD 20m | 8.5% | 4.25% |

Transfer of residential property within 36 months is subject to the following additional special stamp duty if the property was acquired on or after 27 October 2012:

| Holding period | The property was acquired on or after 27 October 2012 |
|---|---|
| Less than 6 months | 20% |
| 6 to 12 months | 15% |
| 12 - 36 months | 10% |

In addition, a Buyer's Stamp Duty (BSD) is payable on the acquisition of Hong Kong residential properties by any person other than a Hong Kong permanent resident. The BSD will be charged at a flat rate of 15% at the higher of consideration and market value.

[1] Subject to marginal relief upon entry into each higher rate band.
[2] Rates apply to residential property acquired by a Hong Kong permanent resident who does not own any other residential property in Hong Kong at the time of acquisition and certain other limited circumstances.



The transfer of immovable property or shares between associated bodies can be tax-exempt under the following conditions:

- one of the associated bodies needs to be an owner of at least 90% of the issued capital of the other;
- the transaction was not made in pursuance of or in connection with an arrangement under which:
  - both associated bodies are other than a body corporate;
  - the transfer was previously made by such a person; or
  - the transferor or the transferee cease to be associated within the meaning of No.1 only due to a change in the percentage of the issued share capital of the transferee in the beneficial ownership of the transferor or a third body corporation.

Stock transactions are subject to stamp duty of 0.1% of the consideration or market value, whichever is higher, on both the buyer and seller (i.e. total is 0.2%). The collector of stamp revenue is empowered to impose duties based on the market value of the property conveyed or shares transferred if the consideration is inadequate.

2. Is real estate subject to any real estate tax? At which rate?

Real estate is subject to property tax. Property tax is levied at 15% on the rental income payable to the owners of land and/or buildings in Hong Kong. The only allowable deductions are rates (paid by the owner), irrecoverable rent and a 20% notional allowance for repairs and expenses. If a company owns property and pays profits tax for income generated by the property it will usually be exempted from property tax.

## D. Value Added Tax

Hong Kong does not impose VAT or any other indirect tax.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

No.

## 2. Is there a stamp duty on debt granted to a local company?

No.

## 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

**Tax treatment at REIT level**

**Profits tax**

According to the Hong Kong Inland Revenue Ordinance, an authorised REIT is exempt from Hong Kong profits tax.

However, the REIT holds real estate in Hong Kong through Special Purpose Vehicles ("SPV"), such vehicles are subject to profits tax of 16.5%.

Dividends paid by a SPV to another SPV are exempt from profits tax.

**Property tax**

Rental income received by a REIT by letting a real estate located in Hong Kong is subject to Hong Kong property tax at 15%.

However, exemption is granted if the real estate located in Hong Kong held through SPV as profits tax would have been paid.

**Stamp duty**

The stamp duty tax treatment of REIT is the same as normal transaction of real estate, shares or lease of real estate.

**Tax treatment at the investor level**

**Profits tax**

The gain derived from disposal of the units of REIT is subject to profits tax if the investor is carrying on a trade or business in Hong Kong.



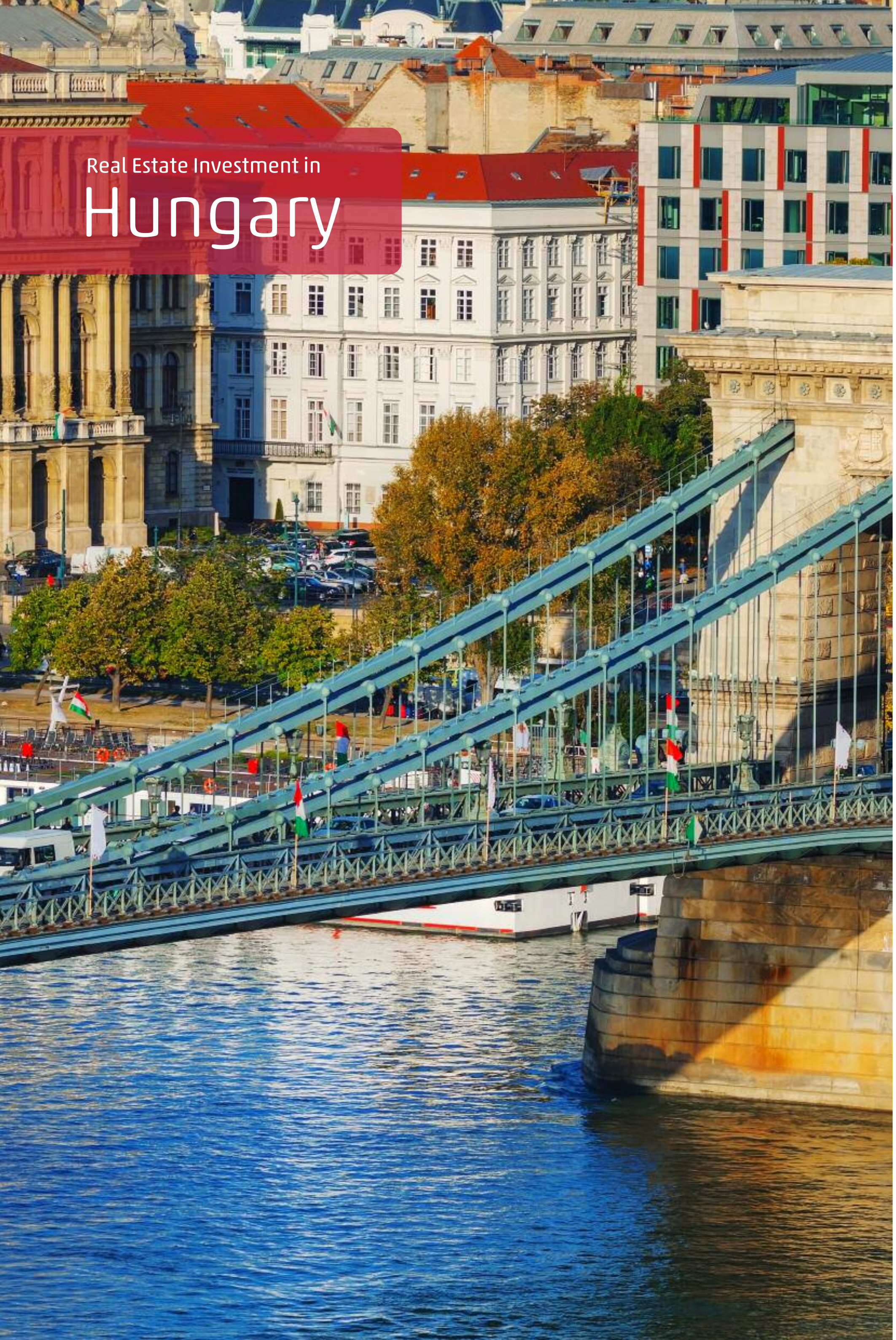
The IRD will treat the gain on disposal of units in a REIT as capital gain and grant an exemption if the investor held the REIT as a long-term investment.

Distributions received from a REIT are not subject to any Hong Kong tax.

**Stamp duty**

Stamp duty is applied on the transfer of the REIT units at 0.2% (payable by the transferor and transferee at 0.1% each) of the transfer consideration or the value of the stock transferred, whichever is the higher.

In addition, any instrument of transfer are stamped at a fixed duty of HKD 5.




## A. Legal/General

1. Are non-residents entitled to acquire real estate in Hungary?
   Does the acquisition have to be carried out by a Hungarian corporation?

Currently, non-resident private individuals and legal persons of the EU or EEA may generally acquire non-agricultural real estate in Hungary under the same conditions as Hungarian residents. Individuals and corporations being resident outside the EU/EEA may acquire non-agricultural real estate in Hungary if they meet certain conditions and request permission from the respective authority.

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The acquisition of agricultural land by non-residents was not possible until 30 April 2014 (the former seven-year transitional period was extended by three years). Currently, after the expiration of this transitional period, from 1 May 2014 agricultural and forestry land may theoretically be acquired by non-resident private individuals of EU or EEA Member States provided that they meet certain criteria. For third-country (non-EU or non-EEA) residents, the restriction on the acquisition of agricultural and forestry land in Hungary remained unchanged after 1 May 2014. The act on agricultural and forestry land includes detailed and complex rules in connection with the above.

There is no mandatory requirement that non-residents could acquire real estate in Hungary only by way of a Hungarian registered company. As such, non-resident corporate entities may acquire real estate in Hungary also directly.

2. Which importance does the land register have?

The land registry is an authentic record: the details of the real estate as well as the related rights and facts indicated in the real estate's title deed are presumed to be true until otherwise substantiated. In case of an ownership transfer of a real estate it is required for the acquisition of ownership that the ownership right of the transferee is registered in the title deed of the real estate in question. The required documents have to be submitted to the land registry within 30 days after the conclusion of the contract.

For the registration of the real estate's ownership right an administrative fee amounting to HUF 6,600 per real estate has to be paid. The administrative registration fee of a mortgage is HUF 12,600 per real estate.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate:
  - There is a flat 9% corporate income tax rate.
  - "Expected" minimum tax base: in general, 2% of total revenues. It may apply to companies having revenues but low level of pre-tax profit or corporate income tax base. Taxation based on the minimum tax base, if applicable, can be avoided by submitting a declaration verifying that costs and expenditures recorded at the company are real costs and expenditures.

- Personal income tax rate:
  - The personal income tax rate is (flat) 15%.

- Personal income tax rate for income from sale of real estate:
  - The rate is 15%.
  - Profit from the sale of residential properties and other than residential properties are exempt from personal income tax after five years from the date of acquisition.

- Participation exemptions:
  - The Hungarian Corporate Income Tax Act provides for an exemption of dividends received from domestic or foreign shareholdings provided that the distributing company is not a controlled foreign company (CFC). This applies regardless of the amount and holding period of the participation.
  - Generally, capital gains are taxable in Hungary under the general rules. Capital gains/foreign exchange gains deriving from the sale or in-kind contribution of stockholding in a qualifying subsidiary are exempt from corporate income tax. Qualifying subsidiaries are those where the company has continuously held a shareholding for at least one (1) year and the acquisition of shares was reported to the tax authority within 75 days following the acquisition.

- Tax-grouping:
  - From 1 January 2019, the Hungarian legislation allows for tax-grouping (created by at least two entities) not only for VAT purposes but also for corporate income tax purposes. A corporate tax group can be established by at least two qualifying entities being related parties on the basis of (direct or indirect) voting rights of at least 75% in each other. As a further requirement, members of a corporate tax group must have the same balance sheet date and bookkeeping currency. The corporate tax group is established as of its registration by the Hungarian tax authority beginning from the tax year subsequent to the year of submission of the request for establishment.
  - Members of a corporate tax group must establish their corporate income tax base on a standalone basis (as if they were not members of a corporate tax group) while a group tax return must also be prepared and submitted. The corporate group's tax base is the amount of non-negative tax bases established by the members on a standalone basis which can be reduced by tax losses carried forward determined based on a special group taxation rule.
  - The main benefit of a corporate tax group can be that transfer pricing provisions within members of a corporate tax group do not have to be observed.

2. What is the tax depreciation period for real estate in Hungary?
   Are there depreciation categories? Which depreciation method is used?

The tax depreciation rate for buildings varies from 2% to 6% p.a., whereby the basis of depreciation is the acquisition value. For tax purposes, no residual value should be taken into account.

The depreciation rate for long-life structured building amounts to 2% p.a.
The Hungarian law provides for a shorter depreciation period for mid-life (3%) and short-life structured building (6%).

For tax purposes, leased-out real estate can be depreciated with a 5% rate.

Land cannot be depreciated.

## 3. When is a foreign investor subject to limited tax liability in Hungary?

From 2010, if a foreign tax resident shareholder realises capital gains upon the sale of shares in a company holding real estate, under certain circumstances, the foreign shareholder may be subject to corporate income tax in Hungary.

For Hungarian corporate income tax purposes, a company qualifies as a company holding real estate if the book value of Hungarian properties represent more than 75% of total assets shown in the financial statement of a taxpayer or the financial statement of the taxpayer and its qualifying related parties on an aggregate basis exceeds 75% of the book value of their total assets and the taxpayer's shareholder or the shareholder of one of the taxpayer's qualifying related parties' is, at least for one day during the tax year, tax resident in a country with which Hungary does not have an effective double tax treaty or such double tax treaty allows the taxation of capital gains in Hungary. The corporate income tax rate is 9%.

## 4. Are asset deal and share deal possible in Hungary? What are the main consequences?

The real estate investor can acquire Hungarian real estate in the course of an asset deal (i.e. direct acquisition of real estate by a foreign entity or acquisition by a local company established by a foreign entity for acquisition purposes) or share deal (i.e. acquisition of shares in an entity owning real estate).

**Asset deal**

By performing an asset deal, the foreign investor either directly or through a local entity established for such purposes acquires the real estate from a Hungarian company.

The capital gain realised upon the sale of this real estate (i.e. difference between tax value and purchase price) would be subject to corporate income tax at the level of the Hungarian company formerly holding the real estate. The corporate income tax rate is 9%.

The transferee acquiring the real estate is subject to transfer tax levied based on the market value of the real estate *(see below)*.



**Share deal**

In a share deal, instead of a direct acquisition of a real estate, a share in a company holding the real estate is obtained.

Any capital gains realized on the sale of shareholding would be subject to corporate income tax (except the sale of a reported shareholding). Capital gains realized by a non-resident shareholder of a Hungarian company holding real estate may also be subject to corporate income tax. The corporate income tax rate is 9%.

At the transferee level, transfer tax payment obligation applies in the case of acquiring at least 75% shareholding in a company holding real estate *(see below)*.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

**Interest limitation rule**

From 1 January 2019 new interest limitation rules have been introduced in Hungary adopting the EU Anti-Tax Avoidance Directive No. 2016/1164 (ATAD-I).

Compared to the previous equity-based, thin capitalisation approach (3:1 debt-to-equity ratio), a new, EBITDA-based interest limitation rule was introduced in line with ATAD-I. Accordingly, borrowing costs in excess of taxable interest revenues (exceeding borrowing costs) are tax deductible up to 30% of fiscal-year earnings before interest, taxes, depreciation and amortisation (EBITDA) or up to EUR 3 million (HUF 939,810,000).

Exceeding borrowing costs taken into account as a tax base increasing item can be carried forward for future tax years. Unused interest capacity (positive difference of 30% of current year's EBITDA and the exceeding borrowing costs) can be carried forward for a definite period of 5 years. Rules generally aim at ensuring interest deductibility of 30% of the EBITDA in long term. No carry back provisions exist.

Taxpayers under group consolidation may rely on group-equity rules in line with ATAD-I.

Members of a Hungarian corporate income tax group must consider their exceeding borrowing costs pro-rated to total exceeding borrowing costs on group level.

As part of a grandfathering rule, previous thin capitalisation rules (3:1 debt-to-equity ratio) apply for loans concluded prior to 17 June 2016. For these agreements, the new interest limitation rules apply from the extension of the term or increase of the loan amount occurring from 2019.

**Transfer pricing rule**

In respect of financing transactions between companies qualifying as related parties in accordance with the Corporate Income Tax Act, transfer pricing provisions need to be observed.

As a compliance related requirement, the related party affected by the financing transaction must be reported by the Hungarian corporate income taxpayer to the Hungarian tax authority within 15 days from the first transaction.

The application of non-arm's-length interest rates in a related party transaction results in the corresponding adjustment of the Hungarian taxpayer's corporate income tax base.

In general, interest rates applied in related party financing transactions need to be supported with transfer pricing documentation. There is no need to prepare transfer pricing documentation for related party financing transactions if the annual interest amount for the given tax year (aggregated value of contracts that can be consolidated) does not exceed HUF 50 million (approx. EUR 156,000) on arm's-length value.

### 6. Can acquisition costs/financing fees/interest be deducted?

In addition to the new interest limitation rules in line with ATAD-I and transfer pricing provisions, costs and other expenditure are deductible for corporate income tax purposes which incurred in relation to the taxpayer's business-like and revenue generating activity. General deductibility is presumed unless costs, expenses (e.g. interest expenses) incur as a consideration paid to a so-called controlled foreign company.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

If the real estate is held by a Hungarian corporate entity (target) and the purchaser acquires the target company, from a corporate law perspective, Hungarian law allows the merger of the Hungarian target company holding the real estate with the purchaser company. Costs and expenditures in connection with the acquisition of the shares of the target are, in general, also tax deductible, however, due to recent modifications of corporate income tax laws with the aim of ensuring an increased level of meeting substance requirements, genuine business reasons need to be presented to support tax deductibility of related costs and expenses in such cases.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Hungary does not levy withholding tax on cross-border payments provided that the recipient is a corporation (regardless of whether the recipient is resident in the EU, OECD or treaty country or not). This applies to dividend distribution, royalty and interest payments to corporations abroad.

Private individual recipients may be subject to personal income tax – however the respective treaty may reduce or eliminate withholding taxation if certain administrative requirements are met (e.g. availability of a tax residence certificate, beneficial ownership declaration prior the payment and a residence certificate by the end of the year at the latest).

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

From 2015, tax losses may be carried forward for five years to relieve the company's profits provided that losses are established in accordance with the good faith business principle. However, when offsetting the current tax year's positive taxable income by losses brought forward, the earliest losses must be used first (according to the first-in, first-out principle). Tax losses occurred prior to the tax year 2015 can be used until the end of the tax year 2030 the latest.

Moreover, according to the modification to the Act on Corporate Income Tax effective from 2012, taxpayers are able to use the accrued losses of previous years only up to 50% of the current year's positive tax base (not including accrued losses). This provision only affects the schedule of the utilisation of accrued losses brought forward from earlier tax years and does not have an impact on the amount of losses in total.

Utilization of tax losses in the case of legal succession or transformation as well as in the case of changes in the company's ownership structure can be limited.

Generally, tax loss carry back is not allowed in Hungary. However, special taxpayers engaged in the agricultural sector are allowed to benefit from loss carry back. For these taxpayers, losses can be used to offset profits of the preceding two years under certain conditions.

## C. Real Estate Taxes

1. Does Hungary levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

The acquisition of a participation in a company holding real estate in Hungary may be subject to transfer tax (and a reporting obligation) if the total participation in the target company reaches or exceeds 75% of all participations in that company. From 2014, a company qualifies as "company holding properties" if the value of the Hungarian real estate properties shown on balance sheet date represent more than 75% in the (total) value of its assets or has at least 75% shareholding in a company (directly or indirectly) that satisfies the first criterion. Any participations in the target company that are held by the acquirer's relatives (parents, children, spouse, registered common-law spouse) or by the acquirer's business interests have to be added together for the purpose of calculating this percentage value.

Exemption from transfer tax is available for transfer of shareholding in companies holding real estate as well as real estate properties between companies qualifying as "related parties" under the Act on Corporate Income Tax. In the case of a transfer of real estate, the related party recipient's main business activity should be lease, operation of own, rented properties or transfer of own properties to qualify for exemption from transfer tax. To benefit from such exemptions, the legislation provides for some conditions to fulfil for the company acquiring the quotas/properties.

Exemption also applies if the acquisition takes place by way of a preferential transformation, preferential exchange of shares of preferential transfer of assets as per the Act on Corporate Income Tax.

The general transfer tax rate of payable on property transfers (as well as for residential properties) is 4%. If the market price of the property (without any deduction of potential encumbrances) exceeds HUF 1bn, the rate is 2% on the excess part, although the total amount of transfer tax payable per property cannot exceed HUF 200 million.

In the case of companies engaged in the sale of properties in a business manner ("real estate reseller"), a flat 2% tax rate applies (without an upper limit) for the acquisition of real estate assets provided that the company meets certain conditions in this respect.

Acquisition of real estate by a qualifying real estate fund is subject to a flat 2% transfer tax rate (without an upper limit) based on the market value of the real estate (without any deduction of potential encumbrances).

2. Is real estate subject to any real estate tax? At which rate?

Municipalities may levy taxes on properties (plots and buildings) located within their territory. Undeveloped land plots within the territory of a municipality (with some exceptions) are subject to land tax. The tax base can be determined either by the size or the adjusted market value of the land, depending on the decision of the municipality. The tax rate may be fixed by the municipality, but may not exceed HUF 200 per square metre or 3% of the adjusted market value of the land.

Buildings situated within the territory of the municipality are generally subject to building tax, but there are some exemptions. The tax base is determined either by the size or the adjusted market value of the building, while the tax rate may not exceed HUF 1,898 per square metre (in 2019) or 3.6% of the adjusted market value of the building.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Generally, the sale of real estate occupied more than two years ago and of undeveloped land (except for construction lands) is tax-exempt. Notwithstanding the general tax exemption rule, the taxpayer may opt for taxation upon submitting a reporting form to the tax authority – such decision cannot be changed for the next five consecutive years. Such taxable transactions under certain circumstances are subject to the reverse charge mechanism where VAT is payable (and deductible if general conditions of VAT deduction are met) by the customer.

Contrary to that, the alienation of real estate occupied for less than two years and construction land is always subject to VAT at a rate of 27% (the reverse-charge mechanism does not apply in this case). There is also a preferential tax rate of 5%

for the sale of new flats with no more than 150 square metres of total usable floor space and detached family houses with no more than 300 square metres of total usable floor space.

Under certain circumstances listed by VAT laws, the sale of construction lands or real estate qualifying as new based on the VAT laws by private individuals (originally not qualifying as VAT taxpayers) may also be subject to VAT.

The sale of shares is exempt from VAT regardless of the fact whether the main asset of the entity acquired is a real estate. Additionally, providing real estate as a contribution in-kind to a company can be out of scope of VAT under certain conditions.

### 2. What are the VAT consequences of renting/leasing of real estate?

In brief, rental or lease of real estate is also, in general, tax-exempt (with certain exceptions like rental of a parking place or rental of machinery attached to a real estate).

However, if the party renting out the real estate has opted for taxation, 27% VAT is to be charged (reverse-charge mechanism does not apply in this case). Electing to treat the rental of real estate as a taxable supply enables the deduction of input VAT at the lessor if other general conditions of VAT deduction as regards a particular supply are also met (possession of a proper VAT invoice or relevant customs receipt as appropriate and that no special input VAT deduction limitations exist).

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

No capital tax obligation arises in Hungary; initial capital injection or further increase of capital is non-taxable.

Only duty fees apply with regard to the registration of such corporate changes (initial incorporation duty fee varies between HUF 50,000 and HUF 600,000 depending on the company form while, in general, in respect of any corporate law related changes of an existing entity, a HUF 15,000 duty fee applies).



### 2. Is there a stamp duty on debt granted to a local company?

No stamp duty applies in this case.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Hungary adopted rules with respect to real estate investment trusts (REIT) back in 2011. However, up until now, only a few companies have opted for such real estate investment route.

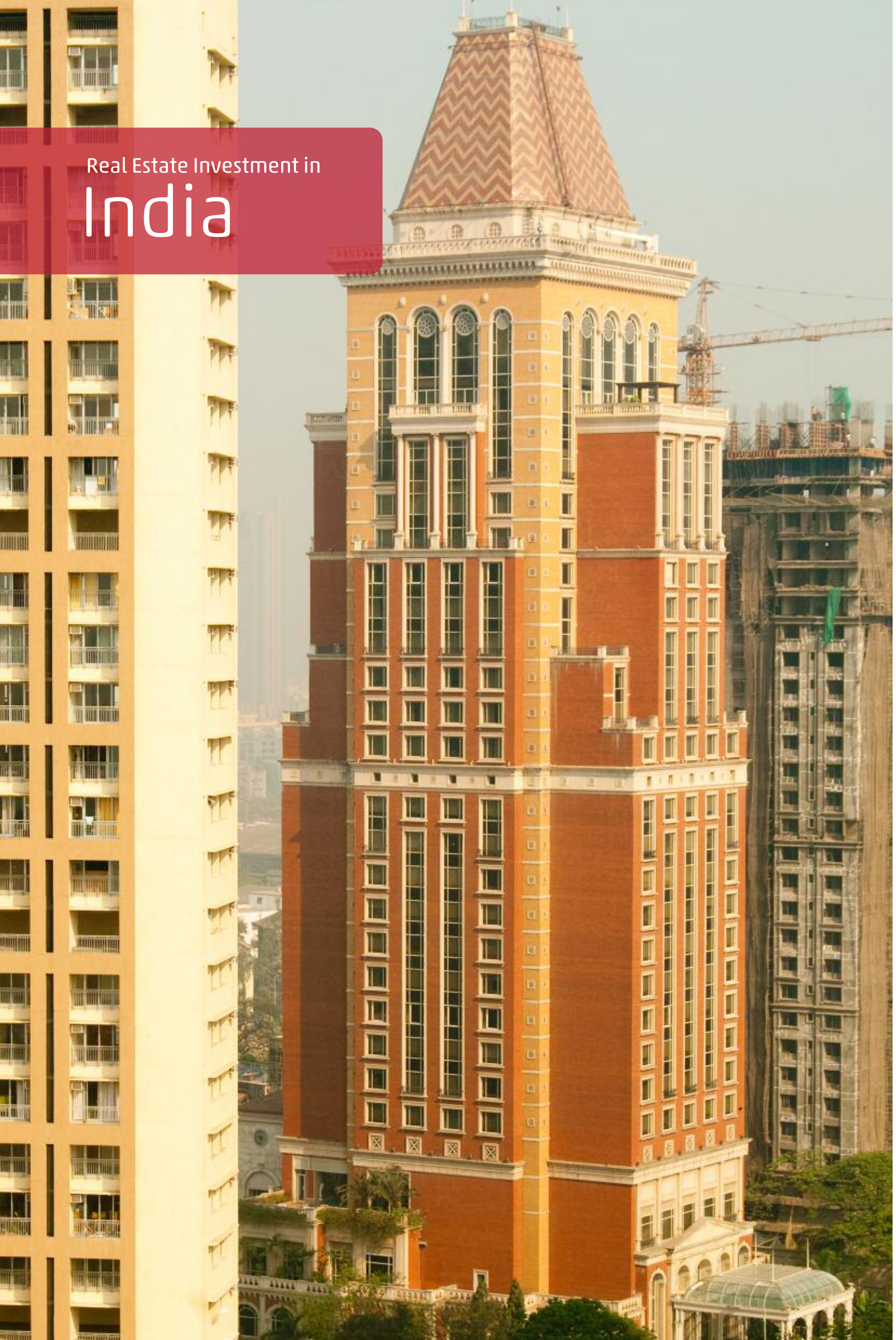
REITs must operate in the form a public joint stock company listed on the stock exchange with an initial capital of at least HUF 5 billion (approx. EUR 15,6 million) and must pursue either of the following business activities: sale of own real estate; lease, operation of own real estate; real estate management and asset management; development of building projects.

Shareholding of REITs in other companies is limited to certain qualifying entities while at least 25% shareholding in a REIT must comprise of small investors having individually (directly or indirectly) a shareholding not more than 5% compared to the total share capital.

The real estate portfolio of a REIT is subject to quarterly valuation requirement.

A REIT status of a public joint stock company is registered with the tax authority where the rights and obligations pertaining to the operation as a REIT are applicable from the effective date of registration with the tax authority.

A REIT (similar to a qualifying real estate fund) is, in general, exempt from corporate income tax, local business tax and innovation contribution obligation. Real estate assets acquired by a REIT are subject to a flat 2% (uncapped) transfer tax payment obligation (similar to acquisitions by a qualifying real estate fund). No withholding tax applies on outbound dividends distributed by a REIT to a foreign tax resident corporate shareholder. Dividends distributed to a local tax resident corporate shareholder is tax-exempt while 15% tax applies if dividends are distributed to a local tax resident individual (treaty provisions may limit the amount of tax in the case of a foreign tax resident individual shareholder).




## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in India? Does the acquisition have to be carried out by an Indian corporation?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The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by certain persons domiciled outside India.

The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 determine how to deal with the purchase or transfer of immovable property by certain specified persons as summarized in table below:

| Categories of specified persons | RBI Regulations |
|---|---|
| Foreign individuals of specified countries (Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan or Democratic People's Republic of Korea). | → Not permitted to acquire or transfer immovable property in India without the prior permission of the Reserve Bank. Such prohibition shall not apply to an Overseas Citizen of India ("OCI").<br>→ No restriction on purchase of immovable property on lease for a period not exceeding five years. |
| Non-resident Indian ("NRI") or OCI (other than from specified countries) | → Acquisition of agricultural land/plantation property/farmhouse is generally prohibited.<br>→ Acquisition of other immovable property in India is permitted provided consideration paid out of (i) funds received in India through inward remittance under the permitted banking channels or (ii) funds held in any non-resident account.<br>→ Can also acquire immovable property in India by way of gift from a person resident in India or from an NRI or from an OCI (who is a relative[1]).<br>→ Can acquire immovable property by way of inheritance from a person who was resident outside India who had acquired such property – (a) in accordance with provisions of foreign exchange law or (b) from a person resident in India.<br>→ Person resident outside India (other than NRI/OCI) who is a spouse of NRI/OCI can acquire one immovable property jointly with NRI/OCI spouse provided the marriage should be registered and subsisted for a continuous two years immediately before acquisition and acquisition to be through appropriate banking channels as mentioned above. |

[1] The term relative defined to include lineal ascendants/descendant.

| Categories of specified persons | RBI Regulations |
|---|---|
| Foreign nationals | → Acquisition of agricultural land/plantation property/farmhouse is generally prohibited.<br>→ Can acquire immovable property in India on becoming resident in India in terms of Section 2 (v) of the Foreign Exchange Management Act, 1999. In this connection, such a person has to satisfy the condition of period and purpose of stay in India as provided under FEMA.<br>→ A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries namely, Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who is residing in India and has been granted a long-term visa by the Central Government may purchase only one residential immovable property in India (subject to certain locational restrictions) as dwelling unit for self-occupation and only one immovable property for self-employment subject to certain conditions. Further, such property can be sold only after acquiring Indian citizenship or through prior approval from concerned Indian authorities. |
| Foreign corporations/individuals having established a branch, office or other place of business, excluding a liaison office | → A branch or office or any other place of business in India, other than a liaison office, established by a person resident outside India, may acquire immovable property in India which is necessary for or incidental to the activity carried on in India by such branch or office, and the person files with the Reserve Bank a declaration in the form IPI, not later than ninety days from the date of such acquisition.<br>→ The immovable property so acquired can be mortgaged to an Authorized Dealer as security for any such borrowing.<br>→ The acquisition of immovable property in India by a branch, office or other place of business person, of entities of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan, Democratic People's Republic of Korea origin/nationality/ownership, other than a lease not exceeding five years, requires the prior approval of Reserve Bank. |
| Foreign embassies/ diplomats/consulate generals | Permitted to purchase/sell immovable property (other than agricultural land/plantation property/farmhouse) in India provided:<br>→ clearance from the government of India, Ministry of External Affairs is obtained for such a purchase/sale; and<br>→ the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels. |

## Foreign direct investment (FDI) in construction development sector

FDI up to 100% is permitted under the automatic route in the construction development sector including development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships. The said FDI is permitted subject to specified conditions inter-alia including the following:



Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. Investment will be subject to the following conditions:

(i) The investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage.
(ii) Notwithstanding anything contained at (i) above, a foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years calculated with reference to each tranche of foreign investment has been completed. Further, transfer of stake from one non-resident to another non-resident, without repatriation of foreign investment will neither be subject to any lock-in-period nor any government approval.

- The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.
- The Indian Investee Company will be permitted to sell only developed plots. For the purposes of this policy "developed plots" will mean plots where trunk infrastructure, i.e. roads, water supply, street lighting, drainage and sewerage, have been made available.
- The Indian Investee Company shall be responsible for obtaining all necessary approvals, including those of building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/ regulations of the State Government/Municipal/Local Body concerned.
- The State Government/Municipal/Local Body concerned, which approves the building/development plans, will monitor compliance of the above conditions by the developer.

Foreign investment is not permitted in an entity which is engaged or proposes to engage in real estate[2] business, construction of farmhouses and trading in transferable development rights ("TDRs").

The condition for lock-in period, as mentioned above, will not apply to hotels & tourist resorts, hospitals, special economic zones ("SEZs"), educational institutions, old age homes and investment by NRIs/OCIs.

[2] Real estate broking services shall be excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route.

100% FDI under automatic route is also permitted in completed projects for operation and management of townships, malls/shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.

### 2. Which importance does the land register have?

Registration is compulsory for the following transactions if one of the Indian Registration Acts (Act 1908/Act No. XVI of 1864/Act 1866/Act 1871/Act 1877) is applicable (i.e. the property is situated in a district covered by one of the named acts and the transaction have been executed when the respective act has already come into force) (Section 17 Registration Act 1908):

- Instruments of gift of immovable property;
- Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;
- Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree, order, award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of INR 100 and upwards, to or in immovable property.

Documents relating to the transfer of immovable property – including the transaction's underlying agreement – are to be presented for registration in the office of a sub-registrar of that sub-district in which the whole or some portion of the respective property is situated (Section 28 Registration Act 1908).



Section 49 Registration Act 1908 states that if documents required by a Registration Act or by the Transfer of Property Act 1882 are not registered then such documents shall not:

- affect any immovable property comprised therein; or
- confer any power to adopt; or
- be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

The agreement should be registered with the sub-registrar of assurance within four months from the date of execution of the document. If due to any reason, the document is not registered within the time limit the document can be registered only on making an application to the sub-registrar of assurance within a further period not exceeding four months and on payment of appropriate fine.

## B. Real Estate Taxes

(Regulation and Development) Act, 2016 ("RERA")

RERA regulates transactions between promoters and buyers of residential real estate projects. It establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERA). As per provisions of RERA, no promoter can advertise, market, book or sell any plot, apartment, building etc. without registering the project with the aforementioned authority. The ongoing projects as on the date of filing of application are required to be registered within a period of three months from the date of commencement of RERA.

Application form for registration to be accompanied with affidavit stating, inter-alia, the following:

- 70% of amounts realized for real estate project from allottees to be deposited in separate bank account with scheduled bank to cover cost of construction and land cost – amount to be withdrawn in proportion to Percentage of Completion determined based on certificate of engineer/architect/chartered accountant. (It has been clarified by the Ministry of Housing and Poverty Allevia-tion that amount to the extent of land cost can be withdrawn by the promoter).
- Time period within which the promoter undertakes to complete the project.

The registration granted to the promoter is valid until the expiry of the time period indicated by the promoter for completion of the project in the affidavit filed along with the application for registration.

The promoter shall not accept more than 10% of cost of project as advance payment or an application fee unless agreement for sale has been executed and registered.

Other than minor alterations, approval of the allottees required for any change in sanctioned plans, layout plans and specifications.

If promoter fails to complete or is unable to give possession of an apartment, plot or building, the allottee has two options:

- withdraw from project – refund of advance payment plus applicable interest and compensation; or
- continue with project and receive interest for every month of delay till handing over of possession.

Appeal can be filed against the order of the Authority with the Real Estate Appellate Tribunal ("Tribunal"). Appeal shall be admitted only if 30% of the demand has been paid by the promoter and the Tribunal shall try and dispose of such appeal within 60 days.

## C. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate? Are there any participation exemptions?

**Individuals**

The Finance Act, 2020 has provided an option to individuals/HUFs for taxation under the Old Regime or New Regime mentioned below:

| | Old Regime | | | New Regime |
|---|---|---|---|---|
| **Income range (in INR)** | **Age less than 60 years** | **Age 60 years or more** | **Age 80 years or more** | |
| Up to 250,000 | Nil | Nil | Nil | Nil |
| 250,001 - 300,000 | 5% | Nil | Nil | 5% |
| 300,001 - 500,000 | 5% | 5% | Nil | 5% |
| 500,001 - 750,000 | 20% | 20% | 20% | 10% |
| 750,001 - 1,000,000 | 20% | 20% | 20% | 15% |
| 1,000,001 - 1,250,000 | 30% | 30% | 30% | 20% |
| 1,250,001 - 1,500,000 | 30% | 30% | 30% | 25% |
| Above 1,500,000 | 30% | 30% | 30% | 30% |



Surcharge at the rate of:

- 10% of income tax where income is more than INR 5 million but does not exceed INR 10 million;
- 15% of income tax where taxable income is more than INR 10 million;
- 25% of income tax where taxable income is more than INR 20 million; and
- 37% of income tax where taxable income is more than INR 50 million.

Above rates to be increased by health and education cess (Government's initiative to collect additional funds to support the education and health of poor people) of 4%.

The surcharge shall be restricted to a rate of 15% in case of income by way of dividends and capital gains arising on specified securities.

Key conditions to be satisfied for availing benefit of New Regime are as follows:

- No deductions or exemptions are allowed such as leave travel concession, house rent allowance, standard deduction, interest on housing loan (for self-occupied property or vacant property), deduction under Chapter VI-A (e.g. insurance, PPF payments, Mediclaim, premium, donations etc.) except employers contribution to National Pension Scheme and incentive for employment generation).
- Brought forward loss or unabsorbed depreciation pertaining to above deductions, would not be available for set-off.
- Loss under the head House Property would not be allowed for set-off against any other heads of income.
- No exemption or deduction to be claimed for any other allowances or perquisites.

The option to be governed under the New Regime to be exercised by the taxpayer as follows:

- In case of individuals, HUFs having no business income, option to be exercised annually, while filing return of income.
- In case of individuals, HUFs having business income, option to be exercised while filing return of income, the option once exercised shall apply to subsequent years. Withdrawal from this option is permitted only once.
- In case of any other conditions specified for the New Regime is not satisfied by the taxpayer, such taxpayer to be liable to tax as per the Old Regime.

### Corporates

Tax rates including surcharge and cess for a domestic company are tabulated below:

| Particulars | Tax rate (including surcharge and cess) |
|---|---|
| Manufacturing company set-up and registered on or after the 1st day of October, 2019[3] | 17.16% |
| Domestic company (not claiming specified benefits)[4] | 25.17% |
| Turnover of domestic company in previous year 2017-18 up to four thousand million | 29.12% |
| Newly set-up manufacturing company | 29.12% |
| Other domestic companies | 34.94% |

Tax rates for every company other than a domestic company having a total income exceeding INR 100 million is 43.68%, exceeding INR 10 million is 42.432% and 41.6% where total income does not exceed INR 10 million.

There is no special rate of taxation for income from real estate but income from residential property shall be reduced by a standard deduction of 30% of the income. Tax rates on capital gains arising on transfer of real estate being held for more than two years is 20% plus applicable surcharge and cess, while in a case where the real estate is held for less than two years, the tax rate shall be applicable slab rates mentioned above in respect of individuals, domestic companies or foreign companies, as the case may be.

[3] New tax rate provision under Section 115BAB of the Income Tax Act, 1961 introduced by Taxation Laws (Amendment) Act, 2019
[4] New tax rate provision under Section 115BAA of the Income Tax Act, 1961 introduced by Taxation Laws (Amendment) Act, 2019



### Tax regime for Real Estate Investment Trusts (REIT)

Business trusts provide for a larger population to deploy resources for business. Hitherto shares or debentures and to some extent deposits and loans were the more favored instruments. These were regulated by independent legislation.

A special tax regime is provided for the way the income earned by "business trusts" set up as REIT is to be taxed in their hands and the taxability of the income distributed by such trusts in the hands of unit holders of such trusts. Under the SEBI[5] (Real Estate Investment Trusts) Regulations 2014, these trusts would raise capital by issue of units (to be listed on a recognized stock exchange) as well as raise monies directly from resident and non-resident investors by way of debt. The trusts would in turn invest these monies and acquire controlling or other specific interest (income bearing assets) in Indian companies (SPV) which would be engaged in executing real estate/infrastructure projects.

Interest received/receivable from a SPV or dividend distributed by SPV is exempt in the hands of the business trust under Section 10 (23FC) of the Indian Income Tax Act, 1961 ("the Act"). Also, any income received by a REIT by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt under Section 10 (23FCA). The income exempt in the hands of the business trust will be taxed in the hands of the unitholders. Further, dividend income received by unitholders will also be exempt in the hands of the business trust and taxable in the hands of the unitholders with an exception that such dividend income will also be exempt in the hands of unitholders if the underlying SPV does not opt for a concessional corporate tax rate (25.17%) regime under Section 115BAA as explained above. The special tax regime further provides that the income distributed by the business trust to its unitholders will be of the same nature and same proportion in the hands of the unitholder.

The total income of the business trust by way of capital gains will be taxed under Section 111A and Section 112 of the Act depending on whether it is short-term/long-term capital gains. Other income of the business trust is chargeable to tax at the maximum marginal rate in the hand of such business trust.

Further, as per Section 112A of the Act, long-term capital gains arising from transfer of units of business trust (i.e. where such unit held for more than three years) is taxable at 10%, plus applicable surcharge and cess. Short-term capital gains on transfer of such units shall be taxable at the rate of 15%, plus applicable surcharge and cess.

[5] Securities Exchange Board of India

The applicable surcharge in this context for Individuals shall be restricted to a maximum of 15% (and the enhanced surcharge of 25% and 37% shall not be applicable in case of such income).

Withholding tax at the rate of 5% and 10% in the case of payment of interest component of income distributed to non-resident and resident unit holders, respectively, is mandated as per section 194LBA of the Act. Withholding tax at the rate of 10% in the case of payment of dividend component of income distributed to non-resident as well as resident unitholders is required as per section 194LBA of the Act however, in a case where underlying SPV has not opted for the concessional tax regime under section 115BAA, no withholding on dividends shall be required in case of payments to unitholders. In addition, SPV is required to withhold 10% tax on dividend distributed to the REIT in all circumstances.

So also, in the case of external commercial borrowings by a business trust, the benefit of reduced rate of 5% tax on interest payments to non-resident lenders shall be available on similar conditions, for such period as is provided in Section 194LC of the Act. Further, where a business trust has borrowed by way of a long-term bond or INR denominated bond listed on a recognized stock exchange located at any International Financial Services Centre, the benefit of reduced rate of 4% tax on interest payments to non-resident lenders shall be available for such period as is provided in Section 194LC of the Act. The capital gains arising to sponsor of the SPV, at the time of exchange of shares of the SPV for units of the business trust, is exempt under Section 47(xvii).

## 2. What is the tax depreciation period for real estate in India? Are there depreciation categories? Which depreciation method is used?

Depreciation is based on the acquisition cost or production costs as follows:

- Buildings which are used mainly for residential purposes except hotels and boarding houses 5%
- Buildings other than those used mainly for residential purposes 10%
- Purely temporary erections such as wooden structures 40%

Depreciation is computed under written down value method (WDV method).

## 3. When is a foreign investor subject to limited tax liability in India?

Limited tax liability occurs when the total income of a taxpayer being a non-resident Indian includes (Section 115E of the Act).

(a) Any income from investment or income from long-term capital gains of an asset other than a specified asset*.
(b) Income by way of long-term capital gains.

The tax payable shall be the aggregate of (plus applicable surcharge and cess):

- income tax calculated on the income in respect of investments referred to in clause (a), if any, included in the total income, at the rate of 20%;
- income tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, included in the total income, at the rate of 10%; and
- income tax of total income reduced by the amount of income referred to in clauses (a) and (b).

* Specified asset has been defined to include the following assets:

- shares in an Indian company;
- debentures issued by an Indian company which is not a private company as defined in the Companies Act, 1956 (1 of 1956);
- deposits with an Indian company which is not a private company as defined in the Companies Act, 1956 (1 of 1956);
- any security of the Central Government as defined in Clause (2) of Section 2 of the Public Debt Act, 1944 (18 of 1944); and
- such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

## 4. Are asset deal and share deal possible in India? What are the main consequences?

**Asset deal**

Asset deals are possible in India. The valuation of assets will then have to be done as per valuation rules wherever prescribed. For example, valuations of immovable properties are done by registered chartered engineers.

There are no specific provisions in the Act on asset deals, but wherever an asset deal takes place, the market value of the assets on the date of transfer is the consideration for the transfer and the capital gains tax is thus determined.

Where the consideration received as a result of transfer by an asset (capital or stock in trade) is less than the stamp duty value adopted or assessed by the State Government, then the stamp duty value so adopted or assessable, shall be deemed to be full value of consideration received or accruing as a result of such transfer.

**Share deal**

Such deals happen under schemes of arrangement such as amalgamation, demerger etc.

The long-term capital gains tax is 20% for resident individuals and domestic companies and 10% in case of non-residents, where shares are held for more than two years and are shares of an unlisted company. The short-term capital gains are taxed at normal rates of taxation.

Section 47 (vi) of the Act exempts any transfer in an amalgamation, of a capital asset by the amalgamating company to the amalgamated company from capital gains tax if the amalgamated company is an Indian company.

Section 47 (via) of the Act exempts any transfer in an merger, of a capital asset being a share or shares held in an Indian company from capital gains tax, by the merging foreign company to the merged foreign company, if

- at least twenty-five percent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company;
- such transfer does not attract tax on capital gains in the country, in which the merged company is incorporated.

Section 47 (vib) of the Act exempts any transfer in a demerger, of a capital asset by the demerged company to the resulting company from capital gains tax, if the resulting company is an Indian company.



### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

As per Section 94B of the Act, deduction for interest payments exceeding INR 10 million by Indian companies or permanent establishment of foreign companies in India to overseas related parties are restricted to 30% of their earnings before interest, taxes, depreciation and amortization ("EBITDA"). Excess interest that is disallowed in a year is eligible for being carried forward up to eight consecutive years.

Further, the general anti-avoidance rules ("GAAR") which are made applicable from 1 April 2017, may also limit deduction of interest expenditure apart from Section 94B of the Act (i.e. restriction upto 30% of EBITDA as discussed above). GAAR is an anti-abuse provision under which, if any transaction/arrangement or a part of any transaction/arrangement is structured with a main purpose of obtaining a tax benefit, then the tax authorities can treat the same as an impermissible avoidance arrangement. Thus, they may further limit the interest deductions by invoking provisions of GAAR.

Operating expenses are deductible as long as they are at arm's-length and they are for business reasons.

Interest on loans borrowed for residential houses, can be deducted from income arising from house property provided it does not exceed INR 200,000 and subject to certain conditions (property is acquired or constructed with capital borrowed on or after the 1 April 1999 and construction is completed within five years from the end of the financial year in which capital was borrowed). Such benefit is not available for a domestic company opting for a concessional tax regimes discussed in section C.1. above.

### 6. Can acquisition costs/financing fees/interest be deducted?

**Companies**

Acquisition costs are added to the cost of the asset acquired and hence are deductible due to depreciation. Financing fees and interest are deductible as business expenditure if the asset is used for the purposes of business.

**Individuals**

It is also available as deduction against rental income subject to certain conditions. Acquisition costs are added to the cost of the asset acquired and hence deductible due to depreciation if the property is used by the individual for purpose of his own business or profession. If the property is given on rental, no depreciation is available. Finance fees and interest are available as deduction against rental income in full provided that the property is actually let during the whole or any part of the year or any other benefit therefrom is derived by the owner.

Additional interest deduction of INR 50,000 allowed to an individual where amount of loan sanctioned (between 1 April 2016 and 31 March 2017) does not exceed INR 3.5 million and value of residential property purchased does not exceed INR 5 million.

## 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Each entity is regarded as separate entity. If a group of companies own a property and thus, they are co-owners, income from property may be computed as a consolidated statement, and the share of each corporate will be shown individually in their tax return.

Debt at the target company level can be set-off against income from the target company; debt push-down can be achieved by merger of investment vehicle with the target company.

## 8. Is there a withholding tax on interest payments paid by local company to creditor?

| Interest income paid to | Withholding tax rate |
|---|---|
| Resident | → 10% on interest (other than interest on securities).<br>→ 10 % on any sum, exceeding INR 0.25 million, received in the nature of compensation/enhanced compensation on account of compulsory acquisition of immovable property (other than agricultural land). |
| Non-resident | (Rates subject to treaty benefits and excluding applicable surcharge and cess rate)<br>→ 5% (interest received from a business trust/specified company for monies borrowed in foreign currency or interest received from INR denominated bonds issued before 1 July 2020).<br>→ 4% (interest received from a business trust/specified company for monies borrowed by long-term bond or INR denominated bond listed on a recognized stock exchange in International Financial Services Centre).<br>→ 5% (interest paid to specified foreign investors i.e. foreign portfolio investors on investment in INR denominated bonds/municipal debt securities/Government securities before 1 July 2023).<br>→ 20% on interest – where the sum borrowed is in foreign currency.<br>→ 40% on interest – where the sum borrowed is in INR. |

## 9. Is there a withholding tax on transfer of immovable property?

Yes, at 1% on transfer of immovable property (other than agricultural land). No withholding of tax is required where consideration for transfer is less than INR 5 million.

## 10. Is a loss carry forward or carry back granted and what are the restrictions?

Losses arising from the sale of a capital asset (being a real estate asset) can be of two types: short-term capital loss (if the asset is held for a period of less than 24 months) or long-term capital loss. Typically, such losses can be carried forward for a period of eight years.

Loss relating to short-term capital asset can be set-off against gains from any other short-term or long-term capital asset in the same assessment year and unabsorbed capital loss (arising from short-term capital asset), if any, shall be allowed to be carried forward for set-off against both short-term and long-term capital gains for next eight years.
Loss relating to long-term capital asset can be set-off only against long-term capital gains and can be carried forward for set-off against capital gains from transfer of long-term capital asset in the next eight years.

There are no loss carry back provisions in India.

## 11. Are there any incentives available for affordable housing?

Section 80-IBA of the Act introduced which provides for 100% deduction on profits derived from business of developing and building housing projects:

- project approved on or after 1 June 2016 but on before 31 March 2021;
- project completed within five years from date of approval;
- the carpet area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate carpet area;
- project is on a plot of land
  - measuring not less than 1,000 square metres where project is within four metros – size/carpet area of unit not more than 30 square metres;
  - measuring not less than 2,000 square metres in any other area – size/carpet area of unit not more than 60 square metres;
- if residential unit allotted to individual – no other unit can be allotted to him or his family.

Concessional Goods and Services Tax ("GST") rates on supply of following services relating to affordable housing:

- Construction of affordable residential apartments: effective GST rate is 1%.
- Construction of residential apartments other than affordable residential apartments: effective GST rate is 5%.

## D. Real Estate Taxes

### 1. Does India levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Stamp duty is levied on real estate transfers based on its market value. It may be noted that capital gains tax is also payable on the transaction in case there is any gain made on such a transfer.

The rates of stamp duty on transactions relating to transfers of immovable property are broadly regulated by the Indian Stamp Act and are based on the location of the immovable property and the respective regional state stamp acts as well as the nature of the transaction and concessions available, if any. For example, the rates are specified in Article 25 of Schedule 1 appended to the Bombay Stamp Act, 1958 and are between around 5%-8% based on the nature of the transaction.

In general, the parties may decide among themselves who shall pay the stamp duty, if nothing is mentioned in the agreement. However, as per Section 30 of the Bombay Stamp Act, 1958, if the transaction relates to resale of flats the stamp duty will have to be paid by the person executing the agreement, i.e. the purchaser. Value of the property for the purpose of levy of stamp duty will be considered as fair value of consideration to determine capital gain on sale of property if the actual sale price declared by the seller is less than that value.

Further, GST is not applicable on ready-to-move-in property (i.e. property where consideration is made after construction completion certificate has been obtained) as per Schedule II of Central Goods and Service Tax, 2017. In case of sale of under construction properties, effective GST rate between 1% to 12% shall be levied depending upon whether the project is residential or commercial.



### 2. Is real estate subject to any real estate tax? At which rate?

The property taxes are levied by the assessment and collection department of the local municipal corporation. Property taxes are based on the capital value of the property. The capital value is the present market value of the property determined by considering that the property is fully possessed by the owner without any encumbrance.

The property tax is calculated based on the above mentioned stamp duty and the property tax rate. Both the stamp duty and the property tax rates are revised by the Government every year with the new budget. Depending on the type of property, its construction, user and age property is classified into different categories which can be transferred into different weightings by using a stamp duty conversion table. These weightings have to be multiplied by the capital value of the property and the current property tax rate to calculate the property tax.

- Market value of the property multiplied by the total carpet area multiplied by weights for type of construction multiplied by weights for age of the premise = capital value of your property.
- Capital value of the property multiplied by current property tax rate multiplied by weight for user category = property tax due for the specific year.

## E. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

In India, sale of under-construction property is liable to GST. The effective GST rates for supplies pertaining to real estate projects have been revamped w.e.f. 1 April 2019 as under:

| Supply | Effective GST Rate | Conditions |
|---|---|---|
| Construction of affordable residential apartments* in Residential Real Estate Project* ("RREP") or Real Estate Project* ("REP") | 1%# (after deduction of value of land) | → GST to be paid in cash.<br>→ Input tax credit ("ITC")*** on goods and services not available except where specifically permitted.<br>→ Inputs and input services of up to 80% of procurement value should be received from registered supplier. Such inputs and input services does not include:<br>» transfers of development rights (TDR);<br>» Floor Space Indexes (FSI);<br>» premium on long-term lease of land; and<br>» electricity, high speed diesel, motor spirit and natural gas.<br>→ If threshold limit of 80% is not fulfilled, then GST under Reverse. |
| Construction of residential apartments other than affordable residential apartments in RREP or REP | 5%# (after deduction of value of land) | |
| Construction of commercial apartment* by the promoter in RREP | 5%# (after deduction of value of land) | |
| Construction of commercial apartment by the promoter in REP | 12%# (after deduction of value of land) | |
| Supply of Transferable Development Rights or Floor Space Index or long-term lease of land (30 years) used for construction of residential apartments | Exempt**# | → Residential apartments to be booked before issue of Completion Certificate ("CC") or Occupation Certificate ("OC").<br>→ Developer-promoter to pay GST under Reverse Charge Mechanism. |
| Supply of Transferable Development Rights or Floor Space Index or long-term lease of land, attributable towards construction of residential apartments remaining un-booked on date of issue of Completion Certificate or first occupation | 18%**# | → GST to not exceed following limits:<br>» affordable residential apartments: 1% of value of apartments remaining un-booked;<br>» other than affordable residential apartments: 5% of the value of apartments remaining unbooked.<br>→ Developer-promoter to pay GST under Reverse Charge Mechanism. |
| Transferable Development Rights or Floor Space Index or long-term lease of land used for construction of commercial apartments | 18%# | No conditions. |

\# *Effective GST rate: effective GST rate which is 2/3rd of original/notified GST rate.*
*As per the GST law, in case of supply of construction services, if transfer of land is involved, then value of supply shall be net of value of transfer of land and the value of land shall be deemed to be 1/3 of total amount charged for such supply.*
*Transition provisions and notifications have also been separately prescribed for on-going real estate projects as on 31 March 2019. Further, provisions on anti-profiteering imposed to ensure that benefit of (overall) tax cost reduction is passed on to the customers, post the introduction of GST.*



* *Meanings have been defined under the GST law.*
** *Valuation provisions have been prescribed under the GST law.*
*** *ITC of tax paid to supplier of goods or services, for a tax period, restricted to the extent of invoices declared by such supplier in his monthly returns, with a further benevolent amount of 10% (of tax paid) to the extent of unmatched/undisclosed invoices.*

### 2. What are the VAT consequences of renting/leasing of real estate?

- → Renting/leasing of vacant land with or without a structure for agricultural purposes is exempt from GST.
- → Renting/leasing of residential properties for use as residence is exempt from GST.
- → Renting/leasing of commercial properties will attract GST @ 18%.

## F. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Though there is no capital tax, the Indian stamp act with its respective state amendments imposes a stamp duty levied regarding a right or title to any shares script or stock of an incorporated company or other body corporate or a letter of allotment of shares in any company or proposed company. Transfer of shares (whether with or without consideration) held in an incorporated company or other body corporate attracts a stamp duty of 0.25% on the value of the share (where shares are held and transferred in a physical form).

Further, transfer of shares that are dealt by a depository (i.e. held in dematerialized form) are currently exempt from stamp duty. However, it is proposed to levy stamp duty at the rate of 0.015% on the market value of securities, whether listed on the stock exchange or not, and whether transacted on-market or otherwise. This rate is also proposed to be applied to transfer of shares in physical form (which is currently 0.25%).

### 2. Is there a stamp duty on debt granted to a local company?

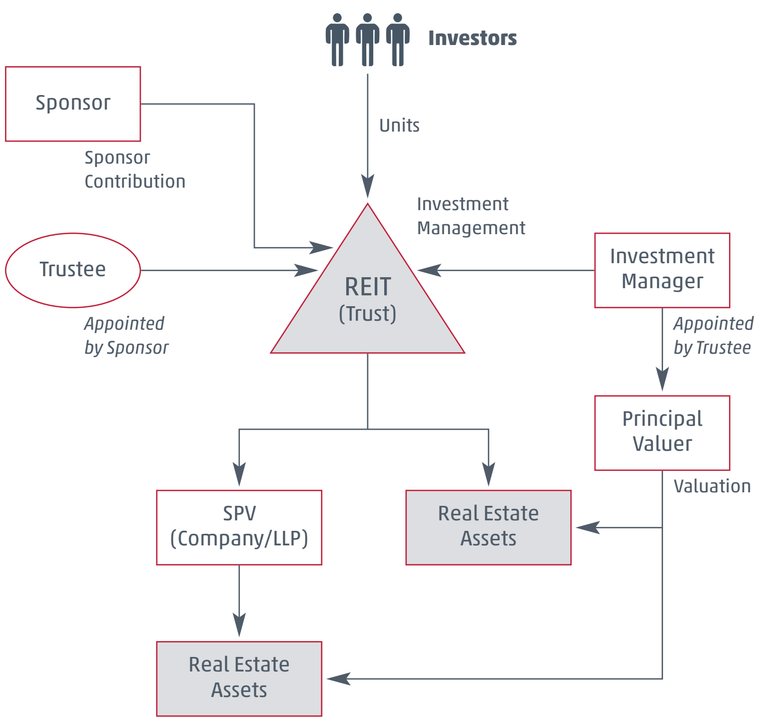
The Indian Stamp Act requires a debt instrument to be stamped. Stamp duty is a state subject and rates vary. It averages from 0.2% to 0.5% on mortgage deeds without possession subject to certain maximum limits (maximum of a million rupees in Mumbai). Further, stamp duty on mortgage deeds with possession would be same as conveyance mentioned above (i.e. 5%-8%). Instruments evidencing debt may be an agreement or a mortgage deed. A mortgage deed is a document in which a mortgage transfers an interest in real estate to a mortgagee for the purpose of providing a mortgage loan. The mortgage deed is the evidence of interest transferred to the mortgage holder.

### 3. Does a special regime for Real Estate Investments Funds exist? If yes, what are the requirements?

Yes, a special regime for Real Estate Investment Funds ("REIT") exists and the regulatory framework governing REITs in India is administered by SEBI under the SEBI (Real Estate Investment Trusts) Regulations 2014 ("REIT Regulations").

After they were first introduced in 2014, these regulations have undergone multiple amendments based on recommendations made. Key aspects of the REIT Regulations are summarized below:

**Typical structure**




As per the REIT Regulations, the REIT is necessarily required to be set-up as a Trust, with a Sponsor, a Trustee and Manager. All three entities need to be separate entities. Their key eligibility conditions are discussed below:

**Key eligibility conditions**

**Sponsor**

- minimum net worth of INR 1,000 million on consolidated basis;
- in case of multiple sponsors, each sponsor/sponsor group to have a net worth of at-least INR 200 million;
- each sponsor shall hold a minimum of 5% of units – post initial public offer;
- a sponsor should have minimum five years' experience in real estate industry on individual basis (either directly or through its associates);
- a developer sponsor should have a track record of at least two completed projects;
- a sponsor should at the minimum hold 25% units prior/post initial offer which shall be locked-in for three years from listing date;
- units exceeding 25% shall be locked-in for one year from listing date;
- minimum 15% holding required at all times (5% for each sponsor); and
- permitted to go below 15% only after three years of listing, subject to redesignating someone else as sponsor (who needs to hold 15%).

**Manager**

- manager is required to be a company and a separate entity from the sponsor, however it can be an associate of the sponsor;
- manager should have a minimum net worth of INR 100 million;
- manager or its associates to have minimum experience of five years in fund management or advisory or property management in the real estate sector or real estate development
  - minimum of two key personnel with minimum five years of experience in fund management, advisory or property management in the real estate sector or real estate development;
- not less than half of the directors/governing board of the manager are required to be independent i.e. they should not be directors/managers of the manager of another REIT;
- roles and responsibilities of manager specifically defined; required to follow prescribed code of conduct; and
- change in control of manager requires unitholders approval.

### Trustee

- registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993;
- should be independent from sponsor/manager/principle valuer of REIT;
- there are restriction on investment in REIT units by a trustee;
- extensive responsibilities defined including ensuring marketable titles of REIT assets, determine arm's-length price for transactions with related parties, ensure compliance with REIT regulations, etc.; and
- trustee needs to regularly overview activities of the manager and report to SEBI, whenever required.

## Key investment conditions applicable to REIT

### Asset related conditions

- At least 80% of the value of REIT assets to be invested in completed and rent and/or income-generating real estate, with a lock-in period of three years from the purchase date.
- A maximum of 20% of the total value of REITs can be from:
  - under construction properties with a lock-in period of three years after completion and completed but non-rent generating properties with a lock-in period of three years from the date of purchase;
  - listed or unlisted debt of real estate companies (other than investment in debt of Hold Co/SPV);
  - mortgage-backed securities;
  - equity shares of listed companies in India, generating at least 75% of their operating income from real estate activities;
  - unlisted equity shares of companies deriving at least 75% of their operating income from real estate activities (investment through unlisted equity shares in under construction properties to be locked in for three years after completion and in completed but non-rent generating properties to be locked in for three years from the date of purchase);
  - government securities;
  - un-utilized floor space index (FSI) and transferable development rights (TDR) with respect to existing investments; and
  - cash or money market instruments.

### Distributions

- minimum of 90% of the net distributable cash flow of a REIT to be distributed to unitholders; and
- distribution to be undertaken at least once every six months.

### Public offer

- a REIT is required to be mandatorily listed within 12 working days of the initial public offer;
- minimum value of REIT assets at the time of making the initial offer should not be less than INR 5,000 million;
- if post issue capital is less than INR 16,000 million, minimum public offer of 25% or INR 2,500 million (based on unit offer price), whichever is higher;
- if post issue capital is equal to or more than INR 16,000 million but less than INR 40,000 million, minimum offer size shall be INR 4,000 million;
- if post issue capital is equal to or more than INR 40,000 million, minimum public offer of 10%;
- public float in all cases to be increased to a minimum of 25% of the post issue capital within three years from date of listing;
- minimum number of subscribers (other than sponsors, its related parties and its associates) at the time of public offer shall be 200;
- minimum subscription amount: INR 50,000 per applicant and the minimum trading lots has to be 100 units; and
- minimum public subscription: 90% of the fresh issue size.

### Leveraging

- consolidated borrowings capped at 49% of the REIT assets; and
- credit rating and unitholder approval required beyond 25% borrowing.

# Real Estate Investment in Italy

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### 1. Are non-residents entitled to acquire real estate in Italy? Does the acquisition have to be carried out by an Italian corporation?

In Italy there are no restrictions with regards to the acquisition of real estate. Residents as well as non-residents can purchase real estate, so that no acquisition vehicle incorporated under the laws of Italy is required for the acquisition of land by non-residents. In Italy, real estate properties can be bought by individuals and companies, so a non-resident can choose to purchase real estate in Italy either directly or using an Italian company.

### 2. Which importance does the Real Estate Register have?

The way real estate properties are included in the Real Estate Register has a number of important consequences on the taxation of the real estate income as well as on the registration tax and/or VAT regimes applicable to transactions involving real estate.

In 2012 an important reorganization of the Real Estate Register categories was started. This reorganization has led to a Land Register, including all the agricultural and non-agricultural lands, and to a Buildings Register, including urban and rural buildings.

The Real Estate Register is the source from which it is generally possible to retrieve the deemed cadastral income of a given item of real estate property. Such deemed cadastral income may be relevant under many respects: first of all, it constitutes the taxable base for the real estate tax as well as for income taxes.

On the basis of Art. 2, Par. 1 of Law of 11 March 2014, n. 23, the Italian Government has been empowered to reform the Real Estate Register and to attribute to each real estate an updated cadastral income.

This process has not started yet: based on the economic and financial document of 2016 approved by the Italian government on 8 April 2016, the reform was to be completed within the three-year period 2016-2018.

Currently, the reform has not yet been implemented.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

Ires is the corporate income tax and its rate for 2020 is 24%.

Irpef is the individual income tax and its rates for 2020 are summarized in the following chart:

| **Income brackets** | **Rate** |
|---|---|
| Up to EUR 15,000 | 23% |
| Beyond EUR 15,000 and up to EUR 28,000 | 27% |
| Beyond EUR 28,000 and up to EUR 55,000 | 38% |
| Beyond EUR 55,000 and up to EUR 75,000 | 41% |
| Beyond EUR 75,000 | 43% |

In addition to the individual income tax each individual must pay to the local authority of residence the municipal (no more than 0.8% or in some exception 0.9%) and the regional tax (up to 1.23%).

Companies and professionals are subject – on a larger tax base than net income – to a regional tax on productive activities (Irap) at a general rate of 3.9%. This rate may vary regionally within a 1% range (special rates apply to banks and agricultural enterprises).

In general terms, there are no special tax rates for real estate. However, in the case of an individual renting a property to another individual, a 21% substitute tax (so called "cedolare secca") may apply.

Participation exemption is foreseen.



In particular, capital gains realized and relating to shares or quotas held in companies and entities shall not be included in Ires taxable income, provided the requisites indicated hereunder are met:

- continuous possession from the first day of the twelfth month preceding the month of the actual sale, considering the share or quotas acquired as of the most recent date as the first shares or quotas sold;
- classification in the category of financial fixed assets in the first financial statements closed during the period of ownership;
- fiscal residence of the company in which the investment is held in a state or territory other than those with preferred tax treatment;
- the exercise of a trade or business on the part of the company in which the investment is held (commercial requirement).

To verify the commercial requirement for companies operating in real estate it's necessary to understand if the main activity is not exclusively renting the buildings. In fact, without any possibility of proving the contrary, it is assumed that this requisite does not exist in relation to the holding of shares or quotas in companies whose equity value is primarily composed of rented real estate assets and therefore for these companies no participation exemption is granted.
The only exception regards real estate companies for which real estate assets are built or purchased for the sale (i.e. real estate assets are recorded as inventory and nor immovable properties).

*For tax-grouping please see chapter F below.*

2. What is the tax depreciation period for real estate in Italy?
   Are there depreciation categories? Which depreciation method is used?

Real estate assets are only depreciable as long as they are inherent to the business activity conducted by the company. In this respect, a distinction can be made between "inherent" commercial buildings (which are grouped under specific cadastral classifications, such as office buildings) and buildings intended to be used within the business activity of the company although they do not qualify as "inherently" commercial. Land is not depreciable.

Commercial buildings are depreciated excluding from the depreciable amount the share attributable to land. If 20% (for office buildings) or 30% (for industrial buildings) of the overall value of the real estate complex exceeds the value of the underlying land entered in the balance sheet, the former shall be assumed as the value of the land and correspondingly subtracted from the depreciation base (i.e. the price paid to buy both the land and the building).

For instance:

**Asset value industrial building entered in the balance sheet: EUR 1,000,000:**
(A) 200,000 (land) + (B) 800,000 (building)
(C) 30.00 (30% value industrial building, under Italian tax rules)
(C) > (A)
Depreciation base: EUR 700,000 (1,000,000-300,000)

In case the real estate complex has been erected subsequently on building land acquired by the company, the land purchase price shall be considered non-deductible.

The maximum depreciation rate and – correspondingly – the minimum depreciation period, depends on the depreciation category. The rates are determined by law (Ministerial Decree 31 December 1988) in accordance with the type of construction and the industry of the company. The rates typically vary between 3%-6%.
The depreciation period may be extended, thus resulting in lower depreciation rates.

### 3. When is a foreign investor subject to limited tax liability in Italy?

Based on Art. 23 of the Income Tax Code, non-residents are subject to tax liability in Italy only with respect to the income deriving from the Italian territory. Real estate income is deemed to be sourced in Italy if the item of real estate is located in Italy.

### 4. Are asset deal and share deal possible in Italy? What are the main consequences?

As anticipated, both asset and share deals are possible.

In case of an asset deal (i.e. if real estate located in Italy is directly purchased by a non-resident individual) rental or cadastral income is subject to tax (Irpef) in the hands of the non-resident owner. In case of alienation, the capital gain is subject to tax in Italy, unless it is agricultural land or a construction owned for more than five years at the time of the sale.

In any case, the sale of a land with construction rights is always subject to taxation.
In case of a share deal, (i.e. real estate located in Italy and owned by an Italian company whose shares are purchased by a non-resident person) ongoing income is subject to tax (Ires and Irap) in the hands of the resident company.



Under certain circumstances taxable income may be higher than actual income, due to the application of the special regime for non-operative companies.
Such regime foresees taxation based on a deemed income determined by means of the following formula, which applies a rather high fixed rate of return to various company assets:

- 1.5% of the value of participations;
- 4.75% of the value of business real estate (3% or 4% of the value of residential properties and 0.9% if the property is located in small municipalities); and
- 12% of the value of other assets.

The applicable tax rate is also increased by a 10.5% corporate income tax surcharge.

In case of alienation of the shares or quotas of the company by the non-resident individual, the capital gain is subject to tax in Italy, unless a double tax treaty is applicable, providing exclusive taxation of the capital gain in the country of residence of the alienator.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

An “interest barrier” rule applies. Interest expenses is deductible up to the amount of interest or similar income (resulting both for the current and previous years).
Interest expenses that exceed interest or similar income are deductible only within the threshold of 30% of EBITDA (based on the tax P&L) of the current year added to the 30% of the EBITDA of the previous years.
The portion of interest expenses which qualifies as non-deductible in a given year can be forward in the following years (only for the positive difference between interest income, the threshold of 30% EBITDA and the interest expenses of the year).

However as far as real estate companies are concerned, interest expense paid for the purchase/construction of real estate properties leased and secured by mortgage are fully deductible and are not subject to the above explained deducibility limits.

### 6. Can acquisition costs/financing fees/interest be deducted?

With reference to individuals, interest expenses deriving from mortgage are tax-deductible only in relation to the primary dwelling of the taxpayer; the tax allowance cannot exceed 19% of an annual threshold of EUR 4,000 (i.e. the maximum allowance is EUR 760,00).

With reference to companies, in general terms, deductibility is admissible within the threshold of interest deductibility limitations foreseen by the interest barrier rule.

Interest arising from debts undertaken in order to finance the building/acquisition of assets, including real estate properties, can be capitalized. With respect to construction companies, interest arising from debts undertaken for construction and renovation works can be capitalized, while such an option is not viable if debt has been undertaken in order to acquire buildings destined to sale. In the latter case, no deductibility limitation applies.

As anticipated, interest arising from debts supported by mortgages undertaken in order to acquire properties destinated to rental are deductible without any limitation.

Clarifications from the Tax Administration have underlined that the mortgage must have been undertaken only in order to acquire or build a property destined to rental, while it is irrelevant whether the property is of commercial or residential nature (see circular letter dated 22 July 2009, n. 37/E).

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

If the share acquisition is funded by debt, it is possible to offset interest expenses against the target's profits only if debt is on the part of an Italian company and this company is either merged with the target or both elect the group tax consolidation regime.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Law Decree n.138/2011 has harmonized the applicable withholding tax rates on investment income introducing a flat 20% withholding tax rate instead of the previously foreseen differentiated rates, comprised between 12.5%-27% depending on the juridical qualification of the payee and on the nature of the underlying debt.

The new 20% withholding tax rate was applicable to interest paid starting from 1 January 2012. Lower double tax treaty rates may apply.

Art. 3 of Law Decree of 24 April 2014, n. 66 provides, starting from 1 July 2014, an increase of the above mentioned tax rate from 20% to 26%.

Law Decree of 24 June 2014, n. 91 has exempted from the withholding tax interest arising from medium and long-term loans granted by – amongst others – EU banks and insurance companies.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses carry back is not allowed.

Law Decree n. 98/2011 has amended the applicable regime for loss carry forward with regards to companies and entities (with the exclusion of non-commercial entities that predominantly carry out a business activity). The new regime foresees that losses can be carried forward with no temporal limitation but only within the threshold of 80% of the corporate income tax base of the fiscal year in which the losses would be offset; any exceeding portion can be further carried forward.

With reference to start-up losses (generated in first three years), the same mechanism applies but the threshold is 100% of the corporate income tax base in which the losses would be offset.

## C. Real Estate Taxes

1. Does Italy levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Registration tax**

The transfer of real estate or shareholdings is typically subject to registration tax.

Generally speaking, in case the transfer falls within the scope of VAT *(see section D)*, registration tax is applied as a fixed levy, amounting to EUR 200 ("principle of alternativity").

As a general rule, the taxable base of the registration tax is the purchase price of the real estate property.

However, when the purchaser is an individual and the sale is not subject to VAT with proportional rates, registration tax is not calculated on the basis of the price but on the basis of the cadastral value (this option is called "prezzo-valore"). This option necessarily applies at the time of signing the act.

The rates of the registration tax can be proportional or fixed, according to the Italian law (tariff attached to the Presidential Decree n. 131/1986).

In general, the registration tax is applied through the application of a general 9% tax rate. In other case, for example, when the property represents a person's primary house, the 2% tax rate is applied.

**Mortgage tax and cadastral tax**

Additional transfer taxes on real estate and related shareholdings are referred to as mortgage tax and cadastral tax.

After the sale (or inheritance, donation etc) the mortgage tax is due for registration in the public real estate register and the cadastral tax is due for the registration of the cadastral transfer.

Mortgage and cadastral tax are now levied at a fixed levy of EUR 50 if the registration tax is applied with a proportional tax rate. In case of sale of commercial buildings, mortgage and cadastral tax are due on a proportional basis (1% and 3% respectively).

### 2. Is real estate subject to any real estate tax? At which rate?

Since 2012, a new municipal real estate tax (I.M.U.) has been introduced.
This tax is based on the possession of properties other than the primary house.
Since fiscal year 2014 the tax is deductible from income taxes up to 20% of its value and it is triggered by the ownership of buildings, building plots and agricultural land situated in Italy and regardless of the residential or business purpose. Starting from 2020 the deductibility from income taxes is increased to 60% for I.M.U. due on commercial buildings.

The I.M.U is not applied to the primary dwelling of persons with the exception of primary dwelling belonging to particular cadastral categories (e.g. luxury dwelling).

Rural buildings are excluded from the application of the I.M.U.

For the commercial building (cadastral category letter D) the general tax rate is 0.86%, that can be increased to a maximum of 1.06% or reduced within a minimum of 0.76% by each municipality. For the other buildings the tax is applied with a 0.86% tax rate that each municipality can increase to a maximum of 1.14% or decrease it, also down to zero (Budget Law 2020).



## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

As a general rule, transfers of real estate property are VAT-exempt. Nonetheless, some transfers may optionally or mandatorily be subject to VAT depending on the nature of the property which is transferred and the qualification of the buyer and of the seller.

In particular, the transfer of building land is obligatorily subject to VAT.

With reference to the transfer of buildings, a distinction should be made between residential buildings and commercial buildings.

The transfer of residential buildings is mandatorily subject to VAT if the seller is a building contractor which has completed construction or renovation activities in the previous five years. In this case, the generally applicable VAT rate is 10% (the VAT rate is reduced to 4% if the building constitutes the primary house of the buyer, while the VAT is increased to 22% in case the building is considered as a luxury building).

The transfer of commercial buildings is mandatorily subject to VAT if:

- the seller is a building contractor who has completed construction or renovation activities in the previous five years. In this case, the generally applicable VAT rate is 22% (whereas if only renovation works have been conducted, the VAT rate is reduced to 10%); or
- the seller is a VAT taxable person and the buyer is a non VAT taxable person or a VAT taxable person subject to VAT deductibility limitations. In this case, the generally applicable VAT rate is 22%.

The transfer of commercial buildings is optionally subject to VAT if both the seller and the buyer are VAT taxable persons. This option is frequently adopted in business practice as VAT would be deductible as long as the pro-rata deductibility limitations are met.

If VAT is not applied, registration tax generally applies at the ordinary proportional rates applicable in relation to the concerned typology of building and counterparts. Conversely, mortgage and cadastral tax are due as a fixed duty amounting to EUR 50. On the other hand, where VAT is applied, registration tax generally applies as a fixed duty amounting to EUR 200 and cadastral tax at 1%, and mortgage tax at 3%.

## 2. What are the VAT consequences of renting/leasing of real estate?

As a general rule, the rental/leasing of real estate is VAT-exempt. Nonetheless, under some circumstances, VAT may apply. In particular:

- rental/leasing of building land is mandatorily subject to VAT (at a 22% rate) if the landlord is a VAT taxable person;
- rental/leasing of residential buildings is mandatorily subject to VAT (at a 10% rate) if the landlord is a building contractor that has completed construction operations on the rented property in the previous five years and the buildings are subsidized residential buildings;
- rental/leasing of commercial buildings is mandatorily subject to VAT (at a 22% rate) if the landlord is a VAT taxable person and the tenant is either a non VAT taxable person or a VAT taxable person subject to VAT deductibility limitations.

The rental/leasing of commercial buildings is optionally subject to VAT if both the landlord and the tenant are VAT taxable persons.

If VAT is not applied, the rental/leasing of real estate is subject to the registry tax at the rate of 2%.

If the landlord is subject to the imposition of VAT, the rate of 1% applies to rental/leasing of non living units.

# E. Other Taxes

## 1. Is there a capital tax for equity injected into a local company?

No, there isn't.

## 2. Is there a stamp duty on debt granted to a local company?

Stamp duties in the measure of a fixed levy of negligible value apply on a broad range of documentation which may be drafted with respect to financing agreements. In most cases, the stamp duty obligation can be overcome by resorting to commercial correspondence as a mean to conclude contracts, as the latter lies outside of the scope of application of stamp duty.



Registration tax of 3% is due on formal financing contracts. In case the financing is provided by a bank and some conditions concerning the long-term nature of the financing (longer than 18 months) and the absence of specific mortgage agreements are met, a substitute tax would apply on the financing. The applicable rate is 2% in case the financing relates to the acquisition, building or renovation of a residential property which is not the main dwelling. In other cases, a general 0.25% rate would be applicable.

## 3. Does a special regime for Real Estate Investment Funds exist? If yes, what are the requirements?

In Italy, there is a different taxation for Real Estate Investment Funds ("REIF"): "institutional" (where the investors are public entities or qualified entities, as explained in the following) and "no institutional" (where the investors are not institutional).

Institutional investors are:

- the state or a public body of persons;
- an investment fund or a "SICAV";
- pension funds (either voluntary or mandatory);
- an insurance company, with exclusive reference to the investments aimed at the coverage of technical reserves;
- a financial or banking intermediary subject to surveillance;
- a subject included in the list above detailed, if resident in a country allowing the exchange of information aimed at recognizing the beneficial owners of the incomes and mentioned in the "white list";
- a bank foundation or an entity pursuing only mutual purposes (e.g. cooperatives);
- a corporate or contractual vehicle held for more than 50% by the subjects listed above.

If the "REIF" is owned only by institutional investors, it is exempt from income taxes (Ires plus Irap), enjoying the various exemptions and tax benefits for VAT and registration tax purposes already granted to the "REIFs" under Art. 8 and 9 Law Decree n. 351/2001.

If the "REIF" is owned also by non-institutional investors, it maintains its exemption and tax benefits only if the investors own a share lower or equal to 5% of the fund.

If the investment by a non-institutional investor exceeds 5%, the incomes realized by the "REIF" are taxable in the hands of the unit-holders.

Profits distributed by "REIFs" to non-residents are:

- exempt if the investor is institutional;
- subject to withholding tax of 26% if the investor is not institutional; in this case the taxation can be reduced in accordance with the provisions of the applicable tax treaty against double taxation (if any), considering the distributed profits assimilated to interest.

## F. Tax Group Regimes

### 1. Are there group taxation regimes?

Yes, tax group regimes are provided both for corporate income tax (Ires) and for VAT.

**Corporate income tax group taxation**

As far as corporate income tax (Ires) is concerned, in Italy, the parent company or the controlling entity and each controlled subsidiary company may jointly exercise the option for group taxation.

Subsidiary companies shall include joint-stock companies, limited partnership with share capital, and limited-liability companies in which the parent company or the controlling entity directly or indirectly controls more than 50% of the share capital or from which the parent company or the controlling entity realizes directly or indirectly more than 50% of the earnings reported in the financial statements.

The requisite of the control must exist as of the beginnings of any year relative to which the parent company or controlling entity and the subsidiary company exercise of the option. The option has a duration of three years with automatic renewal for another three years period or can be revoke at the expiration of the term.

For instance, in order to opt for the group taxation of the period 2020, 2021, 2022, the controlling entity can include the companies already controlled as of 31 December 2019.

The exercise of the option for the group taxation involves the calculation of an overall aggregate income corresponding to the algebric sum of the aggregate net incomes, with regard to the subsidiary companies, regardless of the percentage of control. Therefore the main advantage of the group taxation is the possibility to offset Ires taxable income with Ires losses within the group.

The controlling entity shall be responsible for the carryover of any loss resulting from the algebric sum of the taxable incomes, the settlement of Ires tax globally due or of the Ires tax credit available for reimbursement or for carryover to a future period. Also the obligations for the prepayment of taxes and the payment of the balance of Ires tax due is exclusively the responsibility of the controlling entity.

Finally, fiscal losses accrued in years prior to the start of the group taxation may be used only by the companies to which they refer (i.e. they cannot be transferred to the group).

**VAT-grouping regime**

In accordance with Article 11 of EU Directive 2006/112/EC, Italy introduced domestic value added tax (VAT) grouping provisions in 2018 and the VAT group regime has been effective in Italy as of 1 January 2019.

This VAT group regime is different from the already existing VAT consolidation scheme (i.e. Iva di Gruppo), regulated by Article 73 of Presidential Decree 633/72.

According to this latter scheme, each entity remains not only independent from a juridical point of view, but also a single taxable person, so that the advantage of such a scheme is the possibility to offset VAT credit and debit positions accrued in the hands of different companies of the group.

The new VAT group regime works differently, so that the whole group is considered a single VAT taxpayer and the participating entities are jointly and severally liable for VAT (and interest and penalties) to the tax authorities.

All VAT groups have a sole VAT identification number that:

- groups members use for transactions with third parties; and
- periodically determines their VAT group position (debit or credit) and that they must submit a single VAT return and pay the VAT amount due to the tax authorities.

Pursuant to the Italian VAT-grouping provisions, any taxable person established in Italy that is closely bound, at least from 1 July of the previous year, to another party by financial, economic and organisational links could be eligible to be a VAT group member (the all-in-all-out principle applies).

The financial, economic and organisational links must exist simultaneously as follows (i.e. the threefold test):

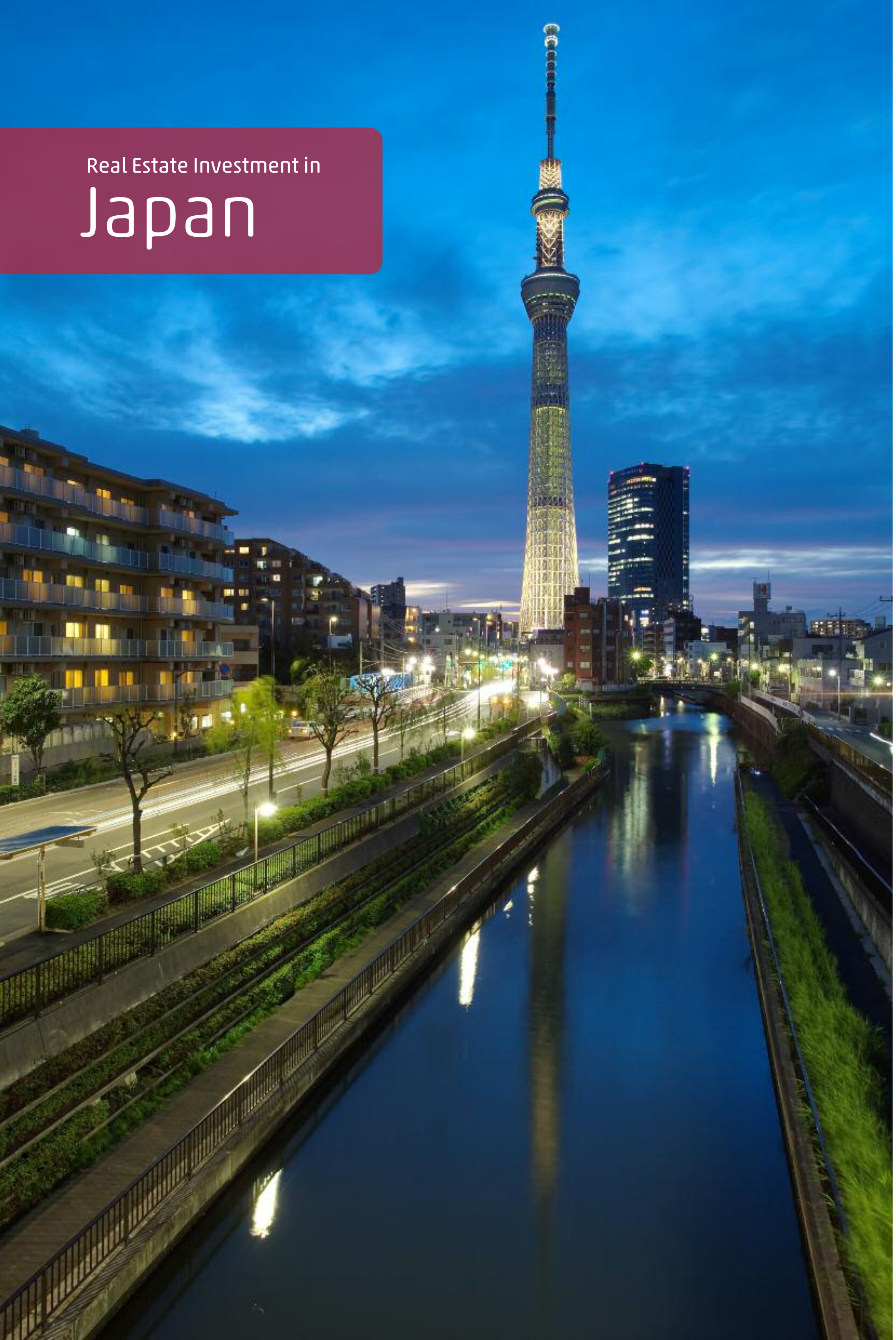
- a financial link exists when there is a relationship of direct or indirect control among VAT group members in accordance to Article 2359 (paragraph 1, subparagraph 1) of the Civil Code (i.e. when a company holds the majority of voting rights in another company);
- an economic link exists when either all VAT group members perform business activities of the same nature, their activities are complementary or interdependent or the activities substantially benefit the other VAT group members; and
- an organisational link exists if there is a coordination of fact or law between the decision-making bodies of the taxable persons, even if the coordination is not carried out by the same persons.

It is important to underline that the following persons are ineligible to become members of a VAT group:

- resident abroad taxable persons;
- foreign permanent establishments of resident taxable persons;
- passive holding companies; and
- persons under winding-up procedures or subject to bankruptcy or seizure.

A VAT group option form, even if discretionary, must be exercised by a VAT group representative and by all taxable persons meeting the conditions to be part of a VAT group (according to the all-in-all-out rule). Thus, if one VAT group member does not exercise the option, a VAT group cannot exist.

The option is binding for three years and is automatically renewed for each subsequent year if it is not revoked.




## A. Legal/General

1. Are non-residents entitled to acquire real estate in Japan?
   Does the acquisition have to be carried out by a Japanese corporation?

A non-resident (foreigner/foreign company) can acquire Japanese real estate and become sole or joint holder of an ownership title without any restrictions, like a Japanese national and regardless of the type of real estate. There is no time limit on proprietary rights, and non-residents can purchase, sell and inherit them freely.

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2. Which importance does the land register have?

Land and buildings are treated as independent real estate. Ownership title and other property rights with respect to real estate are typically and separately registered in the real estate registry maintained by the local registration offices.

Generally, transactions on real estate become effective upon execution of agreements between the parties and no formalities are required. However, the parties must apply for registration in the appropriate registry to assert one's rights against a third party and to complete the transaction.

## B. Income Tax

Please note that the following has been prepared based on the tax laws currently in force. Tax rates may be reduced or increased in near future.

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate? Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The applicable corporate tax rate for the fiscal years started on or after 1 April 2019 is 23.2%. The effective corporate tax rate, after taking account of the local corporate tax burdens, is currently 30.6%. For corporate tax purpose, there is no special tax rate for gains/losses arising from real estate transactions.

Individuals are required to pay national and local taxes. The combined personal tax rates are from 15% up to 55% (10% of inhabitant tax included). However, capital gain arising from sale of real estate is taxed separately. The applicable tax rate for such capital gain is not progressive, depending on the holding period of the underlying real estate. The applicable national and local tax combined rates are 20.315% to capital gains arising from sale of the real estate, which has been held for more than five years as of 1 January of the year, in which the real estate is sold. Other capital gains are subject to taxation at the combined national and local tax rates of 39.63%.

There is tax-grouping aplicable only 100% Japanese domestic corporation (no foreign corporation).

## 2. What is the tax depreciation period for real estate in Japan? Are there depreciation categories? Which depreciation method is used?

For buildings constructed prior to 31 March 1998, a tax payer can choose either the straight-line method or the declining balance method for the depreciation. It should be noted, however, that straight-line method is mandatory for those constructed after 1 April 1998.

Tax depreciation periods vary, depending on type, structure, purpose of the use. For example, a buildings constructed in reinforced concrete shall be depreciated over 50 years, if it is used as an office, while the same type of the building used as a residence shall be depreciated over 47 years.

## 3. When is a foreign investor subject to limited tax liability in Japan?

As a general rule, non-resident individuals and corporations without permanent establishment are not subject to personal and corporate taxation in Japan.

However, non-resident individuals and corporations are subject to taxation in Japan, if they have rental income or capital gain arising from transfer of real estate located in Japan. Tax rate applicable for non-resident individuals and corporations is the same as the one as the Japanese individuals and corporations *(see above point 1.)*.

## 4. Are asset deal and share deal possible in Japan? What are the main consequences?

If a real estate holding corporation is established by a foreign investor, both deals are possible.



In terms of a taxation of the seller, tax consequence can be very different between share deal and asset deal. If shares of the Japanese real estate holding corporation are qualified as "Shares similar to real estate transfer", it can trigger taxes at shareholders' level in certain cases. "Shares similar to real estate transfer" means a sale of shares of the real estate holding corporation, of which 70% of the total assets consist of short-term (equal to or less than 5 years) real estate in Japan, is deemed to be not as a sale of shares (share deal), but instead as a sale of the underlying real estate (asset deal). Also, for the real estate holding corporation with 70% of the total assets consisting of short-term (equal to or less than 5 years) real estate in Japan, and whose shares are sold within 5 years, it is deemed to be not as a sale of shares (share deal), but instead as a sale of the underlying real estate (asset deal). Tax rate applicable for non-resident individuals and corporations is the same as the one as the Japanese individuals and corporations *(see above point 1.)*.

In terms of a taxation of the purchaser, there is no immediate tax consequence arising from share deal. However, the value of the real estate acquired is different between on share deal and asset deal: while the real estate acquired on share deal is not adjusted (book value), the real estate acquired on asset deal is adjusted (fair market value). This difference of the real estate value acquired will have future tax consequences on sale of the real estate by the purchaser (full taxation).

In addition, some transactional taxes are immediately due to purchaser on asset deals. If a foreign investor purchases land and building in Japan, the investor is required to pay real estate acquisition tax and registration and license tax. In addition, consumption tax is imposed on sale of buildings.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Japan has thin capitalization rules that restrict the deductibility of interest above the debt-t-equity ratio 3:1. The interest deductibility is denied only for interest on debt from foreign affiliates in excess of the limit.

For personal income tax purposes, there is certain limitation on deductibility of interest on the loan borrowed for acquisition of land.

### 6. Can acquisition costs/financing fees/interest be deducted?

Generally, acquisition costs cannot be expensed. Acquisition costs for buildings shall be depreciated over the designated period based on the straight-line method. Generally, financing fees/interest are deductible for corporate tax purposes.
For personal income tax purposes, there is certain limitation on deductibility of interest on the loan borrowed for acquisition of land. The amount of interest on debt required to acquire land for business that should generate real estate income is recognized expenses for the calculation of real estate income. If the amount of real estate income is a loss, it is considered that the amount of loss corresponding to the interest amount of the liability has not occurred, and profits and losses cannot be off-set with other income types.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

A Japanese corporation may elect to file a consolidated tax return with its 100% subsidiaries. In so doing, financial costs of a holding entity may be offset against income generated by the entity acquired.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

A Japanese company is required to withhold income tax from interest on loans, so long as recipients of such interests are non-resident individuals and corporations. The applicable withholding tax rate is currently 20.42%, which may be reduced under tax treaties.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

For corporate tax purposes, tax losses are carried forward for ten years, if the company files the blue form tax return (for those who conducts appropriately bookkeeping and make a correct tax filing accordingly, a blue form tax return is applicable, in which favorable tax treatments are permitted). Tax loss carry back is currently suspended.

For personal income tax purposes, tax loss may be carried forward for three years, if the personnel files the blue form tax return. Carry back for one year is elected.



## C. Real Estate Taxes

### 1. Does Japan levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Real estate acquisition tax is payable by the purchaser of real estate. The tax rate is 3% (exceptionally 4% for building for non-residential use). In addition, registration tax is due upon registration of the acquired land and building in the real estate register. The registration tax rate for land and for building is 2% (for non-residential use). Tax base for these transactional taxes is an assessed value (neither market value nor actual selling price) of land and building. There is no such tax payable by the purchaser of shares.

Sale or transfer of beneficiary interest in trust is not subject to real estate acquisition tax, even if the underlying asset held in the trust is real estate. It is an established practice to transform real estate in kind into beneficiary interest, using trust, so that transactional tax burdens can be reduced.

### 2. Is real estate subject to any real estate tax? At which rate?

Fixed assets tax is imposed on holders of real estate in Japan. This tax is payable, regardless of whether the owner is resident or non-resident in Japan. The standard tax rate is 1.4% for land and building (calculated based on real estate tax base) but the fixed asset tax is a local tax and thus tax rate may vary depending on the location of the real estate.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The Japanese VAT (consumption tax) is due on sale of building. The current rate is 8% and expected to be increased 10%. Sale of land is a non-taxable transaction for consumption tax purposes.

### 2. What are the VAT consequences of renting/leasing of real estate?

Leasing of building for commercial use is a taxable transaction for Japanese consumption tax purposes. Leasing of building for residential purposes and land is non-taxable.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Upon establishment of a Japanese corporation (kabushikigaisha), capital tax is payable at 0.7% of the amount of the paid-in capital or minimum amount of JPY 150k. Capital tax is also due upon increase of capital to be registered. Tax due is 0.7% of the amount increased (minimum JPY 30k).

### 2. Is there a stamp duty on debt granted to a local company?

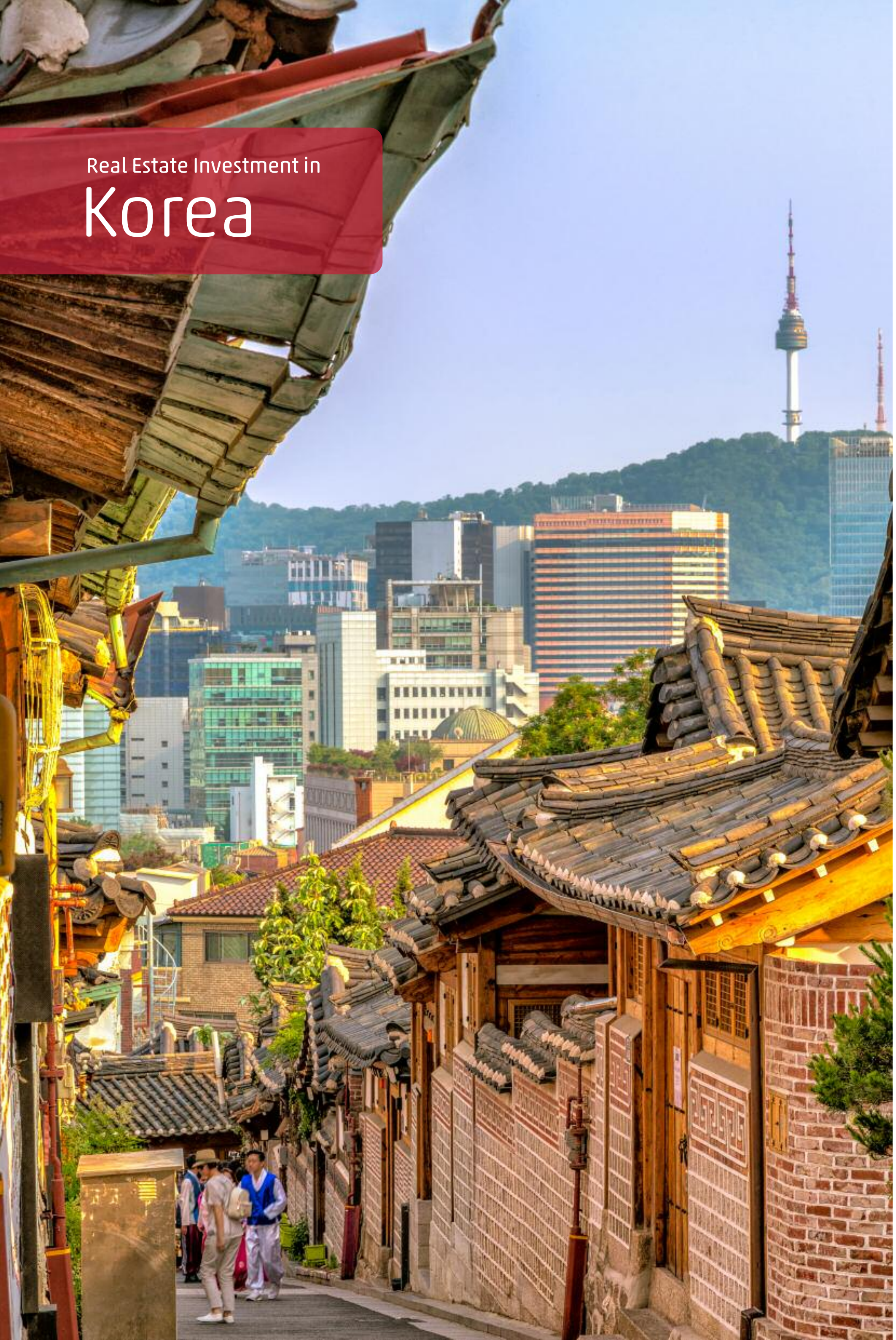
Stamp tax is due on sales or loan agreements for real estate. Stamp tax liability is calculated based on sales price or loan principal indicated in each agreement, amounted from JPY 200 to JPY 600k.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Since September 2001, Japan Real Estate Investment Trusts (J-REIT) is available.

If J-REIT Investment Corporation distributes equal to or more than 90% of distributable income, and fulfills other conduit requirements, no corporate tax is charged.

In terms of a taxation of the individual purchaser of J-REIT, J-REIT dividends are taxed at 20.315% in the personal income tax return *(for tax rate applicable for corporations as shareholder, see above point 1.)*.



Real Estate Investment in

# Korea

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in Korea? Does the acquisition have to be carried out by a Korean corporation?

Under the Act on Foreigner's Land Acquisition, it is permissible for foreign individuals and companies to acquire land within the territory of the Republic of Korea. This means that either headquarters of a foreign corporation or its branch office in Korea may hold the title to the ownership. As a special rule, a foreigner acquiring land is required to make a report of the land acquisition to the head of the appropriate local government within 60 days from the conclusion date of the contract.
The reporting process and the applicable regulations may differ based on the purpose of the acquisition and the governing jurisdiction. Also, a foreigner acquiring land in the areas of the military bases, designated cultural asset area, ecology and scenery conservation areas, or special reservations for wildlife must obtain permission to enter into the contract for land acquisition. Furthermore, under the Act on Foreigner's Land Acquisitions, the principle of reciprocity may apply to prohibit or restrict the land acquisition by persons of a certain nationality.

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### 2. What is the significance of a land registry?

Under the Civil Act and the Registration of Real Estate Act, a land registry is one of the requirements for effectuating the transfer of real estates (i.e. change in legal rights and duties associated with the real estate). However, please note that the Korean law does not extend protections to bona fide purchasers who, in good faith, acquire real estate in reliance of the invalid land registry.

## B. Income Tax

1. What are the corporate and personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporate income tax rate**

The corporate income tax rate is as follows. Please note that the following tax rates include the local income tax which is 10% of the corporate income tax rates.

| Tax base | Graduated tax rate |
| --- | --- |
| Up to KRW 200m | 11% |
| More than KRW 200m - up to KRW 20bn | KRW 22m + 22% for exceeding KRW 200m |
| More than KRW 20bn - up to KRW 300bn | KRW 4.378bn + 24.2% for exceeding KRW 20bn |
| More than KRW 300bn | KRW 72.138bn + 27.5% for exceeding KRW 300bn |

**Personal income tax rate**

The personal income tax rate is as follows. Please note that the following tax rates include the local income tax which is 10% of the personal income tax rates.

| Tax base | Graduated tax rate |
| --- | --- |
| Up to KRW 12m | 06.6% |
| More than KRW 12m - up to KRW 46m | 16.5% |
| More than KRW 46m - up to KRW 88m | 26.4% |
| More than KRW 88m - up to KRW 150m | 38.5% |
| More than KRW 150m - up to KRW 300m | 41.8% |
| More than KRW 300m - up to KRW 500m | 44.0% |
| More than KRW 500m | 46.2% |



**Special additional tax for certain real estate**

Capital gains derived from a transfer of certain real estate (such as non-business purpose land) are subject to additional 11% (44% for a transfer of non-registered land) tax rate including local income tax in addition to the corporate income tax or personal income tax stated above on the capital gains.

2. What is the tax depreciation period for real estate in Korea?
   Are there depreciation categories? Which depreciation method is used?

Depreciation is allowable for buildings, but not for land. The depreciation method to be applied to buildings is a straight-line method. Different useful life is applied to different building structures (e.g. brick or wooden construction (15-25 years), steel frame building (30-50 years).

3. When is a foreign investor subject to limited tax liability in Korea?

A domestic corporation and a resident in Korea are taxed on worldwide income. However, a foreign corporation and non-resident have a limited liability to pay tax on Korean-source income if it does not have a permanent establishment in Korea. A foreign corporation means a corporation with its headquarters or main office in a foreign country which does not maintain a place of management in Korea.
A resident means an individual having a domestic address or one's place of residence for more than 183 days in Korea. A non-resident is an individual who is not a resident in Korea.

4. Are asset deals and share deals possible in Korea?
   What are the main consequences?

Both asset deals and share deals are possible in Korea. Main difference comes from the acquisition tax. For asset deal, the acquisition tax rate of 4.6% (or 9.4%) would be applied on the value of real estate. For share deal, the transfer tax rate of 2.2% would be applied on the book value of real estate.

5. Are thin capitalization rules applicable?
   Are there other limitations of interest deduction applicable?

Yes. Thin capitalization rules in Korea limit deduction of interest expense paid to the foreign shareholders. Based on the thin capitalization rules, an interest paid on borrowings from the foreign controlling shareholders in excess of twice (six times for financial institutions) to the foreign controlling shareholder's paid-in capital (or net asset amount at the year-end) are excluded from deductible interest expenses, but it will be deemed as dividend to the foreign shareholder or other outflow of income for tax purposes.

In addition, there is limitation for deduction of excessive interest expense paid to foreign shareholders. If net interest expense (interest expense (paid to) minus interest income (earned from foreign shareholders)) exceeds 30% of taxable income before deduction of depreciation and interest expense, such excessive interest expense will be denied for deduction for corporate income tax purpose.

Lastly, interest paid to the mismatched hybrid securities will not be deductible in Korea when such interest income is not recognized as taxable income in the country of foreign related parties which receive the interest income.

6. Can acquisition costs/financing fees/interest be deducted?

They are generally deductible.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

The Korean tax law does not prevent or limit debt push-down.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Yes. A tax rate of 15.4% (27.5% for interest of non-business loan) is applied to interest paid by a local company to a creditor, and a 22% (15.4% for interest on the bond) or the reduced tax rate under the tax treaty, whichever is lower, is applied to interest paid to a non-resident or a foreign corporation.

9. Is a loss carry forward or carry back allowable? If so, what are the restrictions?

A loss carry back may only be applied by small and medium-sized companies for the amount not exceeding the previous business year's corporate tax liability (net of any tax exemption and tax deduction) and accordingly, the taxes paid in the previous year will be refunded. A loss carry forward is allowed regardless of a company size for ten years after the year of net operating loss. However, a deductible amount is limited to a certain percentage (i.e. 60% from the fiscal year of 2019 and afterwards) of each business year's taxable income except for certain corporations, such as small and medium-sized companies and companies under a recovery plan.

## C. Real Estate Taxes

1. Does Korea levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

*Please refer to the response to the question 4. of chapter B.* It cannot be avoidable.

2. Is real estate subject to any real estate tax? At which rate?

For real estate acquisitions, an acquisition tax is imposed based on the value of the acquired property. Also, a property tax is imposed based on the value of the real estate during the holding period.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

For a transfer of real estate except for land, a transferor must collect VAT from the transferor, which is 10% of the transfer value of the real estate.

2. What are the VAT consequences of renting/leasing of real estate?

VAT, which is 10% of the rental or leasing fee, applies to renting or leasing of real estate.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

Yes. When injecting capital to a corporation, a registration and license tax (plus surtax) is imposed based on the injected capital amount (par value of capital).

2. Is there a stamp duty on debt granted to a local company?

Yes. When documenting a certificate of consumer cash loan with financial institutions, a stamp duty is imposed based on the loan amount.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Yes, it does. Generally, it is required to be set up in public placement.


## A. Legal/General

1. Are non-residents entitled to acquire real estate in Latvia? Does the acquisition have to be carried out by a Latvian corporation?

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In Latvia, the acquisition of real estate is generally allowed. If the real estate is acquired by a foreign entity or a natural person, the Latvian tax risks need to be evaluated carefully, especially the permanent establishment (PE) risks. Mere holding of a real estate may not require registering the foreign entity or person for Latvian taxes, but additional business activities may.

European Economic Area or Swiss Confederation citizens and registered companies may acquire land plots in Latvian urban areas. They must comply with the require-ments imposed on citizens of the EU or companies registered in the EU (companies must likewise be registered as taxpayers in Latvia). However, this only applies to acquisition of land. Apartments or buildings may be acquired without further restrictions and limitations unless the land beneath them is included in the deal.

Foreigners from non-EU states should be aware of restrictions on real estate acquisition in Latvia. Acquisition of land plots in certain areas in both rural and urban territories is restricted. Acquisition is restricted to certain areas such as coastal areas, border areas and heritage protection zones. The restrictions on foreign entities exist for acquisition of agricultural and forestry land (except if construction is permitted there under the territorial plan of the relevant municipality). Specific restrictions should be checked beforehand.

2. Which importance does the Latvian land register have?

Latvian real estate is registered in a centralized register called the Land Book. The Land Book ensures publicity and the protection of the rights of the property owners with respect to third parties. The register is also available electronically.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax (CIT) rate: 20%.
  Corporate taxpayers are taxed on profit distribution (dividends, deemed dividends and expenses comparable to dividends with the real aim of profit distribution). Business income earned (including interest, royalties and inbound dividends) is not taxed on receipt but on profit distribution. No PIT applies to dividends received by the individual where CIT has been already paid by the company. Non-resident companies are taxed only on their Latvian-source income.

- Progressive personal income tax (PIT) rates:
  - for yearly gross income up to EUR 20,004: 20%;
  - for a part of yearly gross income exceeding EUR 20,004 but not exceeding EUR 62,800: 23%;
  - income exceeding EUR 62,800 a year is taxable at a PIT rate of 31.4%.

- PIT on capital gains from sale of a capital assets: 20%.

- Dividends received by a domestic or foreign company can be distributed without CIT liability if CIT is paid in the country of origin (except dividends from black-listed offshore jurisdictions: 20%). Latvia does not levy withholding tax on dividends paid to non-resident companies, except to residents of black-listed offshore jurisdictions.

- Withholding tax amounting to 3% applies on the sales price of real estate or shares in qualifying real estate companies paid to non-residents. In order to ensure equal treatment of local and EU/EEA companies, non-residents (EU/EEA companies) are entitled to recalculate CIT in accordance to general rules, i.e. 20% CIT from capital gains and claim back the overpaid tax (if any).
  - A non-resident must register and pay 3% CIT from the sale of real estate in Latvia if the tax has not been withheld by the purchaser.
  - Non-residents rental or leasing income from real estate located in Latvia is subject to withholding tax of 5%.

- Capital gains from sale of shares held by a Latvian company in any other company for at least 3 years (unless held in companies in black listed jurisdictions or in a real estate company) are exempt from CIT.

2. What is the tax depreciation period for real estate in Latvia?
   Are there depreciation categories? Which depreciation method is used?

As only distributed profits are taxable, CIT payers do not need to calculate the tax depreciation.

3. When is a foreign investor subject to limited tax liability in Latvia?

As a matter of principle, non-residents are subject to limited tax liability in Latvia. A non-resident's proceeds of sale of real property in Latvia, or from sale of shares in a company whose real property holdings make up more than 50 per cent of its total assets, attract a 3% withholding tax.

Latvian tax system recognizes a non-resident entity as a similar entity established in Latvia according to its status on like terms. Non-resident companies are taxed only on their Latvian-source income and capital gains constituting income attributable to a PE in Latvia on profit distribution at 20% rate. A PE is treated as a separate resident taxpayer for the purposes of Latvian tax laws.

Non-resident companies without a PE in Latvia need only pay withholding taxes on certain types of payments received from Latvian residents or Latvian PEs, such as:

- disposal of immovable property in Latvia;
- management and consultancy fees;
- rental income from real estate located in Latvia;
- payments to residents of black-listed offshore jurisdictions.

Generally, Latvia follows the OECD concept of PE for both domestic and treaty purposes, with certain modifications for domestic purposes as to the level of activity by service providers or agents that might result in a PE. Services provided in Latvia for 30 days in any 6-month period will constitute a PE, as will the use of an agent authorized to enter into contracts where the agent exercises that authority as in-frequently as twice in a tax year.

For CIT purposes, only expenses directly related to company business activity are deductible.

Latvia does not levy withholding tax on dividends paid to non-resident companies, interest payments to non-resident companies, royalty payments to non-resident companies, except to residents of black-listed offshore jurisdictions. Payments to black-listed offshore jurisdictions are taxed at 20% rate.
No PIT applies to dividends received by the residents or non-resident individual where CIT has been already paid by the company.

## 4. Are share deal and asset deal possible in Latvia? What are the main consequences?

Both share and asset deals are possible in Latvia. Capital gains arising from an asset deal or a share deal are treated similarly for PIT purposes. Capital gains derived by an individual from the sale of real estate generally are subject to an income tax rate of 20%. Sale of residential property is exempt from PIT if one of the following is fulfilled:

- the property is owned by an individual for a period exceeding 60 months out of which it is the declared residence of the individual taxpayer for at least 12 months;
- the property is owned by an individual for a period exceeding 60 months and during this time it has been the only real estate of the individual;
- the property is the only real estate of the individual and 12 months before or after the sale new property is purchased.

Capital gains derived by resident companies and PEs of non-resident companies are subject to CIT on profit distribution at 20% rate.

## 5. Are thin capitalization rules applicable? Are there other limitations of interest deduction applicable?

Under the Latvian CIT law two thin capitalization rules apply.

- Firstly, allowable interest is calculated on a maximum debt/equity ratio of 4:1.
- Secondly, if borrowing costs exceed EUR 3 million, the excess over 30% of the company's net profit before tax is included in the taxable base.

The higher amount of excess interest calculated under either method is taxable to CIT. The non-deductible interest cannot be carried forward. Thin capitalization rules do not apply with respect to loans received from banks registered in EU/EEA and other financing institutions incorporated in jurisdictions which have concluded double tax treaties with Latvia.

## 6. Can acquisition costs/financing fees/interest be deducted?

The acquisition costs are immediately tax deductible. The major exception to this principle exists when, e.g. an unfinished construction object is purchased and its completion requires additional costs which are capitalized. Financing fees and interest normally are immediately tax deductible (subject to thin capitalization limitations). Interest expenses and refinancing fees are tax deductible as long as they are considered business-related costs.

## 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

A possible model is to effectuate a merger between the target company and the SPV (special purpose vehicle) . There are no transfer taxes for the implementation of the debt push-down. Latvia generally does not allow debt push-down and consolidation for tax purposes, however each such case should be analyzed individually due to a lack of a wide-spread practice in such cases.

## 8. Is there a withholding tax on interest payments paid by local company to creditor?

There is no withholding tax on interest payments to creditor, legal entity, except for payments to residents of black-listed offshore jurisdictions.

Interest payments to creditor, individual person is subject to PIT withholding at 20% rate.

## 9. Is a loss carry forward or carry back granted and what are the restrictions?

From 1 January 2018, the concept of tax losses no longer exists in Latvian tax law. There is no loss carry back in Latvia.

Carry forwards – as a transitional measure under the newly introduced CIT system, companies can use tax losses generated until 31 December 2017. Only 15% of tax losses can be used to cover CIT liabilities for dividends during a term of five years from 2018. Losses can be used to decrease CIT payable on dividends but not by more than 50%.

Under the new Latvian CIT law, over a five-year transitional period Latvia is cancelling the possibility to use the system of carrying forward losses. As with the new CIT system, tax is paid on distributed profit – not on yearly profit – and from 2023 it will no longer be possible to use and carry forward losses.

## C. Real Estate Taxes

1. Does Latvia levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

There is no formal real estate transfer tax. However the following stamp duties apply:

- the registration of the new owner of a non-residential real estate generally is subject to the stamp duty of 2% from the transaction value;
- the uncapped 2% stamp duty applies to sales of residential property;
- a 1% stamp duty applies to investments in kind into the share capital of a company;
- for gift transfers of real estate the stamp duty generally is 3%.

Stamp duties do not apply to mergers or similar restructurings, and transfers of shares in companies holding real estate.

2. Is real estate subject to any real estate tax? At which rate?

Real estate tax (RET) is payable by corporate owners or entities owning or controlling the use of real estate, as well as individuals on their land and residential property.

RET is levied at a rate of 1.5% of the real estate's cadastral value and is payable annually. A 1.5% rate is applicable to buildings other than residential houses, engineering structures and land. If prescribed by municipal regulations, derelict or unsafe buildings may be subject to 3% tax.

As of 1 January 2013, local municipalities are authorized to set the RET rate ranging from 0.2% to 3% in their binding regulations. If the respective municipality has not issued the said regulations, the 1.5% RET applies. Individual property owners are subject to progressive tax rates on their residential homes and apartments as outlined below with a minimum payment of EUR 7 for each registered item of real estate:

- 0.2% – for cadastral value below EUR 56,915;
- 0.4% – for cadastral value from EUR 56,915 to EUR 106,715;
- 0.6% – for cadastral value exceeding EUR 106,715.

Local municipalities are allowed to grant tax reliefs to specific categories of individuals.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Sale of land and sale of used real estate is VAT-exempt.

However, sale of unused real estate (inter-alia recently renovated, reconstructed and restored buildings) and development land (land with a granted construction permit) is subject to 21% VAT. The combined sale of unused real estate and the whole or a part of the underlying land cannot be separated for VAT purposes and is subject to 21% VAT.

A share deal is VAT-exempt. Sale of real estate within a business as a going concern is out of VAT scope.

2. What are the VAT consequences of renting/leasing of real estate?

Lease of commercial property is subject to 21% VAT, whereas rent of residential premises to individuals is VAT- exempt.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

There is no capital tax in Latvia. For stamp duties levied on the investment of a real estate into the equity of a company a 1% stamp duty applies as indicated above.

2. Is there a stamp duty on debt granted to a local company?

As a general rule, debt transactions are not subject to a stamp duty. However, a stamp duty of 0.1% from the principal amount is levied upon the registration of a mortgage in the Land Book. In all other cases, registration of real estate alienation transactions in the Land Book is subject to a stamp duty of EUR 28.46.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

No.


## A. Legal/General

1. **Are non-residents entitled to acquire real estate in Lithuania? Does the acquisition have to be carried out by a Lithuanian corporation?**

In general, non-resident individuals and foreign legal persons can freely acquire real estate situated in Lithuania, except for land, forests and inner waters, where certain exemptions apply. Land, forests and inner waters may be acquired by foreign natural and legal persons on condition that these persons comply with the criteria of the European and Transatlantic Integration.

To meet the said criteria a legal person is required to be established in or a natural person is required to hold the citizenship or a permanent residency of, one of the following states:

- Member States of the European Union or states being parties to the European Treaty with the European Communities and their Member States; or
- Member Countries of the Organisation for Economic Cooperation and Development (OECD), states being parties to the North Atlantic Treaty Organisation (NATO) or the European Economic Area (EEA) Agreement.

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Legal persons established in or natural persons holding citizenship of other countries than those mentioned above do not have the right to acquire land, forests and inner waters.

Please also note that certain additional restrictions still apply in respect of the right to acquire agricultural and forestry land as well as inner waters in Lithuania. Accordingly, the persons from the countries meeting the European and Transatlantic Integration criteria are able to acquire the mentioned real estate on the same grounds and in line with the same procedures as nationals and legal persons of the Republic of Lithuania.

It is generally not required for non-residents to acquire real estate in Lithuania through a Lithuanian company.

2. Which importance does the Lithuanian land register have?

Real estate as well as contracts relating to real estate (transfer, lease of real estate and others) are being registered with the Lithuanian Real Estate Register. A failure to register a real estate related contract generally does not cause its invalidity but it precludes the parties from invoking the agreement against third parties.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporate income tax rates**

The standard rate is 15%. A reduced 5% rate is applicable to certain small and medium-sized entities whose average number of employees does not exceed 10 employees and income during the taxable year does not exceed EUR 300,000 (reduced rate's application is subject to other conditions). Such micro-companies that are newly established enjoy 0% CIT during the first tax period, provided that shareholders of the micro-company are natural persons and in the three tax periods (including the first one) the operations of the micro-company are not stopped, the micro-company is not liquidated or reorganized, and the shares of the micro-company are not transferred to new shareholders. In case the micro-company does not fulfil the established conditions for the 0% tax rate, the reduced 5% tax rate applies.

**Personal income tax rates**

As of 1 January 2019 progressive taxation system is implemented, according to which:

- income that is not derived from employment relationships, independent individual activities or profit distributions is subject to 15% personal income tax, if the amount of such income does not exceed 120 average monthly salaries per year. Any excess is taxed at the rate of 20%.
- income from employment or employment-related relationships is subject to 20% personal income tax, if the amount of such income does not exceed the established threshold of average monthly salaries per year. The threshold in 2020 is 84 average monthly salaries per year and in 2021 will be 60 average monthly salaries per year. Any excess is taxed at the rate of 32%.
- income from independent individual activities and profit distribution, irrespective of whether the threshold is reached, is subject to 15% personal income.

The size of the state average salary is being re-approved by the Government on a yearly basis and in 2020 it is equal to EUR 1,241.40.

**Participation exemption**

Dividends will not be taxed in Lithuania if the recipient of dividends (resident or non-resident entity) holds no less than 10% of shares in the payer of dividends for a period not shorter than 12 consecutive months, including the moment when the dividends are distributed. Dividends may enjoy the aforesaid exemption even if the shares are held for a period shorter than 12 months, but the shareholder intends to hold them for such or longer period.

**Tax-grouping**

There is no group taxation regime for CIT purposes in Lithuania. However, it is noteworthy that the transfer of tax losses is available among the entities of the same group. *Please see section B.9*.

2. What is the tax depreciation period for real estate in Lithuania?
   Are there depreciation categories? Which depreciation method is used?

The tax depreciation period for new and renovated buildings that are used in economic activities is 8 years, except for residential and other buildings. Either the straight-line method or the double balance depreciation method may be used. For residential buildings the depreciation period is 20 years, while for the other buildings the depreciation period is 15 years. Only the straight-line method may be used for this type of real estate.

3. When is a foreign investor subject to limited tax liability in Lithuania?

A foreign investor is subject to limited tax liability in Lithuania if he either has a Lithuanian permanent establishment or earns certain type of income in Lithuania which is sourced in Lithuania. In the first case, personal income tax or corporate income tax may be levied in Lithuania on profits earned through that permanent establishment. In the second case, a withholding tax on personal income or corporate income may be levied, e.g. income from the sale or lease of real estate situated in Lithuania may be subject to a 15% withholding tax.

### 4. Are asset deal and share deal possible in Lithuania? What are the main consequences?

Both an asset deal and a share deal may be concluded in Lithuania.

**Asset deal**

Capital gain realized upon the sale of real estate is subject to 15% or 20% personal income tax (depending on whether the threshold is reached) for individuals and 15% corporate income tax for legal entities.

However, personal income tax exemption applies for:

- capital gain from the sale of housing located in an EEA Member State, if the individual's place of residence was declared there during the last two years prior to the sale;
- capital gain from the sale of housing located in an EEA Member State, provided that such income was invested within one year into the acquisition of another housing located in an EEA Member State where the place of residence was declared;
- capital gain from the sale or transfer of other immovable property located in an EEA Member State and acquired more than ten years prior to its sale or transfer.

**Share deal**

Capital gain upon the sale of shares is generally subject to 15% or 20% personal income tax (depending on whether the threshold is reached) for individuals and 15% corporate income for legal entities.

However, personal income tax exemption applies for:

- capital gain from a transfer of shares not exceeding EUR 500 within one tax period, provided that those shares are issued by an entity not registered in the Black List territory (tax haven), and are not transferred to an entity which initially issued those shares in the event of its liquidation, and were not acquired by means of increase in share capital of that entity from the entity's funds.

Corporate income tax exemption applies for:

- capital gain from a transfer of shares of a Lithuanian company or a company registered in an EEA Member State or of a state which has signed a tax treaty with Lithuania, provided that the seller is a Lithuanian company that has been holding more than 10% of the shares during a two year period or a three year period in case of certain reorganizations or transfers (non-exempt when the shares are sold back to the issuer).

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Lithuanian thin capitalization rules apply to restrict tax deductions on borrowings from related parties, including third party debt that is guaranteed by a related party. The debt-to-equity ratio governing otherwise permitted interest deduction is limited to 4:1. This is applicable in respect of the debt capital provided by a creditor, who: (i) directly or indirectly holds more than 50% of shares or rights (options) to dividends; or (ii) together with related parties, holds more than 50% of shares or rights (options) to dividends, and the holding of that creditor is not less than 10%. Thin capitalization rules are not applicable if a taxpayer proves that the same loan could exist between unrelated parties under the same conditions. Financial institutions providing financial leasing services are also not affected by these rules.

The relevant Lithuanian transfer pricing regulations can be listed as follows: requirement to (i) apply arm's-length prices in related party transactions; (ii) provide information to the Lithuanian tax authorities on related party transactions; and (iii) maintain a sufficient documentation of the related party transactions.

As of 2019, the interest limitation rule, implementing the EU Directive 2016/1164, entered into force. It applies to any financing, irrespective of whether provided by related parties or third parties, unless the borrower has no associated persons (in practice, this would be the case when an enterprise is managed by a shareholder who is a, natural person not holding shares in other enterprise).

According to this rule, companies will be able to deduct only:

- interest expenses that do not exceed interest income; and

- exceed interest income but the excess does not exceed the following thresholds: (i) 30% unit EBITDA (profit before interest, taxes, depreciation and amortization); or (ii)EUR 3,000,000.

This rule has certain peculiarities of application to Lithuanian corporate groups, e.g. for a company that belongs to a group, interest expenses will have to be calculated for all Lithuanian companies in that group and for permanent establishments of foreign companies in Lithuania (except financial institutions and insurance companies).

## 6. Can acquisition costs/financing fees/interest be deducted?

Yes, acquisition costs are immediately deductible for short-term assets. For long-term assets depreciation (amortization) is applicable. Financing fees and interest are deductible (with respect to limitations as discussed above) if they are incurred for the earning of income or for deriving economic benefit of the company.

## 7. Are there any possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

A debt push-down can be achieved by merging companies, on a condition that the interest is related to earning income or deriving economic benefit of the entity continuing operations, as is explained in the recent courts' judgements. No transfer tax is applied.

## 8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest paid to non-resident companies is generally subject to 10% withholding tax.

However, exemption applies to:

- interest on government securities, deposit interest and interest on subordinated loans meeting the criteria prescribed by the Bank of Lithuania;
- interest paid to non-resident companies registered or otherwise established in an EEA Member State, or in a country with which Lithuania has an effective tax treaty.

Interest paid to non-resident individuals is subject to 15% withholding tax.
No exemption according to Lithuanian laws applies.
However, further exemptions may be applied following double taxation treaties.



## 9. Is a loss carry forward or carry back granted and what are the restrictions?

Carry back of losses is not allowed in Lithuania.

Ordinary losses may be carried forward for an unlimited period of time if the entity continues to carry on the activity that resulted in losses, however only up to 70% of current year's taxable profits can be offset against tax loss carried forward. This restriction is not applicable to companies that are entitled to apply reduced CIT rate of 5%. Meanwhile, losses on the disposal of securities and financial derivatives may be carried forward only for five successive tax years, beginning with the tax period following the tax period during which the losses were incurred. Furthermore, only the taxable profit from transactions of securities can be reduced using this kind of losses. Also specific rules apply in cases of carrying forward losses sustained from the use, sale or other transfer of property ownership created in research and experimental development activities carried out by the entity itself.

Transfer of tax losses is available among the entities of the same group. An entity can transfer tax losses (or a part of the tax losses) incurred in the tax year of 2010 or later to another entity of the same group which has the right to reduce the taxable profit of the same tax period. Such possibility is available only if the following conditions are met:

(i) the parent company of the group has to hold directly or indirectly no less than 2/3 of the shares (interests, member shares) or other rights to distribute profits in both entities participating in the loss transfer (or loss may be transferred to the parent company); and
(ii) tax losses has to be transferred between the entities within a group, which have been part of that group for an uninterrupted period of no less than 2 years or have been within the group as of their establishment and will remain within the group for no less than 2 years.

A non-resident entity can transfer tax losses (or a part of the incurred losses) to a resident entity only if the following conditions are met:

(i) the non-resident entity is a tax resident of an EU Member State; and
(ii) the tax losses of the non-resident entity cannot be carried forward to another tax year (or deducted from its income or profit) according to the laws of its residence country; and
(iii) the tax losses to be transferred are calculated according to the provisions of the Lithuanian Law on Corporate Income Tax.

## C. Real Estate Taxes

1. Does Lithuania levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

No, there are no transfer taxes in Lithuania.

However, please note that certain share sale transactions and all real estate transfer transactions must be certified by a notary and involve notary fees. The fee for notarisation of an agreement for real estate acquisition amounts to 0.3745% of the value of the transaction, however no more than EUR 5,000. Share transfer transactions must be certified by a notary if (i) 25% or more of total shares in the company are sold; or (ii) the shares are sold at a price higher than EUR 14,500, unless personal securities accounts of shareholders are managed according to procedures laid down in legal acts regulating the securities market (i.e. if shares in a private limited liability company are registered with the Lithuanian Central Securities Depository and personal securities accounts of shareholders are kept by licensed account managers (commercial banks or securities brokerage firms), the requirement to certify a share sale-purchase agreement through a notary should not apply).
The fee for notarisation of a share transfer transaction amounts to 0.33-0.41% of the value of the transaction, however no more than EUR 5,000.

The state duties for the registration of title to real estate are calculated separately for each real estate object and vary depending on the market value of the property and the acquirer (whether the owner is a natural or a legal person). Registration duties for legal persons are capped at EUR 1,450 per object and for natural persons EUR 290 per object. Additional expenses such as brokerage fees, real estate valuation, bank fees, etc. may also be incurred during a transaction.

2. Is real estate subject to any real estate tax? At which rate?

**Real estate tax**

Real estate other than land owned by Lithuanian and foreign legal entities and individuals is subject to real estate tax. The annual real estate tax (applicable on the real estate other than land) rate varies from 0.5% to 3% of taxable value of the real estate, depending on the decision of the particular municipality which has to determine the exact rate(s) of the tax within its territory. Taxable value of the real estate is determined based on the market value. Individuals owning residential real estate, value of which in total exceeds EUR 150,000 have an obligation to pay real estate tax from the exceeding part. The applicable tax rate ranges from 0.5% to 2% depending on:

- 0.5% tax rate is applicable if the value is more that EUR 150,000 but does not exceed EUR 300,000;
- 1% tax rate is applicable if the value is EUR 300,000 up to EUR 500,000;
- 2% tax rate is applicable if the value is EUR 500,000 and more.

**Land tax**

Land owned by resident and non-resident companies and individuals is subject to land tax. Annual land tax rate varies from 0.01% to 4% of taxable value of the land, depending on the decision of the particular municipality which has to determine the exact rate(s) of the tax within its territory. Taxable value of the land is determined based on the market value.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The sale of land (except the land transferred together with new buildings or structures or parts thereof as well as land for construction) and the sale of buildings, structures or parts thereof (except new buildings and structures, new parts of buildings and structures) are VAT-exempt.

In case a transaction is subject to VAT, a standard rate of 21% is applied.

The seller may also opt for taxation of the generally exempt transaction at 21% VAT, provided that both the seller and the buyer are subject to VAT.

The sale of shares is exempt from VAT.

2. What are the VAT consequences of renting/leasing of real estate?

Similarly as in case of sale of real estate, the lease of real estate is generally exempt from VAT, but there is a possibility to opt for VAT application. However, short-term lease of residential premises (i.e. hotel, motels, camping sites and similar), as well as lease of parking lots, garages or other items of similar purpose is subject to 21% VAT.

## E. Other Taxes

1 Is there a capital tax for equity injected into a local company?

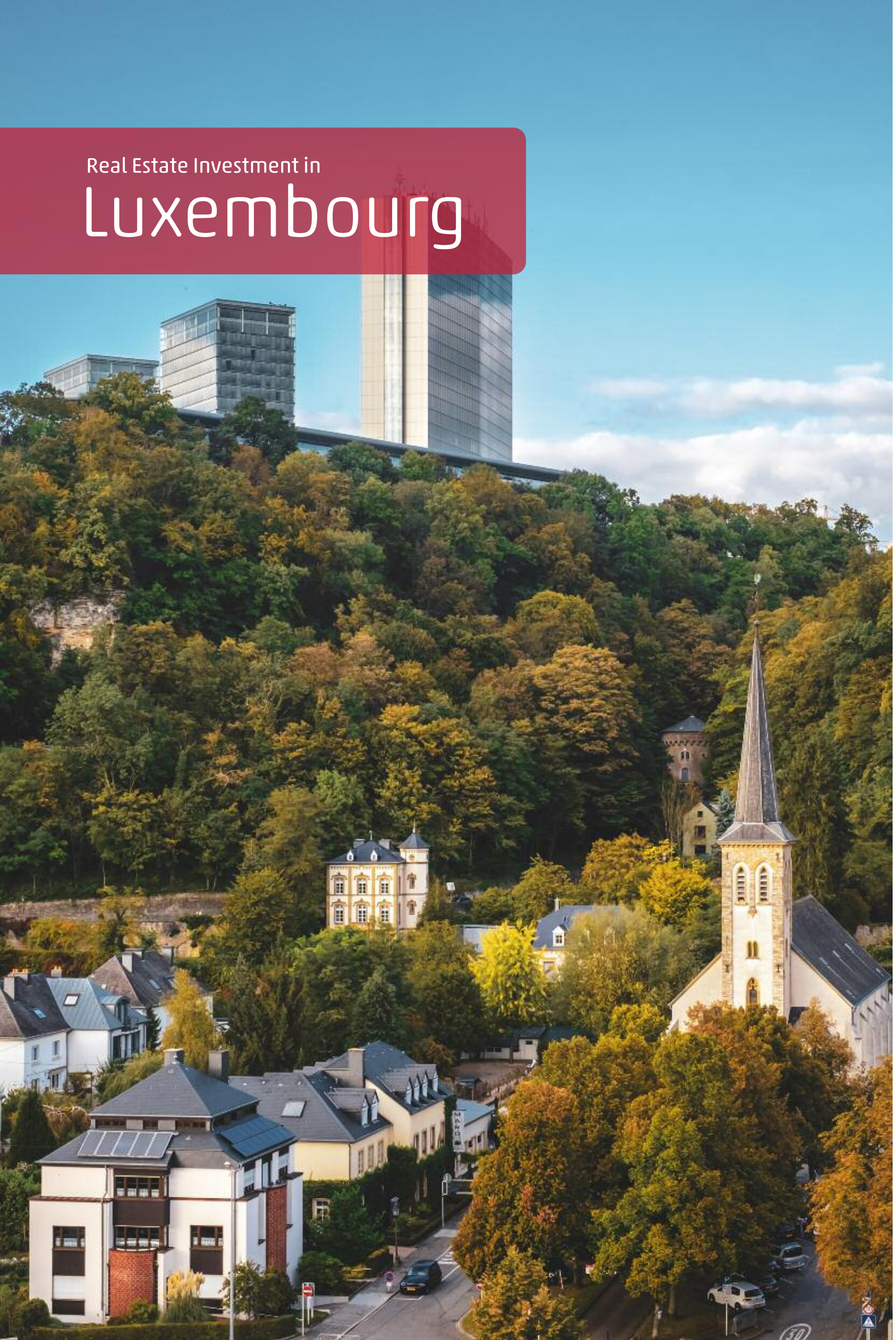
No, there is no capital tax in Lithuania.

2. Is there a stamp duty on debt granted to a local company?

No, stamp duties are not levied in case of granting of debt to a local company.

3. Does a special regime for Real Estate Investment Trusts exist?
If yes, what are the requirements?

No, there is no special regime for Real Estate Investment Trusts.



Real Estate Investment in

# Luxembourg

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Luxembourg?
   Does the acquisition have to be carried out by a Luxembourg corporation?

There are no restrictions on foreign ownership of real estate property in Luxembourg. Such investment can be carried out either by individuals or corporations.

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2. Which importance does the land register have?

The main purpose of the land register is to guarantee a specific date to a deed and ensure the enforceability of real estate property transfers towards third parties.

The Luxembourg land register is competent for land mortgages and land registration.

The land register also deals with recording real estate conveyances and seizure reports.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Personal income tax**

With regard to individuals, income tax rates are progressive and range from 0% to 42%. A surcharge of 7% applies on the tax due. This surcharge is increased to 9% for (i) individuals in tax class 1 and 1a with a taxable annual income in excess of EUR 150k and for (ii) individuals in tax class 2 with a taxable income in excess of EUR 300K, so that the marginal income tax rate is 45.78%.

The first income bracket is exempt (up to EUR 11,265 for class 1 and class 1a individuals and up to EUR 22,530 for class 2 individuals).

The marginal tax rate of 42% is reached with a level of taxable income of EUR 200k for unmarried individuals and of EUR 400k for married spouses.

The Law of 18 December 2015 introduced the principle of a step-up in the acquisition price of substantial shareholdings upon the transfer of an individual's tax residency to Luxembourg. Thus, the acquisition price of substantial participations held by newly relocated residents will be revalued at their estimated market value as at the date of transfer to Luxembourg.

**Corporate income tax**

With regard to companies, a corporate income tax at a rate of 15% applies to companies with a taxable income not exceeding EUR 175,000.

The corporate income tax rate then progressively increases up to 17% for companies with a taxable income exceeding EUR 200,000.

The corporate income tax is increased by a contribution to the unemployment fund of 7% (therefore increasing the aggregate corporate income tax rate to 18.19% for companies with an income exceeding EUR 200,000).

**Municipal business tax**

Companies are also usually liable to a municipal business tax at rates ranging from 6,75% to 10,5% (6.75% in the municipality of Luxembourg in 2020). The municipal business tax applies on tax basis corresponding to the taxable income (as determined for corporate income tax purposes), less an abatement of EUR 17,500 (EUR 40,000 for partnerships).

**Net wealth tax**

Net wealth tax only applies to resident companies and foreign companies having Luxembourg real estate assets or a Luxembourg permanent establishment.

Net wealth tax is calculated based on the unitary value, which corresponds, broadly speaking, to the market value of the companies' net assets minus their liabilities.

The net wealth tax is to be levied at a rate of 0.5% on an amount of unitary value up to EUR 500m.



When the unitary value exceeds the aforementioned threshold, net wealth tax is calculated as follows:

- EUR 2.5m (which corresponds to a rate of 0.5% applied to the amount of EUR 500m); plus
- 0.05% calculated on the taxable amount exceeding EUR 500m.

A minimum annual net wealth tax is levied. It amounts to:

- EUR 4,815 if the sum of fixed financial assets, transferable securities, cash, and receivables owed by affiliated companies exceeds 90% of the balance-sheet total and EUR 350,000; or
- if the aforementioned thresholds are not met, the minimum net wealth tax ranges from EUR 535 to EUR 32,100 depending on the total balance-sheet at the closing of the preceding financial year.

Regarding real estate assets, the net wealth tax does not apply to their market value or their accounting value but to their unitary value, which is an abstract value determined by the Luxembourg administration in view of calculating some taxes (such as income tax, net wealth tax or land tax). The unitary value corresponds to the market value of the real estate based on the real estate market in 1941.

**Luxembourg participation exemption regime for dividends and capital gains (very high level)**

Dividends and capital gains derived from a qualifying entity in which a Luxembourg fully taxable corporation holds or commits to hold a minimum shareholding of at least 10% or with an acquisition price of EUR 1.2m (for dividends and liquidation proceeds exemption, EUR 6m for capital gains) during a minimum holding period of at least twelve months, may be exempt from Luxembourg corporate income tax and municipal business tax.

In order to embed the anti-hybrid rule (Directive 2014/86/EU) into Luxembourg legislation, the Corporate Income Tax Law amended the Luxembourg participation exemption regime for dividends received from qualifying EU subsidiaries. In line with the above, the Luxembourg tax exemption for dividend income derived from an otherwise qualifying EU subsidiary should not be applicable to the extent that such income is deductible by the EU subsidiary.

The new anti-hybrid rule will only apply within the EU and is not applicable to hybrid arrangements between a Luxembourg entity and a non-EU parent or subsidiary.

Following the wording as adopted by the Council on 27 January 2015, the Luxembourg tax law also introduces an anti-abuse clause. It provides that:

- the participation exemption for income from qualifying EU subsidiaries and
- the exemption from Luxembourg dividend withholding tax to income (dividend) distributions to qualifying EU parent companies of a Luxembourg company

are not applicable if the income is allocated in the context of "an arrangement or a series of arrangements which, having been put into place for the main purpose, or one of the main purposes, of obtaining a tax advantage that defeats the object or purpose of the Parent-Subsidiary Directive, are not genuine having regard to all relevant facts and circumstances".

**Minimum annual corporate income tax**

The Law of 18 December 2015 abolished the minimum annual corporate income tax, as from 2016. It has been replaced by a minimum net wealth tax *(see above)*.

**Tax-grouping**

A tax consolidation regime is provided by the Luxembourg tax law under certain conditions, mainly that:

- the entities are Luxembourg fully taxable companies (or the Luxembourg permanent establishment of a foreign entity subject to a tax equivalent to the Luxembourg corporate income tax);
- the top company holds directly or indirectly at least 95% of the capital of the integrated subsidiaries.

A tax consolidation is requested for a minimum period of five years and is only allowed for corporate and municipal business tax purposes (i.e. not for net wealth tax purposes)



### 2. What is the tax depreciation period for real estate in Luxembourg? Are there depreciation categories? Which depreciation method is used?

From a general perspective, the tax depreciation period is determined based on the useful lifetime of the assets, taking into consideration the specific features of the assets and the specific conditions of their use.

For each kind of building, a range that varies between 20 and 50 years is provided by the government and the rate of amortization is ultimately to be chosen by the taxpayer based on such range (as a result, annual depreciation rates vary between 2% and 5%).

The only depreciation method available for Luxembourg real estate is the straight-line depreciation method.

However, individuals leasing real estate outside of the scope of a business can use an accelerated depreciation method, provided that the construction was finalized for less than six years. The depreciation rate for the accelerated depreciation method is 6% per year during the first six years following the construction of the real estate.

### 3. When is a foreign investor subject to limited tax liability in Luxembourg?

Any income or capital gains deriving from Luxembourg real estate are subject to tax in Luxembourg.

For individual foreign investors, real estate income is subject to the same tax liability as for resident investors (i.e. progressive tax rate from 0% to 42% or specific rates for capital gains in certain circumstances).

For foreign investors established under the form of a capital company, real estate income is subject to the same tax liability as for resident companies. However, provided that the activity performed in Luxembourg is not considered as a commercial activity (for instance, the activity is limited to the passive leasing of only one real estate property), real estate income derived by foreign investors established under the form of a capital company will not be subject to municipal business tax (the rate of which varies, depending on the municipality, from 6.75% to 10.5%) but only to corporate income tax at the rate of 18.19% (including contribution to the unemployment fund), so that their global tax liability is limited compared with resident investors established under the form of a capital company.

4. Are asset deal and share deal possible in Luxembourg?
   What are the main consequences?

Both asset deal and share deal are possible in Luxembourg.

The profits realized pursuant to an asset deal are in principle fully subject to tax (except in case of a roll-over relief under specific circumstances). Moreover, Luxembourg asset deals are in principle subject to Luxembourg real estate transfer tax.

Provided that the Luxembourg real estate company is not tax transparent (i.e. incorporated under the form of a civil company or partnership), profits realized upon the sale of shares in a Luxembourg real estate company by a Luxembourg investor established under the form of a capital company may be exempt under the participation exemption regime *(see B.1. above)*.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

The Luxembourg law does not provide for specific rules but for the obligation to carry out arm's-length intra-group transactions. Although in practice a minimum debt-to-equity ratio of 85:15 for shareholding activities and 90:10 for the holding of real estate property is usually considered as sufficient, it would be recommended to be in position to justify such ratio with relevant transfer pricing reports as excess interest deductions may be denied and subject to a 15% withholding tax as constructive dividends.

The Luxembourg law transposing Council Directive (EU) 2016/1164 implemented a new provision applicable to corporate taxpayers and aiming to reduce excessive use of borrowing as an instrument to reduce their taxable base.

According to this rule, the deduction of borrowing costs that are in excess of interest revenues is limited, in the tax period in which they are incurred, to the highest of (i) 30% of the taxpayer's earnings before interest, tax, depreciation and amortization (EBITDA); or (ii) EUR 3 million.

This interest limitation rule does not apply to financial institutions as well as to standalone entities that are not part of a consolidated group (from a financial perspective) and that have no permanent establishment outside Luxembourg or no associated enterprise.

6. Can acquisition costs/financing fees/interest be deducted?

Acquisition costs are included in the acquisition price of the asset and thus depreciated over the same period.

Financing fees are in principle tax deductible as from their accrual provided that they have been incurred in relation with the financing of a taxable asset.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Luxembourg tax law allows tax neutral mergers of Luxembourg companies provided that certain conditions are met (implementation of EU merger directive as amended).

As a result, all assets and liabilities of the absorbed/merged company are transferred to the absorbing company in tax neutrality.

The outstanding debt of one of the companies merged will thus be transferred to the surviving entity, the interest on this loan remaining in principle fully tax deductible.

Moreover, in case of tax consolidation *(see above)* the interest charges of the Luxembourg parent entity could be deductible against the income of the Luxembourg subsidiary for Luxembourg tax purposes.

8. Is there a withholding tax on interest payments paid by local company to creditor?

There is in principle no withholding tax on interest paid to both residents and foreign creditors. However a withholding tax can apply in the following cases:

- interest payments re-characterized as hidden dividend distribution (excessive amount or rate);
- income derived from participating loans or profit sharing bonds can be subject to withholding tax at a rate of 15%.

9. Is a loss carry forward or carry back granted and what are the restrictions?

As from the tax year 2017, tax losses incurred by a company can only be carried forward during 17 years for both corporate income tax and municipal business tax purposes. A tax loss carry back is not permitted.

## C. Real Estate Taxes

### 1. Does Luxembourg levy a real estate transfer tax on sale of real estate or share holdings? Is it avoidable?

Transfer taxes are levied upon the sale of real estate property located in Luxembourg and upon the sale of shares in a partnership when the partnership holds real estate property located in Luxembourg (proportionally).

Transfer taxes include registration duty at the rate of 6% (increased to 9% for business buildings located on the territory of the city of Luxembourg), plus a transcription fee of 1%.

No transfer tax is usually levied upon the sale of shares in corporations holding real estate property in Luxembourg.

The contribution of immovable property to a Luxembourg company in exchange for shares is subject to a specific registration duty of 0.6% (increased to 0.9% in case of business building located in the city of Luxembourg), plus a transcription fee of 0.5%.

### 2. Is real estate subject to any real estate tax? At which rate?

Municipalities in the Grand-Duchy of Luxembourg levy a land tax at a rate ranging from 0.7% to 1% of the unitary value of the real estate property, increased by a co-efficient depending on the municipality in which the real estate property is located and depending on the type of real estate concerned (coefficients ranging from 250% to 750% for Luxembourg city).

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The sale of real estate property is in principle exempt from VAT in Luxembourg. However, the sale of real estate property is subject to VAT in the following situations:

- if the sale concerns a real estate in future state of completion ("vente d'immeuble en l'état futur d'achèvement", "VEFA"): the price corresponding to the unbuilt part of the building is subject to VAT whereas the price corresponding to the land and the built part of the building is VAT-exempt;
- or an option to submit the sale to the VAT is exercised. Such option may be exercised when the buyer (taxable person and VAT registered) uses the property entirely (or for its main part) to perform activities that give the right to deduct input VAT. In practice, the deductibility right of the buyer is usually considered to determine if an option is possible, i.e. if the minimum deductibility right of the buyer is 51%, an option is possible.

The main interest of subjecting the sale of real estate property to VAT in Luxembourg is to enable the seller to deduct VAT on the building costs.

The sale of real estate property is subject to VAT at a rate of 17% (3% if the building is used as principal residence by the buyer).

### 2. What are the VAT consequences of renting/leasing of real estate?

The renting/leasing of real estate property is in principle exempt from VAT in Luxembourg. However, leasing/renting of real estate property will be subject to VAT in the following situations:

- the leasing/renting relates to accommodation in hotels, camping grounds, parking places, safes or machinery;
- or an option to submit the agreement to VAT is exercised by the lessor. Such option may be exercised when the lessee uses the property entirely or for its main part to perform activities that give the right to deduct input VAT. In practice, the deductibility right of the buyer is usually considered to exercise an option, i.e. if the minimum deductibility right of the buyer is 51%, an option is possible;
- or the leasing/rental of the real estate property is accompanied by a full set of services (e.g. reception, electricity, cleaning, WIFI, access to meeting rooms & kitchen, printers, etc): in such case, the services prevail over the real estate and the whole service is subject to VAT without any option.

Since 1 January 2017, lease agreements are not subject to registration obligation with the exception of long-term leasing agreements. There is still the possibility to register the lease agreement notably to make them enforceable against third parties.

In case of voluntary registration of the lease agreement:

- registration duty at 0.6% determined on the total amount of the lease payments due over the lease agreement would be due for leases not subject to VAT;
- fixed registration duty of EUR 12 for lease agreements where the lessor has a valid VAT option.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

In principle, only a fixed capital duty of EUR 75 is due upon contribution made to Luxembourg companies.

However, in case of contribution in kind of Luxembourg real estate, a capital duty of 1.1% (or 1,4% for commercial buildings located in the city of Luxembourg) calculated on the market value of the Luxembourg real estate contributed is due.

### 2. Is there a stamp duty on debt granted to a local company?

No stamp duty is due on debt granted to local companies.

However, in case of a mortgage loan, transcription fee is due at the rate of 0.05% of the principal of the receivable benefiting from the guarantee.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Luxembourg has not implemented a REIT regime. Luxembourg law however provides for different other vehicles, either placed under the supervision of the Luxembourg financial regulator (f.i. Specialised Investment Fund – SIF) or not (f.i. Reserved Alternative Investment Fund – RAIF) offering structuring flexibility and allowed to invest in different type of assets, including real estate.

Real Estate Investment in

# Mexico

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Mexico? Does the acquisition have to be carried out by a Mexican corporation?

Pursuant to articles 27, paragraph 10, section I, of the Mexican Constitution and 10, paragraph 1, of the Foreign Investments Law, only Mexicans by birth or naturalization and Mexican corporations (with clause of exclusion of non-residents) have the right to acquire domain over land, water and their appurtenances within national territory.

Nonetheless, the Mexican Government may grant the same rights to foreigners, provided that they agree with the Ministry of Foreign Affairs to consider themselves as nationals in respect to such property and not to invoke the protection of their governments in reference to said property. In case of defaulting the agreement, the property forfeits in benefit for the Mexican Government.

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However, the Constitution also states that in any case foreigners may not acquire direct domain over land or water in a zone of 100 kilometers along international borders or 50 kilometers along the shore ("Restricted Zone").

Non-residents intending to acquire real estate outside the Restricted Zone must file a written instrument setting forth their agreement with the provisions of article 27, paragraph 10, section 1, of the Mexican Constitution to the Ministry of Foreign Affairs, and obtain the corresponding administrative permit from said authority.

An administrative simplification is provided to non-residents that have their residence in a country that maintains diplomatic relations with Mexico, according to which the former are exempted from the obligation to obtain the aforesaid permit.

Regarding this restriction, it has been common practice to use trusts for the acquisition of real estate in the abovementioned zones, so that a non-resident does not acquire directly such real estate.

This restriction is intended to be eliminated. A proposal of amendment has been under discussion for several years.

2. Which importance does the Mexican land register have?

Property rights should be registered in the Real Estate Registry. Although ownership is transferred contractually, once registered, the transfer of property is opposable to third parties. The person who registers first has a preferential right regarding a specific property against third parties.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The corporate income tax rate is 30%.

The personal income tax rate is based on a tariff that establishes different tax rates for Mexican resident individuals in accordance with their taxable income of the fiscal year. The range of rates established in the Income Tax Law goes from 1.92% to 35%.

No international participation exemptions are established in the Mexican tax provisions.

The Mexican Income Tax Law previously included a chapter that allowed certain holding companies to file a consolidated income tax return with their majority-owned subsidiaries. Tax consolidation was applicable for CIT purposes but not for other taxes (e.g. VAT) or compulsory employee profit sharing.

The tax consolidation regime was repealed starting in 2014, and a simplified tax consolidation (deferral) regime was introduced.

The main requirements for applying the current tax consolidation (deferral) regime are as follows:

- The Mexican tax resident holding entity shall hold, directly or indirectly (through other Mexican entities), 80% or more of the voting shares of the other entities that would form part of the consolidation regime.
- In no event, 80% or more of the Mexican holding entity's voting shares should be owned by another entity or entities, unless such other entities are resident of a country or jurisdiction having an in-force broad exchange of information agreement with Mexico.

Shares that qualify as placed among the general investing public and non-voting shares are not considered for the purposes of determining the proportions described above.

2. What is the tax depreciation period for real estate in Mexico?
   Are there depreciation categories? Which depreciation method is used?

The Income Tax Law establishes maximum annual tax depreciation rates that are applicable for different types of fixed assets to be deducted or depreciated.

Furthermore, the Income Tax Law provides for maximum deductible amounts for certain fixed assets.

In such a case, the only method that is acceptable in terms of Mexican tax provisions is the straight-line method.

In the particular case of immovable properties, the Mexican income tax provisions establish that real estate is to be depreciated at a maximum 5% fixed rate, that is, the real estate would be depreciated in a 20-year period.

It is important to point out that depreciable fixed assets do not include land.

3. When is a foreign investor subject to limited tax liability in Mexico?

Non-resident tax liability is limited to Mexican source income. Withholding rates apply depending on the type of income.

Permanent establishments are treated as Mexican resident legal entities or individuals. But only the income obtained from activities carried out by the permanent establishment are taxable in Mexico, that is, the revenue that is attributable to such permanent establishment.

## 4. Are asset deal and share deal possible in Mexico? What are the main consequences?

As explained before, direct real estate acquisition is prohibited by the Mexican Constitution for foreigners. A foreign investor has to either acquire real estate through a Mexican company or through a Mexican trust.

Since both ways of acquiring real estate are through resident entities, all local regulations apply.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

The Income Tax Law establishes thin capitalization rules that limit the deduction of interest deriving from debts granted to Mexican entities by their foreign related parties, when such debts exceed the stockholders' equity of the Mexican entity on a 3:1 ratio.

Other requirement established in the Income Tax Law for the deduction of interest payments is that the loans from which the interest derive are invested in business activities.

Also, in case that the loan agreement was entered into by and between a Mexican resident and one of his related parties, the transaction should be carried out according to the arm's-length principle. However, in case that such related party is a non-resident, the Mexican company would have to request a transfer pricing study.

The taxpayer has to either obtain or produce a transfer pricing study using one of the methods approved by the Mexican Income Tax Law.

The Tax Reform for fiscal year 2020 introduced a new limitation on the deduction of the net interest that exceed 30% of the adjusted tax profit of corporations that accrued interest from debts in excess of MXN 20 million. If the net interest is less than such 30%, the item shall be fully deductible. This amount applies jointly to all corporations and to PEs of foreign residents that form part of the same group or are related parties, in proportion to their taxable income of the prior fiscal year.

Non-deductible net interests (i.e. interests exceeding the adjusted tax profit multiplied by 30%) may be deducted during the following ten fiscal years.

- → Net interest: payable interest (-) accruable interest (-) proportional amount of the MXN 20 million.
- → Adjusted net tax profit: taxable profit (+) payable interest (+) investments deduction (tax depreciation).

There are certain exemptions to this net interest deductibility limitation (i.e. interests derived from debt contracted to finance public infrastructure works or hydrocarbon-related projects, etc.).

## 6. Can acquisition costs/financing fees/interest be deducted?

In general terms, the acquisition cost of land is not a deductible expense for the taxpayer that purchases such immovable property. However, such cost could be deducted from the income obtained from the sale of the land, at the moment in which such transaction takes place.

Acquisition costs of other immovable properties such as constructions can be deducted from the income tax basis by applying the annual depreciation rate to such costs (updated with Mexican inflation).

Certain financing fees are considered to be interest payments for the purpose of the Mexican Income Tax Law.

Interest payments can be deducted from the income tax basis considering some other requirements that were already described in question five, which are, in general terms, the thin capitalization rules and that the loans are invested in the business activities. In case that the loans were requested from a related party, the interest payments derived from such loans should be agreed on at fair market value. If the related party is a foreign resident for tax effects, the Mexican taxpayer would have to request the elaboration of its transfer pricing study.

As mentioned, this transfer pricing study can be produced by the taxpayer, or requested to an independent consultant.

The limitation on the deduction of the net interest referred to in the previous question should also be considered.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Yes, but:

- Transfer pricing rules must be followed.
- Thin capitalization rules apply.
- The company would need to have a clear business purpose for the operation.
- Tax authorities have challenged this kind of operations in the past.
- The Tax Reform for fiscal year 2020 granted a new power to the tax authorities according to which the former, in the exercise of their verification powers, may presume that legal acts carried out by taxpayers do not have a business reason, based on the facts and circumstances of the taxpayer, as well as on the analysis of the documentation and information provided by the latter, and determine that the respective acts will have the tax effects corresponding to those that would have been carried out to obtain the economic benefit reasonably expected by the taxpayer.

Based on the above, if there is not a business reason for such transaction, the tax authorities may ascribe to the debt push-down the tax effects of a shares' purchase agreement.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest payments are deemed to derive from a Mexican source if they are paid by a Mexican resident. Hence, interest paid by a Mexican resident to a foreign creditor would be taxable in Mexico at the corresponding rate.

The applicable withholding tax rate varies according to the recipient of the payments. In case that the effective beneficiary of the interest is a resident of a country with which a Treaty for the Avoidance of Double Taxation has been entered into by Mexico, the 4.9% withholding tax rate applies; for an effective beneficiary that is resident in another country (which does not have a preferential tax regime) the 10% rate applies, and for a person that is not a bank, in general terms, the 35% rate is applicable.

Notwithstanding the above, in case that the effective beneficiary of the interest is a resident of a country with which a Treaty for the Avoidance of Double Taxation has been entered into by Mexico, the Mexican resident has to determine if the benefits of such a convention can be obtained so that the reduced tax rate can be applied.



In such a case, it is up to the resident taxpayer to ensure that the requirements for obtaining such a tax treaty benefit are observed.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Loss carry back is not possible in Mexico.

However, the Income Tax Law allows tax payers to carry forward losses and offset them in the future. Tax payers have ten years to offset losses against taxable income. This right is not limited to any amount, but if a taxpayer is in possibility to offset losses and does not do it, he will lose the right to offset such losses in the amount of the taxable basis obtained in the tax year.

If the losses are greater than the taxable income after the set-off, the taxpayer can carry forward the remaining amount of losses.

## C. Real Estate Taxes

1. Does Mexico levy a real estate transfer tax on sale of real estate or shareholdings?

Real estate transfer tax is a local tax burden established by the states or municipalities of Mexico respectively. Almost in all cases, the local tax provisions mention that the sale of land and constructions, or both, are burdened with real estate transfer tax.

In order to determine the tax base, in most of the cases, the highest of the acquisition value, commercial value (appraisal value) and the cadastral value is considered.

The real estate transfer tax rate varies according to the place in which the immovable property is located. However, in the case of Mexico City (Federal District), a tariff is applicable which is based on the value of the real estate whose applicable rates range from 3.3% to 4.9%.

2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is a local tax imposed by the states or municipalities of Mexico that should be paid by the owner of an immovable property based in the cadastral value of the real estate.

The real estate tax rate varies according to the place in which the immovable property is located. In the case of a real estate located in Mexico City (Federal District), the rates established in the tariff range from 0.1% to 21%.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

A real estate sale is taxed pursuant to the VAT law at a 16% rate. The sale of real estate properties for residential use is VAT-exempt. Land sale is also VAT-exempt.

2. What are the VAT consequences of renting/leasing of real estate?

All types of leasing are subject to VAT at a 16% rate. However, the lease of residential real estate is VAT-exempt if it is not furnished by the landlord.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

N/A

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

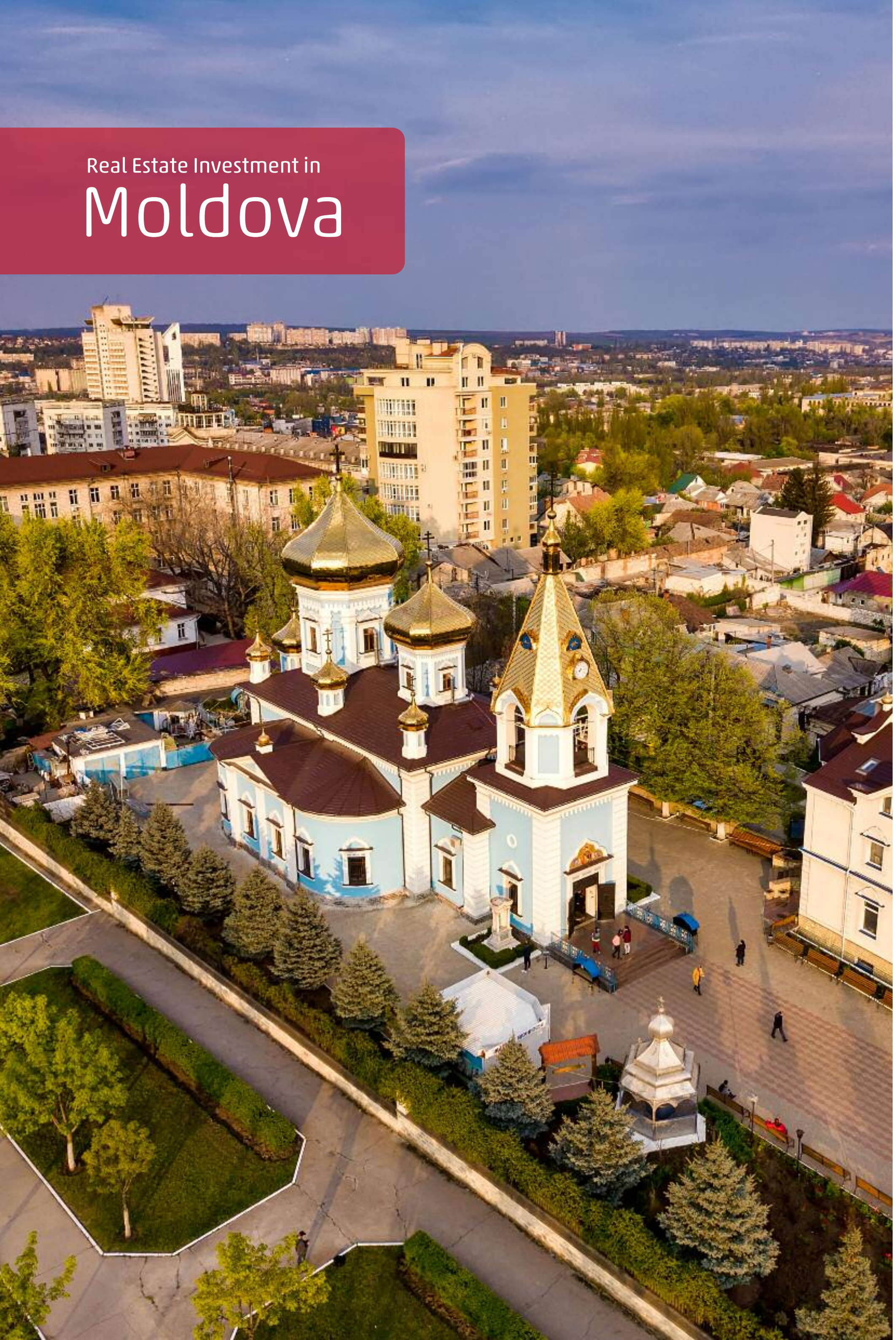
Yes, it is known as a “Fideicomiso de Inversión en Bienes Raíces (“FIBRA”) and the requirements to be considered as such, for income tax purposes, are the following:

- The trust must be incorporated under the laws of Mexico, and the trustee must be a credit Mexican institution or a Mexican brokerage house.
- The FIBRA must issue participation bond funds which may or may not be (private FIBRAs) placed in the stock market, and such bonds must be acquired by at least 10 different individuals or legal entities, in which none of those holders must have more than 20% of the issued bonds.
- Its main purpose must be the acquisition or construction of real state for the lease of such property in the first four years after the corresponding construction or acquisition.
- The FIBRA must have at least the 70% of its equity invested in real state, and must be destined to the lease of such property, and the remaining percentage must be invested on Federal Government securities or on investment fond stocks of debt instruments.
- The trustee must distribute within the bond holders, at least once a year, as a deadline on 15 March, at the very least 95% of the last fiscal year´s tax result, generated by the assets that integrate the trust´s equity.
- It must be registered in the Trust´s Registry dedicated to the acquisition or construction of real state.

The tax special regime is the following:

- The tax result must be determined as if it was a legal entity.
- The tax result must be divided by the number of bonds issued by the FIBRA.
- The FIBRA will not make provisional payments during the fiscal year.
- A 30% tax rate withholding must be made for the tax result that will be distributed to the bond holders. Such withholding will be made to the distributed amount, derived from such tax result, unless the bond holders are exempt from the tax payment derived from such income.
- The bond holders will trigger the income tax for the income that they obtain derived from the alienation of such bonds, which will result from deducting the income perceived from the alienation, the average cost by bond of each alienated bond.
- When the bonds are placed between the great investor public, and are alienated through markets recognized by the Mexican Federal Tax Code, such alienation will be exempt of a tax payment.

Pursuant to the Tax Reform for fiscal year 2020, the aforesaid tax benefits are solely applicable to public FIBRAS, excluding private FIBRAS.

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1. Are non-residents entitled to acquire real estate in Moldova?
   Does the acquisition have to be carried out by a Moldovian corporation?

Yes, non-residents entitled to acquire real estate in Moldova except agricultural lands. Any foreign legal entity or natural person can acquire real estate in Moldova. Agricultural and forested lands can be bought only by the state, Moldovan citizens and Moldovan companies without any foreign investments in their statutory capital.

2. Which importance does the land register have?

High importance. Any transaction with lands shall be registered in the Real Estate Register, held by the Cadastral Office. There is no separate register for lands. Without being register in the Cadastral Register transactions with lands are not considered legal.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The corporate and personal income tax is 12%. There are no special tax rates for real estate. There are no participation exemptions. Moldovan tax law does not provide for group taxation.

2. What is the tax depreciation period for real estate in Moldova?
   Are there depreciation categories? Which depreciation method is used?

Fixed assets are subject to CIT depreciation under the diminishing-balance method if their useful economic life exceeds one year and acquisition costs exceed MDL 6,000.

According to the fiscal law, fixed assets are divided into five categories of property. These categories are set out according to specific rules, mainly on the assets' useful life (i.e. the number of years during which the assets' utilization generates economic advantages; the useful life for each type of depreciating asset is regulated by governmental decision). The depreciation rates vary as follows:

- First category (e.g. buildings): 5%
- Second category (e.g. constructions): 8%
- Third category (e.g. roads, certain equipment): 12.5%
- Fourth category (e.g. industrial equipment): 20%
- Fifth category (e.g. cars, computers, furniture): 30%

Starting with 1 January 2019, fixed assets evidence is held for each asset in part by applying the straight-line method of depreciation and not for groups of assets.

### 3. When is a foreign investor subject to limited tax liability in Moldova?

It is not subject to limited tax liability.

### 4. Are asset deal and share deal possible in Moldova? What are the main consequences?

Yes, it is possible. With a share deal the purchaser acquires the company by buying all or almost all the shares of a partnership or corporation. In the case of the asset deal the purchaser buys the assets of the company and has the individual assets transferred such as production lines, real estate, buildings, facilities, inventory and patents and all contracts and liabilities of the company.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

The deduction of interest on borrowing received from individuals and legal entities, other than financial institutions, micro-financing organizations and leasing companies is allowed only within the limit of the average weighted rate set by the National Bank of Moldova for loans granted by the banking sector to legal entities.

Different CIT deductibility rules apply for interest on loans used for carrying out operational activities and for loans used for investment activities performed on an occasional basis.



As a rule, deductions for interest expenses are allowed for CIT purposes, provided such expenses are deemed as ordinary and necessary for carrying out the activities of the business. Expenses should also be incurred for the purposes of obtaining taxable income and justified by adequate backup documentation. If the interest paid by a Moldovan company relates to its operational or day-to-day activities, the related expenses are deductible for CIT purposes, considering the following:

- Interest expenses incurred by businesses, based on loan agreements, for the benefit of individuals and legal entities (except financial institutions, micro-financing organizations, and leasing companies) are deductible for CIT purposes within a specific limit established by law. Specifically, such interest expenses are deductible up to the limit of the average weighted interest rate on credit loans offered by banks to legal entities, depending on the period of the loan and its currency (e.g. different limits are applied for loans in Moldovan lei and those in foreign currency).
- If the loan is obtained for acquiring/building fixed assets, the related interest expense should be capitalized to the initial fiscal value of such assets until they are put into exploitation. The deductibility of such interest expense is capped at the above limit. The excess difference is treated as a non-deductible expense for CIT purposes.

If interest relates to an investment activity, the interest expense is deductible for CIT purposes within the limit of the income derived from the investment.

### 6. Can acquisition costs/financing fees/interest be deducted?

Yes, acquisition costs/financing fees/interest can be deducted with no restrictions.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Yes.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Yes, withholding tax on interest payments is 12%

9. Is a loss carry forward or carry back granted and what are the restrictions?

Fiscal losses may only be carried forward for five consecutive years following the year the losses were incurred, provided the company records taxable income. If the company recorded fiscal losses for more than one year, such losses are carried forward in the order in which they arose. Fiscal losses are recorded on off-balance-sheet accounts.

Losses may not be carried back.

## C. Real Estate Taxes

1. Does Moldova levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Transfer duties may be applied for notary acts performed by authorized notaries. Transfer duties are applied upon authentication by a notary of sale-purchase agreements regarding plots of land; transfers of houses into private property; alienation agreements of houses, apartments, garages, and other constructions. The tax ranges from 0.1% to 0.3% applied to the transaction value.

2. Is real estate subject to any real estate tax? At which rate?

The 0.3% rate on real estate property used for entrepreneurial activity is applied either on the property's estimated value (if such exists) or on its book value, while the maximum tax rate on property used for agricultural activities is 0.1% of the property's book value. Separate rates are applicable for agricultural land with construction buildings on it.

Real estate tax rates are:

- for real estate intended for housing (apartments and individual residential buildings, adjacent land plots); for garages and land on which they are located; for the lands of horticultural partnerships with or without buildings located on them:
  - maximum 0.4% of the taxable base of real estate;
  - minimum 0.05% of of the taxable base of real estate.

  The specific rate is set annually by the representative and competent body of local public administration;
- for agricultural land with buildings located on them:
  - maximum 0.3% of the taxable base of real estate;
  - minimum 0.1% of the taxable base of real estate.

  The specific rate is set annually by the representative and competent body of local public administration;
- for immovable property, the purpose of which is different from residential or agricultural, including with the exception of garages and land plots on which they are located, and the lands of horticultural partnerships with or without buildings located on them – 0.3% of the tax base real estate.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

It is taxable with 20% VAT, exclusive lands and locative real estate. It is tax-exempt.

2. What are the VAT consequences of renting/leasing of real estate?

It is taxable with 20% VAT, exclusive lands and locative real estate. It is tax-exempt.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

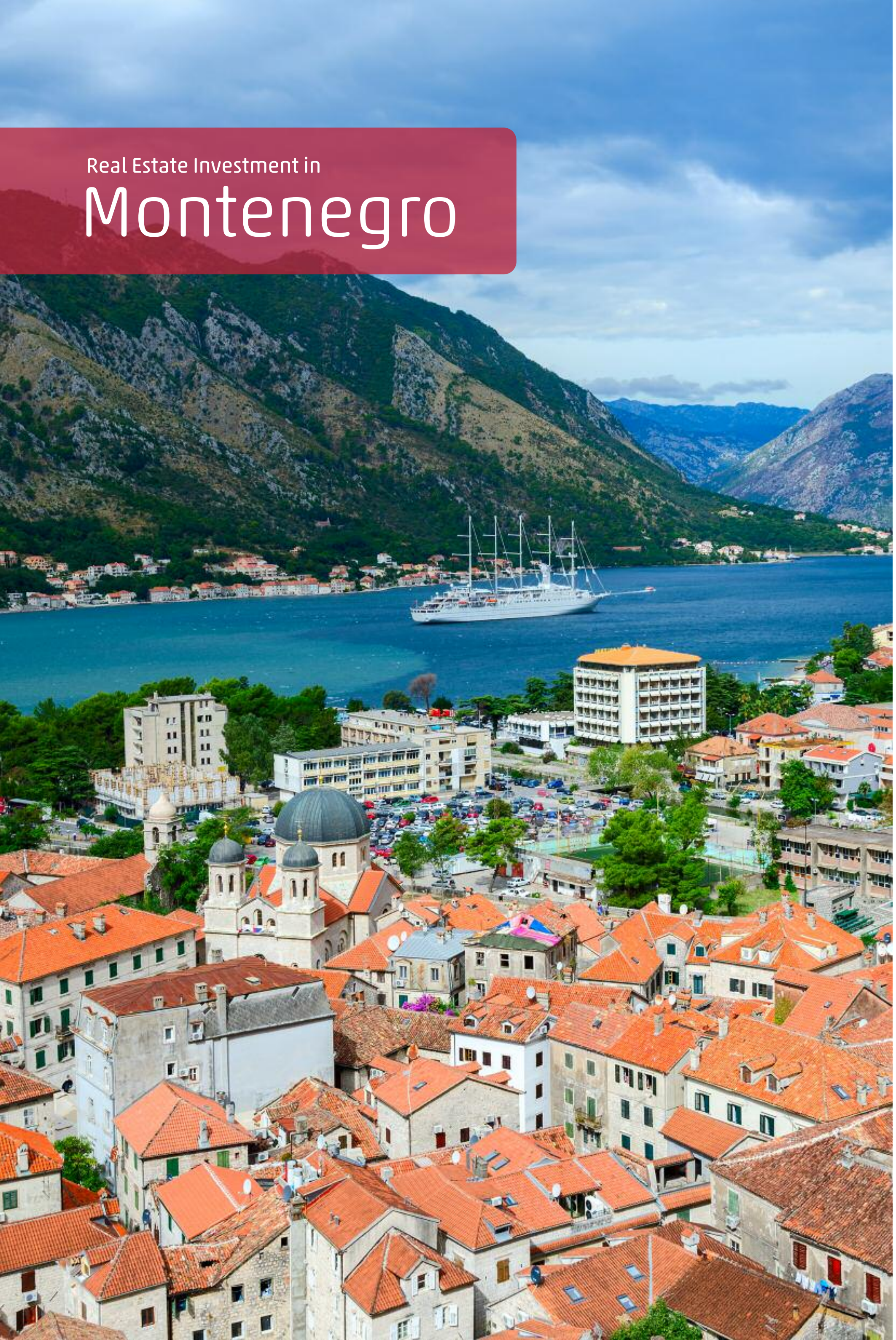
No.

2. Is there a stamp duty on debt granted to a local company?

No.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

No.




## A. Legal/General

1. **Are non-residents entitled to acquire real estate in Montenegro? Does the acquisition have to be carried out by a Montenegrin corporation?**

Non-resident (foreign) individuals and non-resident (foreign) companies can acquire real estate "needed for performance of their business" or for personal use (residential property only) under the reciprocity principle. When purchasing property non-resident individuals and non-resident companies are subject to sales tax (tax rate of 3%) in Montenegro.

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Yet, in practice a Montenegrin subsidiary is frequently used for the purchase of real estate in Montenegro (in order to avoid adverse interpretation of the term real estate "needed for performance of their business activities"). These special purpose vehicles are used in order to avoid administrative requirements imposed on a foreigner in order to acquire land and for taxation purposes. Sales tax is not paid in case purchased real estate is used as founding capital or in order to increase basic capital.

2. **Which importance does the land register have?**

Rights of ownership over real property are acquired by their registration in the Real Estate Cadastre, which is the public record of real estate objects and the rights established on them. It contains information about factual and legal data of real properties.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

   - Corporate income tax rate: 9%.

   - Personal income tax rate:
     - » tax on earned interest and dividend: 9%;
     - » capital gains tax: 9%.

   - Participation exemptions:
     There is no international participation exemption. However, withholding tax on dividends received by a Montenegrin resident company holding for at least a year a minimum of 10% of the shares in the non-resident company, which is subject to tax in its state of residence, can be fully credited against the income tax of the Montenegrin holding company.

2. What is the tax depreciation period for real estate in Montenegro?
   Are there depreciation categories? Which depreciation method is used?

Real estate is depreciated over its useful life at a single annual tax depreciation rate of 5%. Straight-line depreciation method is used. There are no different depreciation categories for real estate.

3. When is a foreign investor subject to limited tax liability in Montenegro?

A resident company is subject to withholding tax (tax rate of 9%) in Montenegro, when a non-resident company generates revenue from consulting, auditing and market research services to a resident company. This also applies to interest and dividends paid to a non-resident company. A resident company is not subject to withholding tax or is subject to a lower tax rate if it is regulated by Double Tax Treaty which Montenegro signed with the country the non-resident company is from.



4. Are asset deal and share deal possible in Montenegro?
   What are the main consequences?

A foreign investment company has two available options of purchasing property in Montenegro:

- Incorporation of an Acquisition Company and purchase of real estate:
  The Montenegrin Enterprise Law provides for very few conditions for the incorporation of a company. The usual form of a company is the limited liability company. The incorporation of a Montenegrin limited liability company does not trigger any taxation. Once the Acquisition Company is set up by the Investment Corporation, it can purchase real estate in Montenegro.

- Purchase of a local company owning real estate:
  The Investment Company can opt to purchase an existing Montenegrin company which holds real estate. The purchase of a Montenegrin company is tax neutral.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

**Thin capitalization rules**

In Montenegro, there are no thin capitalization rules.

**Transfer pricing**

Transactions between related entities must be on arm's-length basis.

6. Can acquisition costs/financing fees/interest be deducted?

The purchase price paid for acquisition of real estate is capitalised. The only additional acquisition cost which can be capitalised along with the purchase price is the sales tax at the rate of 3%, if it was paid by the purchaser. All other expenses (financing fees, interest from initial loan and refinancing, evaluation, lawyers' fees etc.) are immediately deductible, if they are considered to be costs according to international accounting standards.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Both up-stream and down-stream mergers are allowed. Mergers are tax neutral. After the merger is performed, all the financing costs (interest and similar) are deductible from the profit of the newly established company. Same refers to potential refinancing expenses.

The Montenegrin legislation does allow tax-grouping for corporate income tax purposes. The parent company must own at least 75% of the shares or stock of the other company. Every individual company in the group calculates its taxable income, and after that the group can calculate its consolidated taxable income and submit a consolidated tax return (losses and gains of the group members from the same year are offset).

8. Is there a withholding tax on interest payments paid by local company to creditor?

Dividends and interest paid by a Montenegrin company to a non-resident shareholder are subject to 9% withholding tax unless reduced under an applicable Double Tax Treaty.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses incurred in a Montenegrin corporation can be carried forward for five years, if it is evaluated that a corporation will make profits that can be covered by incurred losses. No carry back is allowed.

## C. Real Estate Taxes

1. Does Montenegro levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

A real estate sale is subject to sales tax (tax rate of 3%).

The seller is also a subject to capital gains tax.



2. Is real estate subject to any real estate tax? At which rate?

Montenegrin real estate is subject to property tax. The tax depends on the location of the real estate and can be between 0.25% and 1%, calculated on the market value.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The real estate investor can acquire Montenegrin real estate by way of an asset deal (e.g. direct acquisition of real estate).

The sale of real estate is not subject to VAT, except in case the sale represents the first transfer.

2. What are the VAT consequences of renting/leasing of real estate?

The leasing of residential real estate for longer than 60 days is not subject to VAT.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

No.

2. Is there a stamp duty on debt granted to a local company?

No.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

No.


## A. Legal/General

1. Are non-residents entitled to acquire real estate in The Netherlands?
   Does the acquisition have to be carried out by a Dutch corporation?

Any (legal) person, including non-residents, can acquire real estate in the Netherlands so the acquisition does not have to be carried out by a corporation. Any acquisition of real estate must be carried out by a notary who also reports the transfer in the "Kadaster" (land register).

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2. Which importance does the land register have?

The primary duty of the Kadaster is to keep record of immovable property (land, homes, buildings etc) as well as certain movable properties (ships and airplanes). The Kadaster provides legal certainty regarding the ownership of property and what the exact measures and locations of that property are. The Kadaster also keeps record of any mortgages regarding the property.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes,what are the requirements?

**Corporate income tax**

The corporate income tax (CIT) rate for 2019 is 19% regarding profits up to EUR 200,000 and 25% regarding profits exceeding EUR 200,000. The CIT rate is scheduled to decrease in the next two years as follows: 16.5% regarding profits up to EUR 200,000 and 22.55% regarding profits exceeding EUR 200,000 in 2020 and starting 2021 the rates will be 15% regarding profits up to EUR 200,000 and 20.5% regarding profits exceeding EUR 200,000.

If a Dutch resident company (which is not a qualifying collective investment company) or Dutch permanent establishment holds shares in Dutch or foreign companies, dividends received from such companies or capital gains or losses with respect to the shareholdings in these companies are exempt from Dutch corporate income tax, provided the participation exemption applies. The participation exemption is denied for income from a subsidiary that can be deducted in a (foreign) profit based tax (e.g. income from certain hybrid instruments). Furthermore, expenses related to the acquisition or alienation of shareholdings that qualify for application of the participation exemption are not deductible. Profit taxes levied by other jurisdictions on income or capital gains (like withholding tax on dividends received) to a shareholding to which the participation exemption applies, cannot be credited against Dutch tax and cannot be deducted in the Netherlands.

The participation exemption has to be applied on a continuous basis, which can lead to compartmentalization of profits and losses with respect to the shareholding in case the participation exemption did not apply to the entire holding period of the shares. In general, the participation exemption applies when at least 5% of the share capital of a company is owned by a shareholder. The participation exemption does not apply to shares in qualifying collective investment companies and passive portfolio investments that are not sufficiently taxed or hold certain qualifying assets.

Real estate companies (companies that mainly own real estate), provided they are not qualifying collective investment companies, qualify for the participation exemption even if they are not sufficiently taxed or are held as a passive portfolio investment.

Tax-grouping of companies is possible, provided a number of conditions are met. Under pressure of EU law, the Dutch tax-grouping regime ("fiscale eenheid", commonly translated as "fiscal unity") is expected to be subject to fundamental changes in the next years. This is due to a recent EU court case, that already triggered "repair" legislation with retro-active effect to 1 January 2018 which is currently pending at Dutch Parliament to amend the fiscal unity regime, in particular with respect to the application of certain interest limitation provisions.

The current fiscal unity regime is based on the concept of a "fiscal merger", where the fiscal unity entities merge into one entity which is then taxed. Consequently, any transactions between such fiscal unity entities are in principle disregarded (but certain specific anti-abuse provisions exist).



A number of conditions must be met before a fiscal unity can be formed. When these conditions are no longer met, the fiscal unity is terminated. Termination can also be achieved on request. Formation of a fiscal unity is only possible after a formal application request has been granted by the tax authorities. Fiscal unities can be formed at any time during the year, provided at the time of formation all conditions are met. Requests can be filed three months retro-actively. A fiscal unity is only possible in cases of at least 95% ownership (legal and economic) of profits and equity. This concerns direct ownership by fiscal unity entities, but also indirect ownership via EU companies can qualify in most cases. Furthermore, eligible entities must be Dutch limited liability companies or cooperatives (the latter only as head of the fiscal unity) or EU companies or companies resident in certain tax treaty jurisdictions that have similar features as the eligible Dutch company forms. Companies can either be tax resident in the Netherlands or have a permanent establishment in the Netherlands to become part of a fiscal unity. Furthermore, the taxable profit of all members of a fiscal unity must be based on the same rules (Dutch "tax GAAP" rules) and the book years must be the same. Members of a fiscal unity are liable for the corporate income tax due by the fiscal unity, though the head of the fiscal unity (in which the other entities are deemed to be merged for fiscal unity purposes) is in first instance regarded as the formal tax payer.

The rules that govern the application, formation, existence and termination of a fiscal unity form a complex part of Dutch tax law. Please note that only some main features of the fiscal unity are mentioned above; advice from a Dutch tax advisor is definitely recommended when contemplating to use the fiscal unity instrument.

**Personal income tax**

In the Netherlands, there are three "boxes" in which the income of natural persons is taxed.

- Box 1 includes all active income, such as wages (including pensions) and business profits. The personal income tax rate in case of an active investment in real estate ranges (in 2019) from 9% to 51.75% and is levied on the actual income. The rates are scheduled to be adjusted in the next two years, with the most notable item being that the top rate of 51.75% will drop to 49.5% in 2021.
- In box 2 the income from share capital is taxed when 5% or more of the shares is (in-)directly owned by a private person. The tax rate for box 2 is 25% (2019), but scheduled to be increased slightly in the coming two years to 26.25% (2020) and finally 26.90% (2021).

- In box 3 all (passive investment) assets are taxed which are not included in boxes 1 and 2. These passive investments (which could include real estate) are taxed on the basis of a deemed income that ranges from 1.935% to 5.60% of the net asset value (in case of real estate: value of the building -/- loan financing). In 2019 this deemed income is taxed at a tax rate of 30% which results in an effective tax rate between 0.58% and 1.68% of the net value.

Part of the tax base is exempt (in 2019: EUR 30,360). The percentages increase gradually until a taxable base amount of EUR 989,736 (2019) is reached. Amounts exceeding this threshold are taxed at 5.60% (2019). The deemed income percentages are re-evaluated annually.

There are no special income tax rates regarding real estate.

2. What is the tax depreciation period for real estate in The Netherlands? Are there depreciation categories? Which depreciation method is used?

Depreciation on buildings is usually calculated on a straight-line basis using economic principles, which is for personal income tax purposes only relevant if it concerns box 1 income. The municipality makes an annual valuation to determine the "WOZ-value" (WOZ = "Waardering Onroerende Zaken" which means "valuation of immovable property") of each property, which is the basis for the municipal real estate tax and should be a measure of the fair market value of the property. Depreciation of a property is allowed up to a fiscal book value is reached of 100% of the calculated WOZ-value for the property, where a temporary exception can apply in certain cases where first use of the building occurred before 1 January 2019 and the owner used the property for his own business or the business of related parties.

3. When is a foreign investor subject to limited tax liability in The Netherlands?

**Corporate income tax**

A foreign investor, being a legal entity, is subject to Dutch corporate income tax in case it has a permanent establishment in the Netherlands which conducts a business in the Netherlands. Real properties located in the Netherlands are considered permanent establishments by fiction. So in case a foreign entity invests in real estate in the Netherlands, it is liable to pay Dutch corporate income tax. If the entity investing in Dutch real estate qualifies for the special regime for collective investment companies, then a tax rate of 0% applies.

This special regime is only available for corporate tax payers if certain requirements are met with respect to its legal form, activities, the composition of its shareholders, maximum debt financing and an obligation to distribute its annual profits.

In certain cases, an investment of more than 5% in a Dutch company can make the foreign corporate investor subject to Dutch corporate income tax, i.e. in cases that are deemed abusive. This concerns cases where one of the main purposes of the structure is to avoid Dutch personal income tax. Furthermore, and extra ("structuring"/ artificial) element must be present e.g. the investment is not part of the active business of the investor or the structure is deemed to be of an artificial nature not reflecting economic reality.

**Personal income tax**

A foreign investor, being a private person, is subject to Dutch personal income tax in case he has income from one of the three boxes mentioned in question B.1., as far as it concerns Dutch-sourced income, like from employment or a business in the Netherlands (box 1), large shareholdings in the Netherlands (box 2) or Dutch real estate (box 3) if it is not taxed in box 1 or 2.

4. Are asset deal and share deal possible in The Netherlands? What are the main consequences?

In the Netherlands both asset deals and share deals are possible to acquire or sell real estate for income tax purposes. In general, for corporate income tax and personal income tax (box 1 only) purposes, an asset deal means triggering any hidden reserves in the real estate in question, while a share deal avoids this. However, gains on selling real estate can in certain cases be deferred for up to three years provided there is sufficient proof that there is a concrete intention to reinvest in the Netherlands.

Besides, there could be some VAT and/or real estate transfer tax consequences depending on which form is chosen.

5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

In the Netherlands, corporate tax payers are since 2013 no longer subject to general thin capitalization rules which can result in the limitation of interest deduction. Though the general thin cap rule has been abolished, two other specific thin cap regulations were introduced, one regarding acquisitions of companies that are joined in a Dutch fiscal unity, and another one regarding holding companies. This latter limitation is also abolished for book years starting on or after 1 January 2019 and replaced with a general earning stripping rule based on the EU ATAD 1 Directive that limits the deduction of interest exceeding EUR 1m in a book year to 30% of EBITDA. In addition, there are some other interest deduction restrictions as well as limitations to the depreciation of loans that may apply to a specific situation. Due to the amount and complexity of these regulations this cannot be elaborated in this overview any further.

6. Can acquisition costs/financing fees/interest be deducted?

In general, financing fees and interest can be deducted from the taxable profit but acquisition costs may have to be capitalized on the assets that are acquired. Several specific limitations for the deduction of (interest) expenses exist, as well as the general earnings stripping rule as mentioned in the previous paragraph.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In general, the possibilities to allow pooling of financing cost with income of a target through a fiscal unity or legal merger, for example, are restricted. However, depending on the situation, it may be possible to achieve the desired result in whole or part through careful (cross-border) structuring.

8. Is there a withholding tax on interest payments paid by local company to creditor?

No, unless the interest is not at arm's-length or it concerns certain long-term profit participating loans. The Dutch government intends to introduce withholding tax (at 20.5%), starting 2021, on interest paid in a CFC (Controlled Foreign Companies) situation to corporate creditors located in certain listed jurisdictions with a low tax rate.

9. Is a loss carry forward or carry back granted and what are the restrictions?

**Corporate income tax**

Losses suffered by a taxpayer in the Netherlands can be offset against the profit of the previous taxable year (carry back). The losses which could not be settled against the profits of the previous year can be offset against future taxable profits.



This carry forward of losses is limited to six years for losses incurred in book years starting on or after 1 January 2019. Some specific rules may apply that can restrict the utilization of the losses in case of a change in (indirect) ownership and/or activities of a taxpayer.

**Personal income tax**

A negative income for a year in box 1 can be carried back to positive income of the previous three years. Losses that cannot be carried back can be carried forward for a period of nine years. Negative income for a year in box 2 can be carried back one year and carried forward six years (from 2019 on). Box 3 income cannot be negative by definition, so loss carry back and carry forward rules are not applicable at all for box 3 income.

## C. Real Estate Taxes

1. Does The Netherlands levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

When real estate is sold, real estate transfer tax (RETT) is due, unless an exemption applies. The RETT rate is 6% (2% for private homes) of the value and is due by the buyer. In some cases legal entities with a capital divided into shares are considered deemed real estate. The transfer of the shares in these entities is then also taxable with RETT. Not only the legal transfer, but also the economic transfer of real estate is in principle subject to RETT. Certain exemptions exist, for example in case of transfers within a group of companies.

2. Is real estate subject to any real estate tax? At which rate?

Depending in which city the property is located, the owner of real estate must pay municipality taxes (OZB) regarding the property. The municipality makes an annual valuation to determine the "WOZ-value" of each property. The WOZ-value is used to calculate the annual OZB. In 2019 (taking into account virtually all municipalities) the rates range from 0.03789% to 0.2509% of the WOZ-value of the property.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The sale of real estate is in general VAT-exempt unless the property is sold within two years after it has been taken into use for the first time. In that case the sale is taxable with Dutch VAT. When the VAT exemption applies, it is possible for buyer and seller to opt for a VAT taxable sale (provided the real estate will be used for VAT taxable activities).

After the deduction of VAT that was charged for the sale of real estate, the use of the property will be monitored for ten years. If the property is sold within these ten years and the buyer and seller did not opt for a VAT taxable sale then the seller of the property must pay back 10% of the deducted VAT for each remaining year, so 40% in case the property is sold after six years. This revision of the deducted input VAT must be paid at once after the VAT-exempt sale of the property.

### 2. What are the VAT consequences of renting/leasing of real estate?

The lease of real estate is VAT-exempt. The lessor and lessee can opt for VAT taxable lease in case the lessee uses the property for activities which give right to deduct at least 90% of charged VAT. In some cases (if the lessee is a realtor, travel agency etc.) the percentage is 70%. In order to opt for taxation, the parties must file a joint request at the Tax Authorities or complete some administrative conditions in the lease agreement. When in case of a VAT audit it is concluded that the parties did not meet the conditions for opting taxation, then the lease should have been exempt. If the lessor deducted any input VAT regarding the property, the Tax Authorities can impose additional assessments to the lessor. The revision period mentioned at the sale section above, could also result in additional assessments from the Tax Authorities.



## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

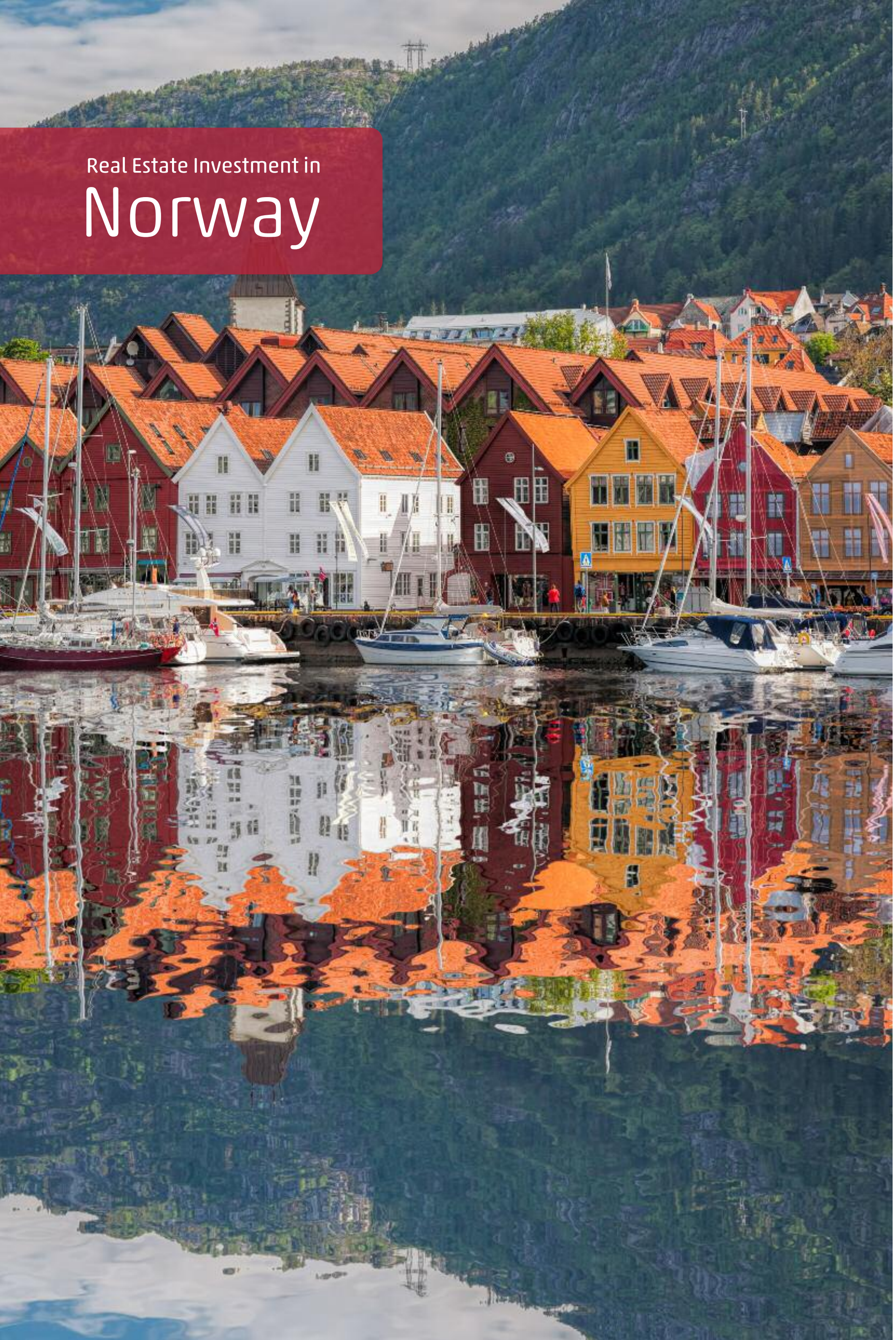
The Netherlands does not levy capital tax for equity injected into a local company.

### 2. Is there a stamp duty on debt granted to a local company?

There is no stamp duty on debt granted to a local company in the Netherlands.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There is no special regime for REITs.




## A. Legal/General

1. Are non-residents entitled to acquire real estate in Norway?
Does the acquisition have to be carried out by a Norwegian corporation?

There are no general restrictions as to who can own property. Any domestic or foreign person or legal entity recognized in Norway may own real estate – and also register their rights in the Land Registry (see below). However, restrictions may apply under the Norwegian General Concession Act. An acquisition of some specific agricultural/forestry properties and undeveloped property over 100 decare must be specifically authorized under the applicable legislation.

2. Which importance does the land register have?

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All land in Norway is divided into registry units with unique numbers for identification and registration purposes. The registry is called the Land Registry ("Grunnboken"), administrated by the Norwegian Mapping Authority ("Kartverket"). Ownership, mortgages, long-term leases as well as easements are commonly registered in the Land Registry. The records maintained by the Land Registry are open to public inspection.

A foreign legal entity must be registered in the Central Coordinating Register for Legal Entities and must obtain a Business Register Number in order to have a title to a property registered in the Land Registry. If the property is deemed as a business activity, a foreign legal entity also has to be registered in the Norwegian Register of Business Enterprises.

Likewise, a foreign individual must obtain a Norwegian identification number in order to have a title registered. The Norwegian Mapping Authority can issue an individual identification number.

Obtaining an identification number is usually a swift and uncomplicated process – while obtaining a Business Register Number takes more than two weeks.

The fee for registration in the Norwegian Register of Business Enterprises is approximately EUR 280, while registration in the Central Coordinating Register for Legal Entities is free. Note that registration in the Norwegian Register of Business Enterprises also involves other duties, for example the filing of annual accounts.

Both a registration fee and stamp duty must be paid for the registration of a new owner of the property. The registration fee is modest being approximately EUR 200. For the registration of rights other than ownership, only the registration fee is payable. Stamp duty is payable by the buyer of commercial, residential or industrial property. The payment of stamp duty is not a condition for the buyer's ownership to the property in question to become effective, but it is a requirement if the buyer wants his ownership to be registered in the Land Registry. Stamp duty for previously used properties amount to 2.5% of the total value of the property. Stamp duty for newly erected buildings amounts to 2.5% of the value of the land on which the building is erected (or part of the land if the property being purchased is a unit within a building).

It is not compulsory to register ownership or other rights to real estate in the Land Registry and registration is not a requirement for the ownership or right to become effective, but it is highly recommended as it is the only way to gain full legal protection for such rights against third parties.

## B. Income Tax

1. What are the corporate and the personal income tax rates? Are there special tax rates for real estate? Are there any participation exemptions? Does a tax-grouping exist? If yes, what are the requirements?

**Corporate tax**

A flat tax rate of 22% applies to corporate taxable profits (ordinary income). The tax base is the sum of operating profit/loss, financial revenues/expenses and net capital gains adjusted for the difference between accounted depreciation and tax depreciation.

**Personal income tax**

The general combined rate of national and municipal income taxes is 22%. A lower rate of 18.5% applies for the counties of Finnmark and Nord-Troms. These are the general rates for capital income. The rates for taxation of dividend and capital gains are multiplied by 1.44.



In addition, distribution and profit the exceeds payable taxes of the profit from a general or limited partnership is subject to 31.68% (22% x 1.44) income tax in Norway. Effective tax rate will be 46.7%.

The maximum effective marginal tax rate on income from work (excluding employers' national security contribution) is 46.4% at salary income and 49.6% at income from self-employment. This occurs for income over NOK 999,550 and is made up of social security contributions of 8.2% (11.4% of income from self-employment), tax on ordinary income of 22% and surtax of 16.2%.

**Real estate**

If the investment is made directly or through a general or limited partnership (i.e. without using a Norwegian limited liability company), payment of rental income to foreign lessors is not subject to any withholding tax in Norway. However, net rental income from real estate situated in Norway is subject to general corporate income tax at a rate of 22% and this principle is followed in all 85 double tax treaties entered into by Norway. The taxes are levied at the hand of the partners. Individual foreign partners will usually also be subject to taxation of distribution of profit *(see above)*.

**Participation exemptions**

Capital gains derived by Norwegian limited companies on the disposal of shares in other Norwegian or EEA resident limited companies are exempt from taxation. For gains realized on the disposal of shares in a company in a low-tax jurisdiction within the EEA, the exemption only applies if real business activities are conducted in that jurisdiction. Capital gains realized by Norwegian limited companies from shares in companies resident in non-EEA countries are exempt from taxation if at least 10% of shares (both number and voting rights) have been held for at least two years and the foreign company is not a resident in a low-tax jurisdiction. A low-tax jurisdiction is assumed if the tax payable is less than two-thirds of the tax that would have been payable in Norway. Any gain realized on the disposal of shares in a company resident in a low-tax jurisdiction outside EEA is subject to taxation in Norway if either the foreign company performed real business activities or is an artificial setup.

If the investment is made through a Norwegian limited liability company, the company will be taxed on its net income derived from the real estate activities. The tax rate is 22%. Dividends payable to non-resident corporate investors are subject to a withholding tax of 25%, unless the recipient is protected by a double tax treaty or is resident in the EEA area. For corporate investors resident in the EEA area no withholding tax applies. For corporate investors resident elsewhere, the withholding rate is usually reduced to 15% or a lower level depending on the size of the holding in the Norwegian company and the relevant double tax treaty.

**Group contribution**

Norway does not have a system for group taxation but allows group contribution between Norwegian entities within a group provided that the parent company owns more than 90% of the shares and holds more than 90% of the voting rights in ceding company by the end of the year.

## 2. What is the tax depreciation period for real estate in Norway? Are there depreciation categories? Which depreciation method is used?

Assets used for business purposes with an expected life of more than three years and costing more than NOK 15,000 are depreciable. Taxable depreciation applies the reducing balance method.

By purchase of a property, the purchase price (including purchase costs) for industrial and commercial buildings has to be divided into the following items:

1. Building
2. Technical installations (such as elevators, ventilations systems etc.)
3. Machinery
4. Building site

The maximum depreciation rates are as follows:

- Industrial buildings and hotels etc. the depreciation is 4% p.a. This increases to 10% if the useful life is less than 20 years.
- For commercial buildings the depreciation rate is 2% p.a.
- Technical installations in buildings have a depreciation rate of 10%.
- Machinery used in production, 20%.
- The building site will not be subject to depreciation.

Residential buildings and leisure properties are usually not subject to depreciation. Exemptions are applicable for short time rental with continued change of lessees.

For combined buildings, the depreciation rate follows the use of the major part of the building based on rental income, i.e. if 51% of the rental income is from commercial and 49% from industrial, the depreciation rate for commercial building has to be used.

## 3. When is a foreign investor subject to limited tax liability in Norway?

Resident companies are subject to corporate tax on worldwide profits and capital gains. Non-resident companies are subject to limited taxation in Norway on Norwegian-sourced income, e.g. corporate tax on Norwegian-sourced profits, including income derived from a permanent establishment in Norway.

Limited companies incorporated in Norway and foreign companies with their effective management and control in Norway are treated as resident in Norway. Norwegian taxable income is based on worldwide income, unless exempt under a double tax treaty. Branches are taxed similar to Norwegian limited companies, but only on Norwegian-sourced income.

Non-resident individuals are taxed on income received from real and personal property in Norway, including income from employment in Norway, but Norway's right to tax may be limited by an applicable double tax treaty. All individuals domiciled or permanently resident in Norway are subject to Norwegian income tax on their worldwide income.

Residential buildings and leisure properties owned by individuals for their own use are not subject to running income taxation in Norway, only wealth taxation. Any debt for financing of the acquisition of the property in Norway can be deducted by calculation of the net wealth. Any gain by disposal of such properties will be exempt from taxation if the property has been owned/used for at least five years.

## 4. Are asset deal and share deal possible in Norway? What are the main consequences?

Investment in real estate in Norway may be effected in two ways; either through direct acquisition, i.e. an asset deal, or through indirect acquisition, i.e. a share deal, in other words a purchase of the corporate vehicle that owns the real estate.

### Asset deal

For asset sales including the transfer of real estate or leaseholds, a stamp duty of 2.5% of the market value of the real estate in question or the aggregate rental for the first 20 years is levied on the buyer.

The acquired net assets receive a step-up or a step-down to market value equal to the purchase price for the buyer to determine the depreciation for tax purposes and the gain or loss in a future asset sale.

For the seller, a capital gain upon direct sale of real estate is subject to 22% tax. Loss is deductible.

### Share deal

An investment in real estate may also be effected by purchasing the shares in the company that owns the real estate. Share deals are often favored in order to avoid stamp duty and registration fees as it is the company itself which is the registered owner of the real estate in the Land Registry. A purchase of shares in a company does not trigger stamp duty, and nor do mergers.

Indirect investment through corporate vehicles in Norway may be achieved using various types of corporate vehicles with limited liability or types of partnership.

Capital gains and dividends from shares held or acquired by corporate entities in Norway and companies resident in an EU or EEA Member State are tax-exempt. Losses from the disposal of shares are not deductible.

The fact that the gain derived from the sale of shares in companies is tax free in Norway implies that most foreign-based real estate investments in Norway take place using a Norwegian (limited liability) company. If the investor in the Norwegian company is also resident in a state with which Norway has a relevant double tax treaty which applies the exemption method for income derived from real estate (and often from shares in companies whose assets are real estate), the gain from the investment in Norway may, in certain cases, be structured to be tax free.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

There are no relevant formal thin capitalization regulations in Norway.

The debt/equity ratio must be based on an arm's-length principle. A ratio of 1:5 (equity vs. debt) was commonly accepted as a guideline for tax purposes, but must not be taken for granted as the Norwegian Tax Authority has put the ratio under severe scrutiny in recent cases.

## 6. Can acquisition costs/financing fees/interest be deducted?

### Acquisition costs

Acquisition costs are deemed to be a part of the acquisition price for the property or the company that owns the property (activation) and are non-deductible. Such cost could be stamp duty, analysis, contract negations due diligence etc.

By acquisition of a property, such cost will be a part of the basis for depreciation and then deductible over time.

### Financing fees

Financing fees to the lender are always deductible. Financing fees to other than the lender are deductible if the costs are related to business activities or income-earning activities.

### Interest expenses

The general rule is that interest expenses are deductible.

In 2014, rules for limitation of deductions on interest paid to related parties were introduced. As of 2019, these rules were extended to also include interest from non-related parties, this means that all interest on debt is included. If a threshold of NOK 25.0 million in net interest cost is exceeded, the deduction on interest is denied for the part of the interests that exceed 25% of specially calculated EBIT in the company or PE in question. Certain exceptions to the limitation rules are available.

Exceptions from the limitation rules are made when the equity of the Norwegian company or the Norwegian companies are equal to the equity of the entire group (based on the consolidated financial statements). The equity of the Norwegian part can be up to 2% lower that the equity of the entire group.

Within the interest deduction limitation rules, a deduction against income generated by the property is usually available for interest paid on debt used to finance the acquisition of the property. Interest payable to non-residents is not subject to withholding tax.

Even though new interest deduction limitation rules are introduced, the arm's-length test still has to be performed in order to assess the deductible amount of intra-group interest. If the loan in question would not have been granted by a third party, the part of the interest accrued which is not at arm's-length will not be deductible for tax purposes.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Norwegian legislation for limited companies provides limitations for the target company in terms of taking on debt related to the owner or parent company. The target company may not take on debt from the buyer related to the acquisition of shares in itself, but a merger may take place between the target and parent company at a later stage.

The prohibition only applies to acquisitions of shares in Norwegian companies. Thus, the prohibition does not apply if the buyout is structured as an asset acquisition rather than a share acquisition. If the target has non-Norwegian subsidiaries, these subsidiaries will in general not be subject to the prohibition. Thus, a foreign subsidiary of the target may, subject to the laws of its jurisdiction of incorporation, in general provide security in respect of the acquisition financing of the target – whereas a Norwegian subsidiary of the target would not have this opportunity.

Legal distributions of equity by the target are allowed. The target may distribute dividends or resolve to decrease its share capital or share premium through distributions to its shareholders and thereby enable the sponsor to partly repay its acquisition financing.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Norway has per date no domestic rule withholding tax on interests paid from a Norwegian debtor to a foreign creditor (the same applies for royalty).

The Norwegian Government represented by the Ministry of Finance published on 27 February 2020 a Consultation Paper with the proposal to impose withholding tax on interest payments and royalty. Norway levies withholding on dividends paid from a Norwegian company to a foreign shareholder.

The Ministry has suggested in the Consultation Paper that the liability to withhold tax on the interests and royalty should consist of:

- interest payments from closely related entities reisdent in low-tax jurisdictions;
- contribution to closely related entities abroad for the use or the right to use intellectual property rights (royalty).

The Ministry is currently considering whether the rules should include payments to closely related entities abroad for rental of physical assets, as for example capital intensity assets as vessels, rigs and airplanes. The Consultation Paper does not further address this issue and the Ministry has announced that they will publish more information regarding this at a later stage after the hearing-process is completed and the Ministry have specifically requested comments on this issue. The deadline for submitting comments to the Consulation Paper is set to be 27 May 2020.

The purpose of the rules is to prevent profit shifting due to multinational entities exploiting gaps and mismatches between different countries' tax systems. Norway does not levy withholding tax on interest payment which initiates multinational groups to flow the interest payments from an internal- loan through Norway as a low-tax jurisdiction to avoid withholding tax on the interest payments.

The Ministry has suggested that the legislation states that recipients of the interest payments and royalty which resides within  the EEA, have the option to be taxed based on their net wealth income, this is under the condition that the company are actual established and performs real economic activity within the EEA-area.

It is expected that the new rules will be announced in connection with the announcement of the National State Budget for 2021 which usually takes place in the beginning of October and the rules will have effect earlies from 1 January 2021.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses may be carried forward without time limitations ("evergreens") regardless of reorganization or changes in ownership, provided that exploitation of the loss was not the main objective behind the change. Losses may be set against income from all sources including capital gains.

The new interest deduction limitation rules that are introduced, cf. section B.6. above, limit the time of carrying forward denied interest deductions to ten years. Denied interest deductions are thus not treated as losses.

Generally, losses may not be carried back, but liquidation losses may be offset against profits of the two preceding years.

## C. Real Estate Taxes

1. Does Norway levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

There are no “transfer taxes” other than stamp duty in Norway.

Stamp duty is normally payable in Norway on the acquisition of real estate situated in the country whether commercial, residential or industrial. The registration of transaction in immovable property in the Land Registry attracts the stamp duty. The stamp duty is 2.5% of the sale value of the property. To calculate the sale value, normal arm’s-length conditions are deemed to apply. Registration of the new ownership in the Land Registry is optional and an application will not be accepted unless stamp duty is paid. The application must disclose the purchase price. Because of this, the Land Registry does not necessarily contain all relevant information about the ownership of the property, as some buyers may decide to avoid the stamp duty by not having their ownership registered. This is not recommended.

A transfer of shares in a limited liability company or a partnership that owns real estate will not trigger stamp duty. A transfer of real estate through a merger or de-merger of limited companies is also exempt from the duty.

Taken together with the Tax Exemption Model *(see section B.1. and B.4.)*, this gives an incentive to buy and sell real estate companies instead of the property itself. Industrial and commercial buildings are often held in single purpose entities. This is beneficiary for both tax and VAT purposes. Since future Norwegian buyers usually would not find it interesting or practical to acquire the shares in a foreign company in order to obtain real estate located in Norway, the best exit planning tool would be to own the property through a Norwegian entity.

2. Is real estate subject to any real estate tax? At which rate?

**State net wealth tax**

Non-resident limited liability companies are liable to net wealth tax of up to 0.4% on approximately 90% of the fair market value of their real estate less the par value of debt related to the estate. If the real estate is the owners primary residence only 30% of fair market value less debt is taxed. Taxpayers can avoid net wealth tax where a double tax treaty is in place or by relying on the EEC principle of free movement of capital. Please note that any claims based on EEC regulations can be expected to be challenged by the Norwegian tax authorities.

**Local property tax**

Property tax may be imposed by the municipal council. Local authorities may levy a property tax in urban areas, varying between 0.2% to 0.7% of the fair market value. Usually, the basis for the property tax is lower than the fair market value.

In the fiscal budget for FY 2020, it is suggested that the maximum rate for residential buildings and leisure property is reduced to 0.5%. The basis for the property tax is suggested to be maximum 70% of the fair market value.

**Transfer by gift or on death**

The gift and inheritance tax has been abolished as of 2014. However, the inheritor no longer receives a step-up or step-down to market value.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Value added tax (VAT) is not to be charged on the transfer or sales price for real estate.

All supplies of materials and construction work is however subject to VAT. The buyer may deduct the VAT amount as input VAT, provided the real estate is used for taxable purposes when finished.

The taxable use of the real estate is monitored for ten years following completion of the erection of the building or subsequent additions or major refurbishments outside the scope of the VAT act the owner of the building will be liable to make a partial repayment of deducted VAT amount. For sales and other transfers of the title to the building, the liability to repay VAT may, under specific conditions, be avoided by transferring the liability to the new owner.

The standard rate of VAT in Norway is 25%.

### 2. What are the VAT consequences of renting/leasing of real estate?

In principle, the letting out of real estate is exempt from VAT in Norway. However, for business premises that are to be used in activities subject to VAT the lessor may opt for a voluntary VAT registration. A voluntary registration will allow the lessor to deduct input VAT on costs related to the erection, maintenance etc. of the premises used for taxable activities. Most lessors make use of the opportunity to register for the letting activity.

A voluntary registration implies that the lessor is liable to charge VAT at the normal rate of 25% on the rent and other remunerations related to the letting of the premises. The lessee is entitled to deduct VAT charged on the rent as input VAT in accordance with the normal regulations for deduction of input VAT.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no capital tax in Norway.

### 2. Is there a stamp duty on debt granted to a local company?

There is no stamp duty on debt granted.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There is no special regime for Real Estate Investment Trusts in Norway.

Real Estate Investment in

# Poland

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Poland?
   Does the acquisition have to be carried out by a Polish corporation?

In general, citizens and corporate entities of the EEA and the Swiss Confederation may freely acquire real estate. Some limitations for them concern agricultural real estates. Other foreigners generally require such a governmental permit (some exceptions exist).

It is not necessary that the acquisition is carried out by a Polish corporation.

2. Which importance does the Polish land register have?

The legal status of Polish Real Estate is codified in the Land and Mortgage Register maintained by Polish Courts. It provides information about the land ownership, the security and consistency for land transactions, mortgages, encumbrances, historical details etc. The Register is publicly accessible.


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The Land and Mortgage Register as well as entries to this Register are not compulsory. In case of an acquisition of a real estate an entry in the Register does not prejudge the effectiveness of the transfer of an ownership.

At the same time, the owner of the property is obliged to immediately submit an application for disclosure of his right in the Land and Mortgage Register.

The Land and Mortgage Register is covered by the principle of public credibility. That means that data contained therein are deemed to be true and consistent with reality. In case the previous owner (who is still presented in Land and Mortgage Register as the current owner) sells the property to a third party the potential conflict would be resolved in favor of this third party that acquires a real estate from the entity mentioned in Land and Mortgage Register as the owner.

The Land and Mortgage Register protects therefore property rights.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate: generally 19%
- Personal income tax rate: generally 18%-32%
- Corporate Income Tax Act contains also regulations regarding so called "tax on building revenue" – taxpayers of this tax are generally owners, co-owners and some users of particular types of buildings located in Poland. The tax base amounts to the initial value of all buildings (which are subject to this tax) that are in possession of particular taxpayer, decreased by PLN 10m. Tax on building revenue is set at 0,035% of the tax base (paid monthly).
- Participation exemption is applied if a Polish company has held directly no less than 10% capital participation in a foreign subsidiary situated in a member of the EU or in another EEA country for an uninterrupted period of at least two years. Participation exemption applies only to Polish entities that do not enjoy the exemption from income tax on all income, regardless the source it is derived from. A similar exemption (however it regards only particular kinds of capital gains) exists if a company of the EEA or from an EU Member State has capital participation in a Polish company at above mentioned level.

**Tax group**

In Poland, tax capital groups may be formed under Corporate Income Tax Law.
In order to form a tax group certain quite restrictive requirements have to be met:

- only joint stock companies and companies of limited liability, which are a residents of Poland can form a group;
- average share capital is not lower than PLN 0.5m (in respect of each of the companies which forms the tax group);
- minimum holding requirement of 75% owned by the parent company;
- subsidiaries do not hold any shares in the share capital of other companies in the group;
- companies do not have outstanding tax liabilities that constitute national budget income;
- minimum period for joint tax settlements of three years;
- profitability ration of the group is not lower than 2% for each tax year.

Taxable income for the group is calculated by combining the incomes and losses of all group members. As a rule, no transfer pricing regulations apply to a intra tax group transactions.

2. What is the tax depreciation period for real estate in Poland?
   Are there depreciation categories? Which depreciation method is used?

Tax depreciation rates for real estates depend on the intended purpose.
The depreciation rate for house buildings and leased residential buildings is 1.5%, for non-house buildings 2.5%, for underground garages and roofed car parks 4.5% and for kiosks and bungalows 10%.

According to Polish tax regulations it is possible to increase the basic depreciation rates in case of buildings or structures that are used in conditions deemed as worsened or bad. In such a case the basic depreciation rate is multiplied by the ratio provided by tax provisions.

In case of buildings or structures that according to the relevant tax provisions are deemed as used or upgraded, taxpayers may individually determine depreciation rates within the limits provided in the tax provisions.

Land is not subject to tax depreciation.

3. When is a foreign investor subject to limited tax liability in Poland?

In the case of taxpayers who do not have their registered office or management (or place of residence) in the territory of Poland, only the income earned by them in the territory of Poland is subject to taxation in Poland.

Under the provisions of the Polish Personal Income Tax Act, a natural person is a Polish tax resident (a resident of Poland for tax purposes) if he or she has his or her centre of personal or economic interests (centre of vital interests) in Poland, or is present in the territory of Poland for longer than 183 days within a tax year.

In order to establish the appropriate tax treatment of the particular case, provisions of a relevant double tax treaty should be applied.

4. Are share deal and asset deal possible in Poland? What are the main consequences?

Real estate can be sold either through the direct sale of the property (an asset deal) or indirectly through the sale of the shares in the company owning the property (a share deal).

Capital gains realized by a Polish company upon the sale of real estate are subject to regular corporate income tax at the standard rate of 19%.The same is true for capital gains on the sale of shares.

In case of individuals who sale real estate or shares, as a rule, 19% PIT tax rate is applicable.

The sale of real estate is subject to a 2% civil law transaction tax (if it is not a subject of taxation under VAT regulations or it is exempt from VAT) and the sale of shares in the Polish company is subject to a 1% civil law transaction tax (on the market value of shares) payable by the buyer.

5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

According to the new regulations, restrictions regarding the possibility of considering the financial costs as tax deductible costs (not only interest, like it was before, but also for example fees, bonus payments) are applicable to internal as well as to external financial costs.

Deductibility limit regarding the surplus of financial costs over financing revenue is established at 30% of tax EBITDA. Limit applies in case if the surplus is over PLN 3m.

Restrictions are not applicable to particular financial entities indicated in Corporate Income Tax Act.

6. Can acquisition costs/financing fees/interest be deducted?

In general, interest on loans and acquisition costs (e.g. advisory and financing costs) are tax deductible. However, restrictions regarding deductibility of financial costs should be taken into account as well as limitation of costs regarding certain intangible services purchased from related parties.



Deductibility restrictions in this regard are applied for example to services like: advisory, market research, advertising, management and control, insurance, warranty and guarantee services and similar benefits. Costs of up to PLN 3m are not limited. However above this limit tax payers have to excluded costs exceeding 5% tax EBITDA.

At the same time, this limit is not applicable to particular costs of intangible services that are covered with advance pricing agreements or are directly connected with production of goods or provision of services.

7. Are there any possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

According to Corporate Income Tax Act this type of financial costs is excluded from tax deductible costs.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest payments to foreign creditors are subject to 20% withholding tax in Poland. A lower rate may be provided in the applicable double tax treaty. Furthermore, Poland incorporated into the domestic legislation the EU Directive on Interest and Royalty Payments.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Yes, a loss carry forward is granted for a maximum period of five years. As a rule, by the amount of loss from a source of income incurred in a tax year, a taxpayer may:

- reduce income from this source of income in the next five consecutive tax years, however the annual amount deductible cannot exceed 50% of the total loss; or
- reduce (a one-time) the income obtained from this source at one of the following five consecutive tax years by an amount not exceeding PLN 5m, the unsettled amount is settled in the remaining years of this five-year period, however the amount of reduction in any of these years cannot exceed 50% of the total loss.

In Poland, a loss carry back is not possible at all.

## C. Real Estate Taxes

1. Does Poland levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

In Poland no real estate transfer tax exists.

However, a real estate transfer may trigger Polish civil law transaction tax if the transfer is not subject to VAT *(see D.1.)*. The tax rate for selling real estate is 2% of the market value.

2. Is real estate subject to any real estate tax? At which rate?

Yes, in Poland a real estate tax is charged to the owner, possessor or perpetual user of the land/building/infrastructure used for business activities. The real estate tax rates are set by regional authorities. However, there are maximum tax rates which are governed by national tax regulations. The local authorities may grant exemptions for certain types of real estate.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

In general, the sale of real estate is VAT-exempt, except for the supply of (part of a) building/infrastructure in the course of its first occupation or when made within two years of the first occupation.

Despite the existing exemptions there is the possibility of taxing real estate sales if a transaction is carried out between registered taxpayers of Polish VAT, under condition that they will submit application (before delivery) in which they will resign from the VAT exemption and they will choose option of VAT taxation. VAT rate for selling of real estate is as a rule 23%. However, residential buildings and separate apartments are subject to 8% VAT rate. Nevertheless, if the usable surface of a single-family house exceeds 300 square metres or if the usable surface of an apartment exceeds 150 square metres, the 8% VAT applies only to the tax base corresponding to the share of the usable surface. The 23% rate applies to the tax base corresponding to the surface exceeding the above limits.



In general, the sale of unbuilt land is VAT-exempt, except for land dedicated for building purposes.

If selling real estate is not subject to or it is exempt from Polish VAT, it is subject to the tax on civil law transactions. The rate of civil law transaction tax for selling real estate is 2% of the market value.

In some cases sale of the real estate may be recognized as a sale of the enterprise or a sale of a part of the enterprise. It may happen if the real estate is sold with other assets that are sufficient for continuation of the business (e.g. generating rental incomes) and the purchaser plans to continue such business. If so, specific tax consequences are applicable. The standpoint of tax authorities is unclear, therefore detailed tax & legal analysis of case circumstances is recommended in this respect.

2. What are the VAT consequences of renting/leasing of real estate?

As a rule, renting/leasing of real estate is subject to Polish VAT. The VAT rate for renting/leasing of real estate is generally 23%. This VAT is added to the rent due.

Rental of residential units for housing is tax-exempt.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

Under the Polish tax law, there is no capital tax for equity injected into a local company. Under the provisions of the Polish Corporate Income Tax Act the following income is not taxable:

- additional payments contributed to a company if they are paid in accordance with separate provisions, amounts and values in excess of the nominal value of shares, received upon the issue of shares and allocated to the supplementary capital;
- revenue received for the purpose of establishing or raising the share capital.

Under the Polish tax on Civil Law Transactions Act, the equity financing involves civil law transactions tax at the rate of 0.5%. There are certain exceptions for restructuring, reorganization transactions and changing the company and partnership agreements resulting in an increase of capital. No civil law transactions tax applies to the increase of share premium.

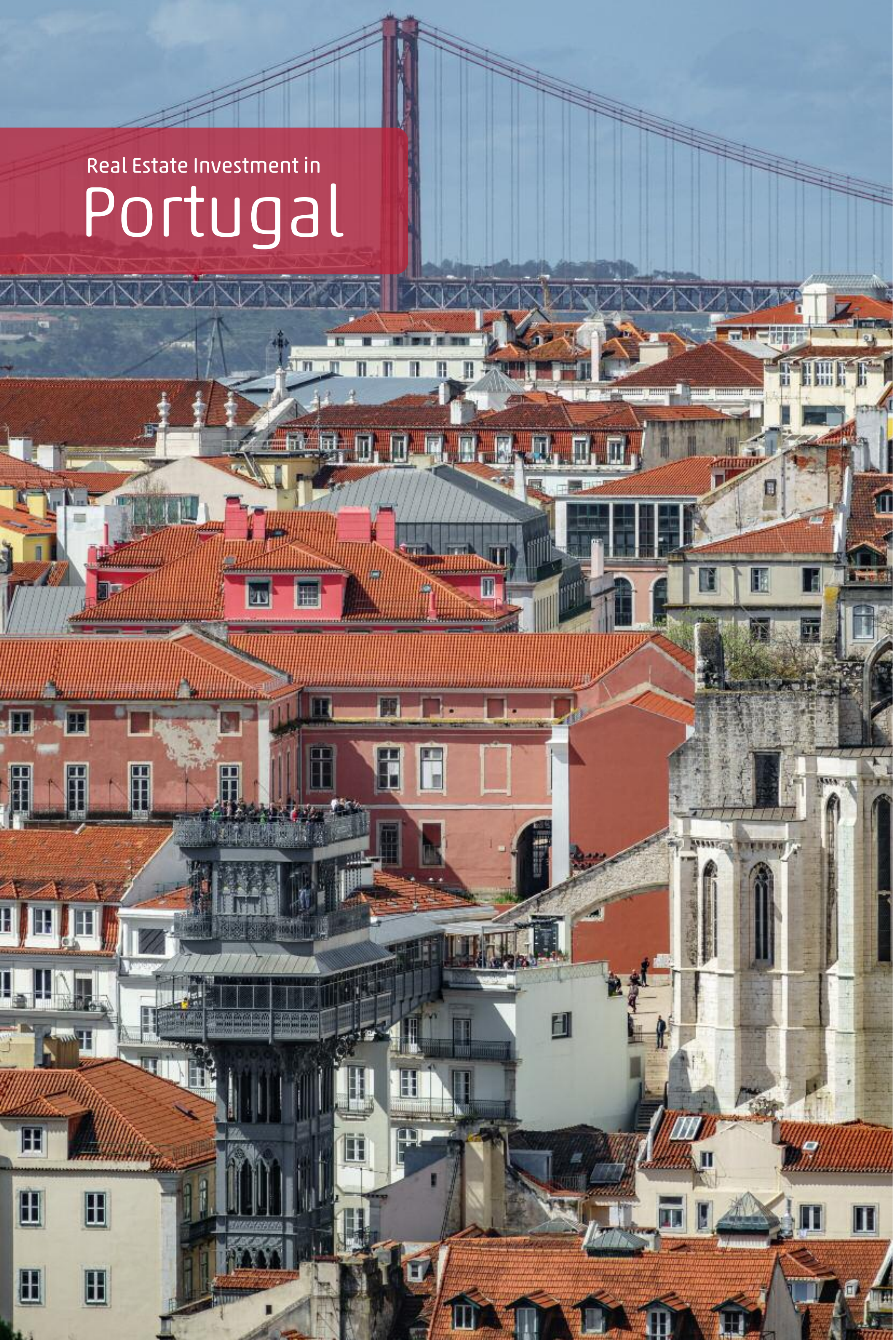
2. Is there a stamp duty on debt granted to a local company?

Loans involve a civil law transactions tax of 0.5% of the loan principal. Certain loans are exempt from taxation, e.g. loans granted by shareholders to a limited liability company or joint stock company (exemption in force from 1 January 2009) or loans granted by foreign entities which are engaged in credit and financing activities.

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

There have been no such special regulations in Poland implemented so far.

In 2018 the government presented draft regulations on Real Estate Investment Trusts dedicated to housing investments. Still, the draft act has not been finalized as well as has not been sent to the Parliament.



Real Estate Investment in

# Portugal

## A. Legal/General

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1. Are non-residents entitled to acquire real estate in Portugal?
   Does the acquisition have to be carried out by a Portuguese corporation?

There are no legal nor tax restrictions in Portugal for non-resident individuals to acquire real estate in Portugal.

Real estate may be acquired by natural or legal persons, irrespective of their tax residence.

2. Which importance does the land register have?

Despite the registration of the facts related with real estate being mandatory, including legal actions, the lack of registration would not impact the contractual relationship inter partes. However, only registered facts may be invoked erga omnes.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Personal income tax ("PIT")**

**Rental income**

Resident individuals are subject to personal income tax ("PIT") on their worldwide income, according to the general progressive tax rates, which range from 14.50% to 48.00%. There is, however, a fixed tax rate applicable to rental income, of 28%.

However, in case of residential renting, the 28% tax rate may be reduced, depending on the duration of the contract, as follows:

- duration equal to or greater than 2 years and less than 5 years: reduction of two percentage points of the autonomous rate. For each renewal with an equal duration, a reduction of two percentage points, up to a limit of fourteen percentage points;
- duration equal to or greater than 5 years and less than 10 years: reduction of five percentage points of the autonomous rate. For each renewal with an equal duration, a reduction of five percentage points, up to a limit of fourteen percentage points;
- duration equal to or greater than 10 years and less than 20 years: reduction of fourteen percentage points of the autonomous rate;
- duration of more than 20 years: reduction of eighteen percentage points of the autonomous rate.

In addition, rental income is also subject to withholding tax at a 25% rate, in the form of payments on account, when the tenant is a company or an individual person subject to organized accounts. As result, the taxpayer is required to submit a personal income tax return and pay the difference between the withholding (on account) and the final tax due. This is applicable to both resident and non-resident individuals.

Please note that PIT on rental income realized by nonresident individuals may be fully eliminated pursuant to the applicable DTT.

### Dividends

Provided that the real estate investment in Portugal is carried out through a Portuguese corporate vehicle ("RECO"), dividends distributed to its individual shareholders are subject to a final 28% withholding tax. This is applicable to both resident and non-resident individuals.

However, please note that resident individual shareholders may benefit from an exclusion from taxation on 50% of the dividend amount, provided that the individual opts for the aggregation of the income.

Please note that any withholding tax on dividends received by nonresident individuals may be reduced pursuant to the applicable Double Tax Treaty ("DTT").

### Capital gains

With respect to resident individuals, the positive difference between capital gains and losses derived from the sale of real estate located in Portugal are subject to the general progressive tax rates. However, please note that the individual shareholders may benefit from an exclusion from taxation on 50% of this positive difference. With respect to non-resident individuals, capital gains derived from the sale of Portuguese real estate are subject to an autonomous tax rate of 28%. Please note that, according to case law, the exclusion of 50% applicable to resident individuals is also applicable to non-resident individuals.

On other hand, the positive difference between capital gains and losses derived from the sale of real estate companies is subject to an autonomous taxation of 28%, for both resident and non-resident individuals. However, please note that individual shareholders may benefit from an exclusion from taxation on 50% of this positive difference, provided that the real estate company is qualified as a Portuguese micro or small enterprise.

Please note that PIT on capital gains realized by non-resident individuals may be fully eliminated pursuant to the applicable DTT.

## Corporate income tax ("CIT")

### Rental income

The taxable profits of resident companies are subject to CIT at a rate of 21%. However, for companies located in Azores, the CIT tax rate is of 16.8%, and for companies located in Madeira, the CIT tax rate is of 20%.

Companies that carry out an agricultural, industrial or commercial activity and that are qualified as a small or medium enterprise may benefit from a reduced rate of 17% applicable to a first bracket of up to EUR 15k. Companies located in Azores and in Madeira that carry out the abovementioned activities and that are qualified as a small or medium enterprise may benefit from a reduced rate of 13% and of 13.6%, respectively.

The taxable profits generally correspond to accounting profits adjusted in accordance with the CIT Code (e.g. non-deductible impairments, excessive depreciation, non-deductible expenses).

In addition to CIT, taxable profits are also subject to Municipal Surtax up to 1.5% (depending on the municipality). State Surtax applies on top of CIT but only if taxable profits exceed EUR 1.5m, as follows:

- 3% on taxable profits exceeding EUR 1.5m;
- 5% on taxable profits exceeding EUR 7.5m; and
- 9% on taxable profits exceeding EUR 35m.

The CIT Code does not foresee any special tax rate for real estate income.

Notwithstanding the above, rental income realized by non-resident entities (with no permanent established in Portugal to which the income is attributable) is subject to withholding tax at a 25% rate, in the form of payments on account, when the tenant is a company or an individual person subject to organized accounts.

**Dividends**

Provided that a real estate investment in Portugal is carried out through a RECO, dividends distributed to its resident or non-resident corporate shareholders are subject to a 25% withholding tax. However, dividends may benefit from a CIT exemption, pursuant to the Portuguese participation exemption regime.

Dividends paid to RECOs may benefit from the domestic participation exemption regime, provided that:

- the RECO holds at least 10% of the share capital or voting rights of the subsidiary;
- the RECO keeps the said shareholding for a minimum period of one year prior to the distribution or, if kept for a shorter period of time, intends to keep the said shareholding for a minimum period of one year; and
- the RECO is not tax transparent.

On other hand, dividends paid by a resident RECO to a non-resident company may benefit from a withholding tax exemption, provided that:

- the parent company is resident in a EU Member State, a EEA Member State or in a state with which Portugal as entered into a Double Tax Treaty with;
- the parent company holds at least 10% of the share capital or voting rights of the RECO;
- the parent company keeps the said shareholding for a minimum period of one year prior to the distribution; and
- the parent company is a company subject to CIT, and not tax-exempt (or is subject to a tax similar to CIT and the applicable tax rate is not lower than 12.6%).



Please note that any withholding tax on dividends received by nonresident companies may be reduced pursuant to the applicable Double Tax Treaty (“DTT”).

**Capital gains**

In respect to resident companies, capital gains derived from the direct sale of real estate are included in their taxable profits and subject to the general tax rate of 21%. As for non-resident entities, capital gains derived from the sale of real estate located in Portugal are subject to CIT at a tax rate of 25%.

On other hand, capital gains derived from the sale of a RECO, and realized by resident companies, are included in their taxable profits and subject to the general tax rate of 21%. Such capital gains may be exempt from taxation provided that the participation exemption conditions described above are met, at the time of the sale. As for non-resident companies, capital gains derived from the sale of a RECO are, in principle, exempt from CIT.

Please note that both exemptions may not apply if the RECO was, at any moment during the 365 days prior to the sale, comprised of, in more than 50%, real estate located in Portugal, and such real estate was not used for the carrying out of an agricultural, industrial or commercial activity (with the exception of the purchase for resale of real estate).

Please note that any CIT on capital gains realized by non-resident companies may be fully eliminated pursuant to the applicable DTT.

**Tax-grouping regime**

The CIT Code expressly foresees a tax-grouping regime (“Regime Especial de Tributação dos Grupos de Sociedades” or “RETGS”), which allows for the offsetting of profits and losses between companies within the group, for corporate income tax purposes.

For the Portuguese CIT consolidation rules to apply, a company (“dominant company”) needs to hold, directly or indirectly, at least 75% of the shareholding in one or more companies, provided that the holding grants at least 50% of the voting rights in the subsidiary/subsidiaries. Some additional requirements should also be met.

The companies which form a Portuguese CIT Group should, in principle, be all resident in Portugal and subject to CIT. However, the “dominant company” may also be a company resident in an EU State, provided some additional requirements are met. The "dominant company" should also keep the shareholding in its subsidiaries for a minimum period of one year prior to the application of the CIT consolidation rules.

For this regime to apply, some additional requirements should also be met, namely:

- the companies should all be resident in Portugal and subject to CIT;
- the "dominant company" should keep the shareholding in its subsidiary for a minimum period of one year prior to the application of the RETGS;
- the "dominant company" is not held by another resident company which also meets the requirements to be qualified as "dominant company";
- the "dominant company" has not waived the application of the RETGS in the three years prior to the application of the regime;
- the companies part of the group are not inactive for more than one year;
- the companies part of the group are subject to CIT at the general rates;
- the companies part of the group have not registered tax losses in the three years prior to the application of the RETGS (unless the dominant company holds the shareholding of its subsidiaries for more than two years);
- the companies' fiscal year coincide.

### 2. What is the tax depreciation period for real estate in Portugal? Are there depreciation categories? Which depreciation method is used?

The tax depreciation rates for real estate in Portugal are applied in a straight-line method and depend on the type of real estate, as follows:

- buildings for residential purposes: 2%;
- buildings for commercial or administrative purposes: 2%;
- buildings for industrial purposes: 5%;
- buildings allocated to hotels, restaurants or similar, garages, gas stations, health and education premises, and recreational buildings: 5%.

Please note that the value of the land itself is excluded from depreciation. When the value of the land is not determined, Regulatory Decree no. 25/2009 deems that 25% of the total value of the real estate correspond to the land. Notwithstanding, in such case, the value of the land cannot be lower than the respective tax value assessed under the Municipal Property Tax.

### 3. When is a foreign investor subject to limited tax liability in Portugal?

Foreign investors (non-resident for tax purposes) are only subject to tax on income sourced in the Portuguese territory, except if they invest through a permanent establishment ("PE") located in Portugal in which case the PE is subject to tax on a worldwide basis.

### 4. Are asset deal and share deal possible in Portugal? What are the main consequences?

Yes, both asset deals and share deals are possible in Portugal.

The direct acquisition of real estate in Portugal is subject to transfer taxes when, in contrast, its indirect acquisition may not trigger such taxes, provided that the investment is carried out through a RECO that adopts the legal form of a public limited liability company ("Sociedade Anónima" or "S.A."), *as explained in section C.1. below.*

The share deal may also be more advantageous when considering the taxation of capital gains derived from the disposal of the real estate. As capital gains derived from the sale of the shares may benefit from a CIT exemption, gains derived from the direct sale of real estate will, on other hand, be subject to PIT and CIT at the general tax rates, *as explained in section B.1.*

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Although the CIT Code does not foresee any thin capital rules, it foresees a limitation of interest deduction ("Interest Barrier Rule"), according to which net financial expenditure is limited to the higher of:

- EUR 1m; or
- 30% of the company's EBITDA.

Please note that, for the purpose of the interest rule, a tax-adjusted EBITDA is applicable, in order to exclude, for example, non-taxable income, deferred taxes and deferred liabilities.
We would also like to underline, however, that the Interest Barrier Rule is not applicable to interest expenses capitalized as, in such case, the expenses are added to the cost of basis of the asset on a company's balance sheet and thus not booked as a loss in the Profits & Losses Account.

### 6. Can acquisition costs/financing fees/interest be deducted?

With respect to RECOs, acquisition costs are in principle deductible for tax purposes. Please note, however, that interest and financing fees paid in connection to loans granted for the acquisition of shares which benefit from the participation exemption regime, are not tax-deductible on the part that exceeds EUR 1m. The deduction of any other interest or financing fees is limited to the Interest Barrier Rule, as explained above. The same reasoning is applicable to non-resident companies with a PE located in the Portuguese territory.

On other hand, non-resident companies with no PE in the Portuguese territory are not allowed to deduct such acquisition costs.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Debt push-down restructuring has been increasingly subject to Portuguese Tax Authorities' scrutiny and the tax litigation in this respect is focused on post-acquisition mergers. Although a case-by-case analysis is recommendable, generally debt push-down is achieved through the tax-grouping regime.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest payments received by resident or non-resident individuals are subject to a final withholding tax of 28%. Interest payments received by resident or non-resident companies are, in principle, subject to withholding tax at a rate of 25%.

Please note that any withholding tax on interest received by non-resident individuals or companies may also be reduced pursuant to the applicable Double Tax Treaty ("DTT").

Notwithstanding the above, interest payments to RECOs may be fully exempt from withholding tax, with respect to shareholder loans, provided that:

- the RECO holds at least 10% of the share capital of the subsidiary;
- for a minimum period of one year prior to the interest payments.

Also, interest payments made to non-resident entities may also benefit from a full withholding tax exemption, pursuant to the regime foreseen in the Interest & Royalties Directive, provided that:

- one company holds at least 25% of the share capital or voting rights of the other;
- the said shareholding is kept for a minimum period of two years prior to the distribution;
- the non-resident company is resident in an EU Member State;
- the non-resident company is subject to CIT, and not tax-exempt.

Please note that any withholding tax on interest received by non-resident individuals or companies may also be reduced pursuant to the applicable Double Tax Treaty ("DTT").

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses accumulated by resident entities may be carried forward up to 5 taxable years. However, the deduction of tax losses carried forward is limited to 70% of the taxable profits computed in the relevant year. Companies that qualify as micro, small or medium companies benefit from an extended period of (12 years) to carry forward tax losses, provided such companies carry out an agricultural, commercial or industrial activity.

However, the transfer of ownership and control over a company (i.e. more than 50% of the share capital or voting rights) implies the expiry of the tax losses incurred prior to the acquisition. In this respect, the companies may submit a request to the Ministry of Finance authorizing the reinstatement of the right to carry forward tax losses, provided that such request is supported on economic valid reasons.

## C. Real Estate Taxes

### 1. Does Portugal levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

The transfer of ownership rights or parts thereof of real estate located In Portugal triggers the application of IMT ("Imposto Municipal sobre as Transmissões Onerosas de Imóveis" or "IMT") and stamp duty payable by the purchaser. Both IMT and stamp duty are levied on the higher of (i) the property tax value of the real estate; or (ii) the purchase price. It should be noted that the purchase price does not include the VAT levied on the acquisition of the real estate (in case the seller waived the VAT exemption, *as explained below in section D.1.*).

The stamp duty is levied at a fixed rate of 0.8%. The IMT tax rates may vary on the type of real estate, as follows:

- urban properties for residential purposes: progressive tax rates ranging from 0% up to 7.5%;
- other urban properties: 6.5%;
- rural properties: 5%;
- properties owned by an individual or entity resident in a blacklisted jurisdiction: 10%.

The concept of transfer of ownership is very broadly defined in the IMT Code, in order to prevent tax avoidance practices. The transfer of the shares may be subject to IMT if (i) the company owns real estate; and (ii) if due to the transfer of shares one of the shareholders of the company holds at least 75% of the share capital, or the number of shareholders is reduced to two spouses. This is not applicable, however, to the transfer of shares in public limited liability companies ("Sociedade Anónima" or "S.A.").

### 2. Is real estate subject to any real estate tax? At which rate?

The holding of real estate located in Portugal is subject to Municipal Property Tax ("Imposto Municipal sobre Imóveis" or "IMI"). IMI is levied annually on the property tax value of the real estate, and it is payable by the owner, the usufructuary, leaseholder or by the person entitled to the use or fruition of the real estate on the 31 December of each year.

The IMI tax rates vary depending on the type of real estate, as follows:

- rural properties: 0.8%;
- urban properties: 0.3% - 0.45%, depending on the municipality in which the real estate is located;
- urban properties vacant for more than 1 year/in a state of ruin: 0.9% - 1.35% for urban properties, depending on the municipality in which the real estate is located;
- properties owned by individuals or entities resident in a blacklisted jurisdiction: 7.5%.

The Additional to Municipal Property Tax ("Adicional ao Imposto sobre Imóveis" or "AIMI") may also be levied on the property tax value of urban properties for residential purposes and of plots of land for construction. When the owner of the real estate is an individual, the taxable base of AIMI results from the deduction of the EUR 600k to the property tax value of the real estate. Married individuals who opt to submit a joint tax return may also deduct EUR 1.2k to the sum of property tax value of all their urban properties.

Please note that urban properties registered for "trade, industry, or services" or as "other types of property" are excluded from AIMI.

Similarly to IMI, AIMI applies to real estate located in Portugal, on an annual basis. The AIMI tax rates are the following:

- properties owned by individual persons: 0.7%;
- properties owned by individuals when the property tax value exceeds EUR 1m: marginal rate of 1% on the part of the property tax value which exceeds the said amount;
- properties owned by entities: 0.4%;
- properties owned by entities but for the personal use of their shareholders, members of the board or management or supervision bodies (and/or their respective spouses, ancestors or descendants): 0.7%;
- properties owned by entities resident in a blacklisted jurisdiction: 7.5%.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The sale of real estate is exempt from VAT under Article 9(30) of the Portuguese VAT Code. According to this provision, transactions subject to property transfer tax ("IMT"), as it is the sale of immovable property, are VAT-exempt.

Taxpayers are allowed the right to opt for taxation provided certain conditions are met, notably that the building is used by the lessee in taxable activities (i.e. activities that are not VAT-exempt). The conditions and formalities for the option for taxation are laid down in the Option for Taxation in Immovable Property Transactions' Scheme ("Option for Taxation Scheme"), approved as an Annex to Decree-Law 21/2007, of 29 January.

2. What are the VAT consequences of renting/leasing of real estate?

The renting/leasing of real estate is exempt from VAT under Article 9(29) of the Portuguese VAT Code. This provision has been interpreted by the Portuguese Tax Authority ("PTA") and the courts as applying only to the letting of "naked walls" i.e. where no services are provided by the lessor in connection with the availability of the space.

For those cases where, in principle, the exemption applies (i.e. letting of "naked walls"), taxpayers are allowed the right to opt for taxation provided certain conditions are met, notably that the building is used by the lessee in taxable activities (i.e. activities that are not VAT-exempt). The conditions and formalities for the option for taxation are laid down in the Option for Taxation in Immovable Property Transactions' Scheme ("Option for Taxation Scheme"), approved as an Annex to Decree-Law 21/2007, of 29 January.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

No.

2. Is there a stamp duty on debt granted to a local company?

Stamp duty applies on the granting of loans, with variable tax rates, depending on the term of the loan, as follows:

- 0.04% per month or fraction (for maturities of less than 1 year);
- 0.5% (paid once upfront) (for maturities of more than 1 year but of less than 5 years); and
- 0.6% (paid upfront) (for maturities of 5 or more years).

However, there are two main stamp duty exemptions for shareholder loans:

- "long-term" shareholder loans, provided that:
  - the shareholder holds at least 10% of the subsidiary;
  - for a minimum period of one year prior to the granting of the loan or, when the subsidiary was incorporated by the lending shareholder, the one year period is kept after the granting of funds; and
  - insofar as the loan is granted for a maturity higher than one year and is nor reimbursed earlier than that.
- "short-term" shareholder loans, provided that:
  - the shareholder holds at least 10% of the subsidiary;
  - for a minimum period of one year prior to the granting of the loan or, when the subsidiary was incorporated by the lending shareholder, the one year period is kept after the granting of funds;
  - insofar as the loan is granted for a maturity of less than one year; and
  - the loan is granted in order to cover for the treasury needs of the subsidiary.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

The Portuguese Tax Benefits Code foresees a special tax regime applicable to Real Estate Investment Funds ("REIF") and Real Estate Investment Companies ("REIC") incorporated under Portuguese Law. Albeit REIF and REIC are generally subject to CIT on business profits, the following items of income are excluded from the taxable profits:

- investment income (e.g. dividends and interest);
- real estate income (e.g. lease rents);
- capital gains (realized from the disposal of securities, as well as real estate assets).

As a consequence, expenditure related to tax excluded income (including management fees) are also not tax deductible against taxable profits. In addition, REIF and REIC are not subject to Municipal Surtax, not to State Surtax.

Please note, however, that the distribution of profits/capital gains derived from the sale of REIF/REIC to its resident individuals is subject to a 28% withholding tax. The distribution of profits/capital gains to resident companies is subject to a 25% withholding tax. On other hand, the distribution of profits/capital gains derived from the sale of REIF/REIC to non-resident individuals and to non-resident companies is subject to a 10% withholding tax.

In addition, please note that REIF and REIC are subject to stamp duty on a quarterly basis. Stamp duty is levied at a rate of 0.0125% (per quarter) on the REIF/REIC's net asset value.

Since January 2019, this special tax regime was also extended to Portuguese Real Estate Investment Trusts ("REIT"). However, the application of such regime depends on the compliance of the REIT with strict formal requirements regarding their:

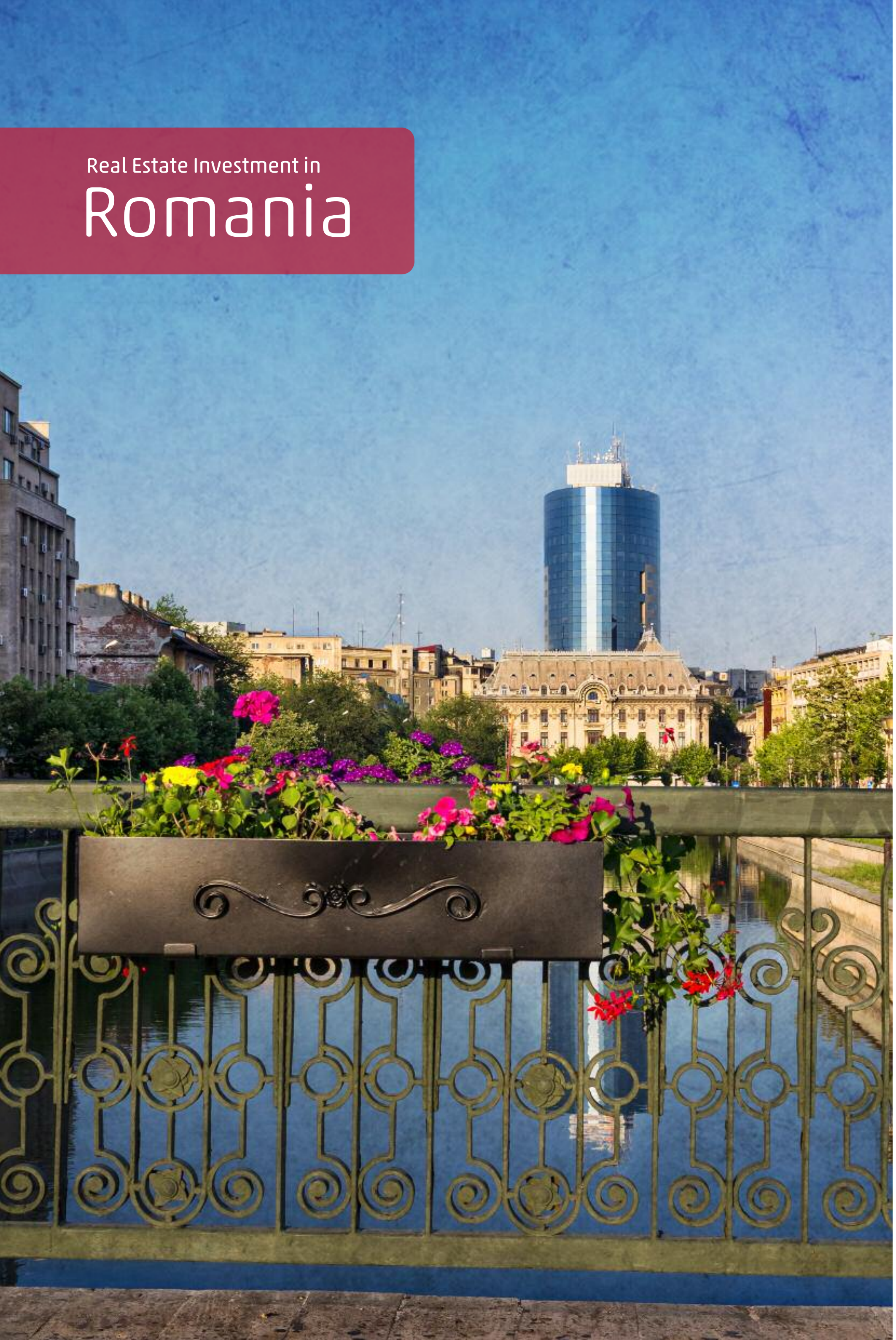
- legal form (which should be of a public limited liability companies);
- share capital (minimum of EUR 5m);
- corporate purpose;
- portfolio composition (some restrictions were imposed regarding the companies REITs are able to hold);
- indebtness limits;
- a minimum free-float of
  - 20% from the end of the third complete calendar year after the admission/selection of the shares' negotiation onwards; and
  - 25% from the end of the fifth complete calendar year after the admission/selection of the shares' negotiation onwards; and
- mandatory distribution of profits.

In case of non-compliance with these requirements, the companies will lose the REIT status and will not be able to opt for the regime for the following three years.

REITs benefit from the tax regime applicable to REIFs. However, with regard to capital gains realized upon the sale of real estate an additional requirement applies – real estate capital gains are exempt from CIT provided such real estate assets were used for rental, leasing or any other form of exploitation at least for three years prior to the sale.

Real Estate Investment in

# Romania



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Romania? Does the acquisition have to be carried out by a Romanian corporation?

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Starting with January 2012, foreign individuals and foreign legal entities are allowed to buy land in Romania. For land to be used for agricultural purposes, the restriction was valid until January 2014.

Nevertheless, starting February 2014, the legislation imposes the observance of the pre-emption right (i.e. the right to be preferred) regardless of citizenship/nationality, under equal terms and for an equal price in favour of (a) co-owners, (b) tenant farmers, (c) owners of adjoining plots, (d) the Romanian State through the State Property Agency. Such pre-emption right shall apply to all sale contracts for agricultural land situated extra muros (outside of built-up areas) concluded between (i) individuals and/or (ii) legal entities that are citizens/nationals of an EU Member State (including Romania), of a state that is a party to the EEA Agreement and the Swiss Confederation.

Non-resident investors are allowed to buy buildings or parts of a building (i.e. apartments). The acquisition of real estate may be done through a Romanian legal entity.

2. Which importance does the Romanian land register have?

The ownership right shall be entered in the Land Registry on the basis of the document through which it has been constituted or validly transmitted. The registrations shall be opposable to third parties on the date the request has been filed and will automatically be filed by the Public Notaries as their lawful obligation (as a general rule). Basically, if you are the owner of a piece of land, you must appear in the Land Registry as owner.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

There is no special tax regime under corporate tax law for Romanian companies investing in Romanian real estate assets. They are treated like any other Romanian company, which are either corporate income tax payers or microenterprise tax payers.

No corporate income tax-grouping is currently available in Romania. A foreign legal entity with several permanent establishments in Romania should assigne a lead permanent establisment that takes over the responsability to declare and pay consolidated corporate income tax for all permanent establishments.

**Corporate income tax rate**

The standard corporate income tax rate is 16%.

A corporate income tax payer is compelled to pay 16% profit tax rate applied to its taxable profits (revenues minus expenses plus fiscal adjustments).

Alternatively, a microenterprise tax payer is a company with yearly revenues below EUR 1 million, RON equivalent (in the previous year), which pays a tax on revenues as follows: 1% if it has more than 1 employee inclusively or 3% if it does not have employees (its expenses are not relevant for the computation of the microenterprise tax).

A newly incorporated company is registered as a microenterprise tax payer upon incorporation and becomes a corporate tax payer when the revenues exceed EUR 1 million. A Romanian company having the status of a micro-enterprise payer cannot carry forward the losses incurred until it becomes a corporate tax payer. Therefore, it is allowed for new companies which intend to invest to opt for the status of corporate tax payer if they have a share capital of minimum RON 45,000 and at least 2 employees.



**Personal income tax rate**

The regular personal income tax is of 10%.

In case a natural person sells the owned real estate (land and/or buildings) as part of a personal transaction (and not through an economic activity), the personal income tax is of 3% for the obtained income exceeding a non-taxable amount of RON 450,000.

Starting with 2019, the construction sector benefits from fiscal facilities.
For employees working in the construction sector have been granted a minimum salary of RON 3,000 which is higher than the national minimum wage. According to the new law the following fiscal incentives are valid for the period 2019-2028 for employees of construction companies/such companies:

- salary tax exemption;
- reduced social contribution from 25% to 21.25% (the published legislation does not mention explicitly the reduction, so a rectification should be expected);
- exemption from health contribution – the employees are insured for health services without the payment of the contribution;
- the employers are exempted for social contribution for particular working conditions, respectively special working conditions;
- reduced work insurance contribution from 2.25% to 0.3375%.

**Participation exemptions**

Dividends

As a general rule, paid dividends are taxed at a 5% withholding tax rate, or a more favorable double tax treaty rate, if a valid certificate of fiscal residency is available at the payment date. Withholding tax exemption may apply under the EU Parent-Subsidiary Directive, if the respective conditions are met and the required documentation is available at the payment date.

Based on the provisions of the EU Parent-Subsidiary Directive, the dividends paid by a Romanian legal entity to a legal entity residing in a EU Member State are tax-exempt in Romania provided that, at the date of the dividends' payment, the beneficiary of the dividends holds at least 10% of the shares in the company paying the dividends for a continuous period of one year ending at the date of payment.

In addition, the EU shareholder has to fulfill specific conditions as regards its legal nature, it has to be tax resident in its country and, also, a corporate income tax payer.

Separately, the Romanian company paying the dividends has to be a corporate income tax payer in order to apply the EU Directive and has to be a limited liability/joint stock/limited partnership company. Consequently, dividends paid by Romanian micro-enterprise taxpayers cannot benefit from the application of the EU Parent-Subsidiary Directive.

Dividends received by resident companies from Romanian legal entities are non-taxable revenues. Dividends received by resident companies from a foreign legal entity which is a corporate income taxpayer or a payer of an similar tax, located in a country with which Romania has concluded a double tax treaty, are non-taxable revenues if the Romanian legal entity receiving the dividends owns at least 10% of the share capital of the foreign company paying the dividends for an uninterrupted period of one year.

In the case of dividends paid by a Romanian company to another Romanian legal entity, 5% of the dividend tax is withheld by the payer from the total amount. This withholding is not applicable if the Romanian company receiving the dividends owns at least 10% of the share capital of the other Romanian company for an uninterrupted period of one year at the dividend payment date.

**Sale of shares**

Income earned by non-residents from the transfer of real estate ownership or of any legal right related to real estate located in Romania, income from the exploration of natural resources in Romania, as well as income from the sale of participation titles held in a Romanian legal person are subject to corporate income tax in Romania.

Revenues from the valuation/revaluation/transfer/sale of shares held in a Romanian company or in a foreign company located in a country with which Romania has concluded a double tax treaty (including those outside the EU) are non-taxable revenues in Romania if at the date of valuation/revaluation/transfer/sale of shares, the seller of shares owns at least 10% of the share capital of the Romanian entity/foreign entity for an uninterrupted period of one year. The requirements are that the 10% shareholding quota has to be fulfilled for more than 1 year when the shares are held and that the seller is a tax resident in a country with a double tax treaty with Romania.

Withholding tax exemption may be also available under various double tax treaties concluded by Romania.

### 2. What is the tax depreciation period for real estate in Romania? Are there depreciation categories? Which depreciation method is used?

Mainly, the depreciation period for buildings is between 40 to 60 years according to the relevant law. In accordance with the Romanian Fiscal Code the depreciable fixed assets do not include land.

Also, according to the fiscal legislation for constructions only the straight-line method of depreciation is applicable.

### 3. When is a foreign investor subject to limited tax liability in Romania?

Foreign entities are generally subject to Romanian tax on the income derived from Romania. The extent to which a foreign entity is subject to Romanian taxation depends on its activities undertaken in/or related to Romania.

Thus, non-residents performing activities in Romania are subject to income tax on the Romanian source income. Also, foreign entities with effective place of management in Romania are Romanian corporate income tax payers.

As mentioned above, income earned by non-residents from the transfer of real estate ownership or income from the sale of participation titles held in a Romanian legal person are subject to corporate income tax in Romania.

A foreign entity can be subject to taxation by establishing a branch, creating a permanent establishment, representative office or by becoming subject to withholding tax on the Romanian-sourced income.

### 4. Are asset deal and share deal possible in Romania? What are the main consequences?

The real estate investor can acquire real estate located in Romania by way of an asset deal (e.g. direct acquisition of real estate) or share deal (e.g. acquisition of corporation owning real estate). Please find below a short overview of the main advantages and disadvantages with respect to the above-mentioned ways used for acquisition of real estate:

| | Advantages | Disadvantages |
|---|---|---|
| Share deal | no VAT on transfer of shares; no need to adjust input VAT; lower tax on buildings | lower depreciation expenses and higher taxable profits |
| Asset deal | higher depreciation expenses and lower taxable profits | higher tax on building |

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

ATAD EU Directive was implanted in Romania for corporate income tax payers. Currently, the excess costs of indebtedness (the difference between borrowing costs and interest revenues) are deductible for corporate income tax purposes if they are less than EUR 1,000,000, RON equivalent.

Afterwards, the amount exceeding the EUR 1,000,000 ceiling may be deducted up to 30% of EBITDA, computed as follows: revenues minus expenses minus non-taxable revenues plus profit tax, plus the excess costs of indebtedness, plus tax depreciation.

An independent company, not part of a group, does not follow the above rules and it can fully deduct the interest expenses.

6. Can acquisition costs/financing fees/interest be deducted?

The costs relating to the acquisition including transaction costs (e.g. due diligence costs, consultancy fees for structuring, valuation costs, etc.) and interest expenses of debt financed acquisition are deductible for corporate income tax purposes, provided that the conditions of the general deductibility rule are fulfilled; "expenses are deductible only if they are incurred within the scope of performing an economic activity". Other conditions that must be fulfilled by any type of expense in order to ensure that it is deductible for the computation of taxable profit refer to the fact that they must be recorded in accounting based on a justifying document proving the performance of transaction or the entry into patrimony.

Expenses for management services, consulting, assistance or other services are not deductible for corporate tax computation if the respective services are rendered by a person resident of a State with whom Romania did not conclude an agreement regarding the exchange of information, and if the expenses are generated by transactions considered artificial.



7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

The Romanian legislation does not allow tax-grouping for corporate income tax purposes.

A merger or a conversion is legally possible. According to the Romanian tax legislation, the interest related to a loan is deductible only if this loan is used in order to perform an economic activity. In case that a debt push-down structure will be used for financing purposes of an economic activity, the related interest expense is deductible for corporate income tax purposes on the basis of the above mentioned rules.

8. Is there a withholding tax on interest payments paid by local company to creditor?

The tax rate applicable for the revenue obtained from Romania by a non-resident entity is the more favorable tax rate between internal legislation (16% tax rate on interest revenues derived from Romania), EU legislation or double tax treaty, if specific documentation is provided.

EU legislation is applicable only in cases of transactions between Romania and EU Member States.

As far as the application of EU legislation is concerned, it is to be noted that Romania has implemented the Interest and Royalties Directive. Provided that the actual interest beneficiary is an EU resident legal person and the foreign entity directly holds at least 25% of the shares of the Romanian tax payer for an uninterrupted period of at least two years ending when the interest payment is made, the interest income would be exempt from withholding tax in Romania.

For the application of EU legislation, the non-resident beneficiary must provide the income payer, besides the fiscal residency certificate, with a liability declaration disclosing the fulfillment of the following conditions as the beneficiary of the interest income from Romania: minimum ownership period, and the minimum percentage of ownership of the share capital of the Romanian legal entity. Also specific types of companies are eligible for the application of the EU Directive.

If one of the above conditions is not met, the provisions of double tax treaties or the local legislation might nevertheless be applied.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

The taxpayers are allowed to carry forward fiscal losses as declared in the yearly profit tax returns for a period of seven years based on a First-In, First-Out (FIFO) method.

For foreign legal persons, this rule (i.e. carry forward of losses) applies only to revenues and expenses attributable to their permanent establishment in Romania.

In Romania, a loss carry back is not possible at all.

## C. Real Estate Taxes

### 1. Does Romania levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

No real estate transfer tax is applicable in Romania.

### 2. Is real estate subject to any real estate tax? At which rate?

In Romania real estate are subject to local taxes and duties which are regulated by the Fiscal Code.

**Taxes on buildings**

The tax on buildings is assessed differently according to the building's purpose – i.e. building used for residential purposes (domicile) or for non-residential purposes (for business purposes).

The taxable value for non-residential buildings can be the final value of the constructions works for new building or the taxable value stems from valuation reports issued by authorised appraisers, every five years in the case of natural persons, and every three years in the case of legal persons.

The rates for tax on residential buildings owned by natural or legal persons are between 0.08% and 0.2%, applicable on the taxable value of the buildings.
For non-residential buildings owned by natural or legal persons the tax rates are in the range of 0.2%-1.3%. If the taxable base is not updated through valuation reports according to the law, the tax rate is increased up to 2% for natural persons and 5% for legal persons.



**Taxes on land**

This tax is calculated annually as a fixed amount per square meter and is payable in two installments, on 31 March and 30 September. The tax varies in accordance with the location of the land and its destination.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate (asset deal/share deal)?

The standard VAT rate in Romania is 19%.

**Asset deal**

The sale of old buildings and of ancillary land, as well as land which is not meant to be used for construction is exempt without deduction right.

New buildings (or part of buildings) and land that could be used for constructions sold by VAT payers do not benefit of this exemption. The sale of a new building means a sale made at the latest on 31 December of the second year following the first occupation or use, as the case may be. The supplier has the option to apply VAT on the exempt transactions.

Currently, Romania has a reverse charge mechanism for the local Romanian supply between two Romanian VAT payers of buildings, parts of buildings and land of any kind, for which the supply is VAT taxable by law or by option.

If a taxable person has deducted VAT related to a real estate and sells or rents immovable property under the VAT exemption regime, adjustments for the deduction right should be performed. The adjustment period is 20 years for immovable property built, acquired or modernized after 1 January 2007.

**Share deal**

No VAT applicable on transfer of shares.

### 2. What are the VAT consequences of renting/leasing of real estate?

With respect to the VAT on rent or leasing of real estate, after the EU accession, the rental or leasing of immovable goods is exempt without right of deduction, except for certain cases explicitly specified by law.

However, the taxpayer has the option to apply VAT on these operations.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Romania does not know a capital tax for equity injected into a local company.

### 2. Is there a duty on debt granted to a local company?

There are no stamp duties on debt granted.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

A sprecial regime for Real Estate Investment Trusts does not exist.

Real Estate Investment in

# Russia

## A. Legal/General

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1. Are non-residents entitled to acquire real estate in Russia?
   Does the acquisition have to be carried out by a Russian corporation?

Generally, real estate may be acquired by both foreign individuals or legal entities. However, there are certain legislative restrictions which apply to ownership and turnover of specific types of property.
In particular, land adjacent to the national borders and agricultural land. However, those types of land may be leased.

2. Which importance does the land register have?

All legal rights with respect to real estate and their transfer as a result of transactions are valid only upon registration in the Unified State Real Estate Register. Prior to such registration, any real estate object must undergo cadastral registration in the State Real Estate Cadastre (Real Estate Cadastre), during which all key technical parameters are established and a unique state cadastre number is assigned. It should be noted that under Russian Law buildings and land plots are considered as separate objects of legal rights and therefore recorded in the register as separate objects.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporate income tax (CIT)**

The Russian corporate profit tax rate is 20%. CIT is imposed on a net taxable income, as computed after deductible expenses. The costs incurred are deductible if they meet the business purpose test and can be confirmed by documentation. There are no special tax rates for real estate.

There is an opportunity to form the tax-groups and use the consolidated taxpayer regime in Russian legislation. However, starting from 2018 it is forbidden to create new consolidated groups. Groups formed before 2018 may apply the regime until 2023.

**Personal income tax (PIT)**

Russia uses flat scale taxation. The general PIT rate for tax residents is 13% and 30% for non-residents (Russian tax residency is acquired if an individual spends at least 183 calendar days in Russia during a period of 12 consecutive months).

The duration of stay test is the only criterion for individuals in order to be considered as Russian resident for tax purposes.

There are no special tax rates for real estate. With regard to participation exemption, the donation of real estate to a Russian company from an individual/legal entity who owns more than 50% of shares of transferring company is exempt from corporate income tax. Similarly, donations of real estate amongst family members are exempt from personal income tax.

**Capital gains**

Russian tax law does not impose special taxes on capital gains.

**Sale of real estate**

- Sale of real estate by legal entities:
  Income received by Russian legal entities from sale of real estate is subject to CIT at a general rate of 20%. Taxable income is calculated as difference between sale price and following amounts: (i) net book value of property according to tax accounting ledgers; (ii) expenses related to deal (notary fees, real estate broker fees, appraisal services fees and any other similar fees).

- Sale of real estate by individuals:
  Tax regime that is applied in respect of Individuals' income from sale of real estate depends on their tax residence status:
  - Option 1. An individual is recognized as Russian tax resident.
    Generally, income from sale of real estate is subject to PIT at the rate of 13%. Individuals' income from real estate sale could be exempted from tax if the following conditions are met:
    - individual has held ownership rights over the property for more than five years (three years for real estate that was received (i) as a result of inheritance or as a gift from family member (ii) as a result of privatization;
    - the property was used for private purposes only.

    If real estate property is sold before expiration of minimal period of ownership (5 years/3 years), the amount of taxable income could be decreased in amount of documentally confirmed expenses or in amount of fixed exemption – RUB 1m upon the chose of taxpayer.
  - Option 2. An individual is not recognized as Russian tax resident.
    Generally, income from sale of real estate is subject to PIT at the rate of 30%. Exemption of income from sale of real estate described in Option 1 is also applied for non-resident individuals. Please note that non-resident individuals do not have the right to decrease their taxable income in amount of acquisition costs or fixed tax exemption in amount of RUB 1m.

**Sale of shares in real estate holding companies**

- Sale of shares by legal entities:
  Russian company income from sale of shares in real estate holding companies is subject to CIT at the rate of 20%. Taxable income is calculated as difference between sale price and following amounts: (i) acquisition price of shares; (ii) expenses related to sale deal.
  Foreign company income from sale of shares in real estate holding companies could be subject to withholding tax (WHT) at the rate of 20% if more than 50% of the company's assets consist directly or indirectly of real estate located in Russia. The share of real estate is calculated based on the book value of the company's assets and its real estate located in Russia. We notice that DTT may provide another approach.

- Sale of shares by individuals:
  Tax regime that is applied in respect of individuals' income from sale of shares depends on their tax residence status:
  - Option 1. An individual is recognized as Russian tax resident.
    Generally, income from sale of shares is subject to PIT at the rate of 13%. Individuals' income from sale of Russian real estate companies' shares could be exempted from PIT in Russia if an individual has held ownership rights over the shares for more thank five years. If shares are sold before expiration of minimal period of ownership (5 years), the amount of taxable income could be decreased in amount of documentally confirmed

expenses or in amount of fixed exemption – RUB 250, 000 (EUR 3,330) upon the chose of taxpayer.

» Option 2. An individual is not recognized as Russian tax resident.
  Generally, income from sale of real estate is subject to PIT at the rate of 30%. Exemption of income from sale of real estate described in Option 1 is also applied for non-resident individuals.
  Please note that non-resident individuals do not have the right to decrease their taxable income in amount of acquisition costs or fixed tax exemption in amount of RUB 250,000 (EUR 3,330).

**Dividends**

The general tax rate for dividends received by Russian corporations or individuals is 13%. Participation exemption (0% rate) is available for dividends received by a Russian company if the following conditions are met simultaneously:

- the recipient of dividends holds at least 50% of the capital of the distributing subsidiary for a period of not less than 365 calendar days;
- the recipient is entitled to receive at least 50% of total dividends distributed;
- the company paying the dividend is neither an offshore company nor resides in a country that does not support the exchange of information procedures (black listed countries defined by Russian Ministry of Finance). Dividends paid by the Russian companies to foreign legal entities are subject to general 15% withholding tax, which may be reduced by the applicable double tax treaty (DTT).

Russian companies which are sources of dividends for foreign companies have the right to apply reduced WHT rates established by DTT if all conditions prescribed by Russian ultimate beneficial concept (UBO Concept) are fulfilled.

### 2. What is the tax depreciation period for real estate in Russia? Are there depreciation categories? Which depreciation method is used?

In Russia different types of assets are divided into depreciation categories (from 1 to 10 depending on depreciation period). Each category of assets has its own legally defined useful life period. Real estate assets could be included into depreciation categories from 7 to 10. Minimal depreciation period of real estate property included into 7$^{th}$ depreciation category is 10 years. The depreciation period of real estate assets included into 10$^{th}$ depreciation category is 30 years and more.

Taxpayer should define depreciation period on its own in respect of each assets depending of threshold prescribed for corresponding depreciation category.

For tax purposes, a corporation may depreciate real estate using the straight-line method only and no accelerated depreciation is available.

The base for tax depreciation are the acquisition costs of the real estate. Taxpayers may deduct a onetime depreciation allowance of up to 30% of the acquisition costs of the fixed assets purchased or capital improvement made. Depreciation allowance in amount of 30% is applied in respect of real estate included into 7$^{th}$ depreciation categories. Real estate property included into depreciation categories from 8$^{th}$ to 10$^{th}$ is subject to depreciation allowance in amount of 10%.

The acquisition costs of land plots are not depreciable.

### 3. When is a foreign investor subject to limited tax liability in Russia?

**Legal entities**

Russian tax law does not provide any special tax regime with limited tax liabilities for legal entities.

A foreign investor, which performs regular business activity in Russia, will be liable to pay CIT from any profit. Russian tax law does not contain special definition of regular business activity. The decision about regularity should be developed on case-by-case basis. Generally, business activity are considered as regular if more than two transactions are performed.

Regular business activity of a foreign investor in Russia might lead to creation of permanent establishment. Profit attributed to such permanent establishment (income less expenses) should be subject to general CIT rate 20%.

If a foreign investor receives passive income (dividends, interest, royalties, rent payments, income from sale of immovable property or shares of real estate holding companies), such income should be subject to withholding taxation at the following rates: 15% – dividends, 20% – other income. We notice double tax treaty provisions might decrease withholding tax rate if all conditions of Russian UBO concept are met.

Generally, the withholding tax is levied on the gross income. In case of disposal of real estate or shares in real estate holding companies the acquisition expenses may be deducted. The tax base is calculated by a tax agent who shall be provided with documents confirming the acquisition expenses prior to the payment of income to a foreign investor.

**Individuals**

Non-resident individuals are subject to limited taxation. The tax is levied on the gross income received from Russian sources including rent payments for real estate, the sale of real estate or of shares in real estate holding companies. The general applicable tax rate is 30%.

Non-resident individuals are personally liable to pay the tax and should declare their tax liability by filing annual tax return.

## 4. Are asset deal and share deal possible in Russia? What are the main consequences?

Acquisition of real estate in Russia may be realized by way of an asset deal or share deal. There are no special transfer taxes applicable.

In case of a share deal, the value of real estate remains unchanged in the target company's books. Special attention should be paid to interest/cost of financing deduction if the acquisition is debt financed. Share deals are exempt from VAT. We notice that recently Russian tax authorities pay more attention on share deals related with immovable property if such transactions are part of a scheme aimed at avoiding of Russian VAT.

If a transaction is structured as an asset deal, a real estate asset's value for the acquiring investor is defined as the purchase price. Increase of the asset's value to the purchase price increases the property tax base of the acquiring investor compared to the seller's tax base which was at the level of asset's net book value (unless the property tax base is defined as a cadastral property value).

Asset deals are usually subject to VAT at the rate of 20% (except for land which is a VAT-exempt transaction).



## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Russian thin capitalization rules should be applied if following conditions are met:

- outstanding indebtedness meets criteria of controlled indebtedness;
- the debt to equity ratio exceeds 3:1 (12.5:1 for banks and leasing companies);
- interest expenses incurred on outstanding indebtedness exceed the amount of deductible interest.

The amount of interests expenses, which exceeds the amount of deductible interest, are recognized as non-deductible expenses and should be treated as dividends paid to foreign company.

Such amount of "dividends" are subject to withholding tax (WHT) at the general rate 15%, which could be reduced under double tax treaty provisions (DTT). Russian companies which are sources of dividends for foreign companies has the right to apply reduced WHT rates established by DTT if all conditions prescribed by Russian ultimate beneficial concept (UBO Concept) are fulfilled.

According to the Russian tax law following types of outstanding indebtedness is subject to Russian thin capitalization rules:

- outstanding indebtedness to a foreign company, which is treated as related party of Russian debtor if such foreign company directly or indirectly controls capital of the Russian company;
- outstanding indebtedness to a foreign company, which is treated as related to the foreign company which directly or indirectly controls capital of the Russian company;
- outstanding indebtedness which is guaranteed by an above foreign company.

Outstanding debt to a foreign company to a foreign company should not be treated in the following cases:

- outstanding indebtedness to a foreign company is related to emission of bonds performed by such foreign companies;
- outstanding indebtedness is not treated as back-to-back loans;
- outstanding indebtedness which is guaranteed by foreign company are not treated is controlled indebtedness if 1) the creditor is a non-related Russian or foreign bank; 2) liability to pay principal amount of debt or interest were

not terminated upon the decision of a foreign related company and its affiliated company which acts as a grantor.

6. Can acquisition costs/financing fees/interest be deducted?

Financing costs (fees/interest) are not capitalized and are deductible as expenses of the current period.

If a transaction is structured as a share deal through a Russian SPV and the SPV's income is merely represented by dividend distributions from the acquired target company, the SPV's financing costs cannot be deducted against its dividend income. In this case financing fees form losses which may be deducted against general (operational/non-operational) income.

Costs for the acquisition of shares in real estate holding companies may be deducted against profits from the disposal of these shares. In order to achieve full deductibility of the debt finance costs in a share deal transaction, a debt push-down option may be used.

Costs for the direct acquisition of real estate can be deducted for tax purposes in two ways: depreciation and deduction of acquisition costs (net book value) against profit derived from the sale of real estate.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

It is possible to pool debt financed expenses for acquisition of a real estate company (target) with income of the target by way of down-stream or upstream merger.

If the target is absorbed by the parent company (upstream merger) the real estate asset is transferred at the tax value according to the records of a merged (target) company, i.e. tax neutrally.

Other debt push-down options as for e.g. setting up a tax group is not practically available for most investors due to high assets value thresholds for group consolidation.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest paid by a Russian company to a foreign creditor is subject to Russian withholding tax at a general tax rate of 20%. Withholding tax on the above payments can be reduced or eliminated based on the provisions of an applicable DTT. No withholding tax applies in case interest payments are made in favour of a resident creditor.

Russian companies which are sources of interest income for foreign companies has the right to apply reduced WHT rates established by DTT if all conditions prescribed by Russian ultimate beneficial concept (UBO Concept) are fulfilled.

9. Is a loss carry forward or carry back granted and what are the restrictions?

According to the current version of Russian tax law losses incurred by resident companies and by foreign companies with a permanent establishment in Russia may be carry forward fully or partly without time limitations.

We notice that tax base should be decreased in amount of loss no more than by 50% since 1 January 2017 to 31 December 2020.

Such rule came into force since 27 November 2018 under Federal Law No. 401 as for 30 November 2016.

Previously resident companies and by foreign companies with a permanent establishment in Russia had the right to carry forward its losses to the following ten years without limitations.

## C. Real Estate Taxes

1. Does Russia levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Russia imposes no real estate transfer tax on sale of real estate or shareholding.

2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is levied on property of Russian companies and of a foreign company's property qualifying as fixed assets including buildings. Generally, the property tax base is the average book value of the fixed assets defined under Russian accounting rules. Currently, the maximum tax rate is 2.2% for corporations, but rates may vary depending on the region.

Starting from 2014 the property tax base for administrative, trade and office centres, public catering facilities as well as real estate of the foreign companies which have no permanent establishment in Russia and real estate of foreign companies if this property does not relate to the activities of these foreign companies in Russia is determined through the cadastral value of this property. The tax base is the value accrued under cadastral value: cadastral value, in practice, is usually much higher than the book value. Cadastral value is determined on 1 January of the corresponding year. The property tax rate for Moscow as well as for other regions of Russia is up to 2%.

Individuals who own real estate are also liable to pay property tax. Currently, the taxpayers have to pay the tax depending on the inventory or the cadastral value of the immovable property (depending on the region). The local authorities, municipalities have discretionary power to impose obligatory cadastral value of estimation. The tax rate for residential property is 0.1% and for property used for commercial and administrative purposes, trade office centres etc or the property, the value of which is more than RUB 300m is 2%. However, the tax rate may vary depending on the region in question.

Land tax is a local tax payable on land, which is owned by a resident or non-resident company. The tax base is the cadastral value of the land, which is set by the corresponding local authorities on 1 January each year. The rate depends on the specific kinds of land. The maximum rate is 0.3% for land used for housing purposes and 1.5% for other types of land. The local authorities have discretionary power to set other more specific tax rates, which shall not exceed the maximum rates mentioned above.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The sale of commercial real estate realized in Russia is subject to VAT at the rate of 20%.

Generally, the sale of residential property and plots of land are not subject to Russian VAT. Similarly, transactions with securities, which include shares in a property holding company, are exempt from VAT.

2. What are the VAT consequences of renting/leasing of real estate?

Lease of immovable property is generally subject to VAT at the rate of 20%.

The lease of offices and residential units to foreign individuals or foreign legal entities accredited in Russia is exempt from VAT, if the foreign individuals are residents of and foreign legal entities are incorporated in the countries listed by the Government of the Russian Federation. Currently there are 113 countries, including EU states, USA, Australia etc.

This exemption is mandatory.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

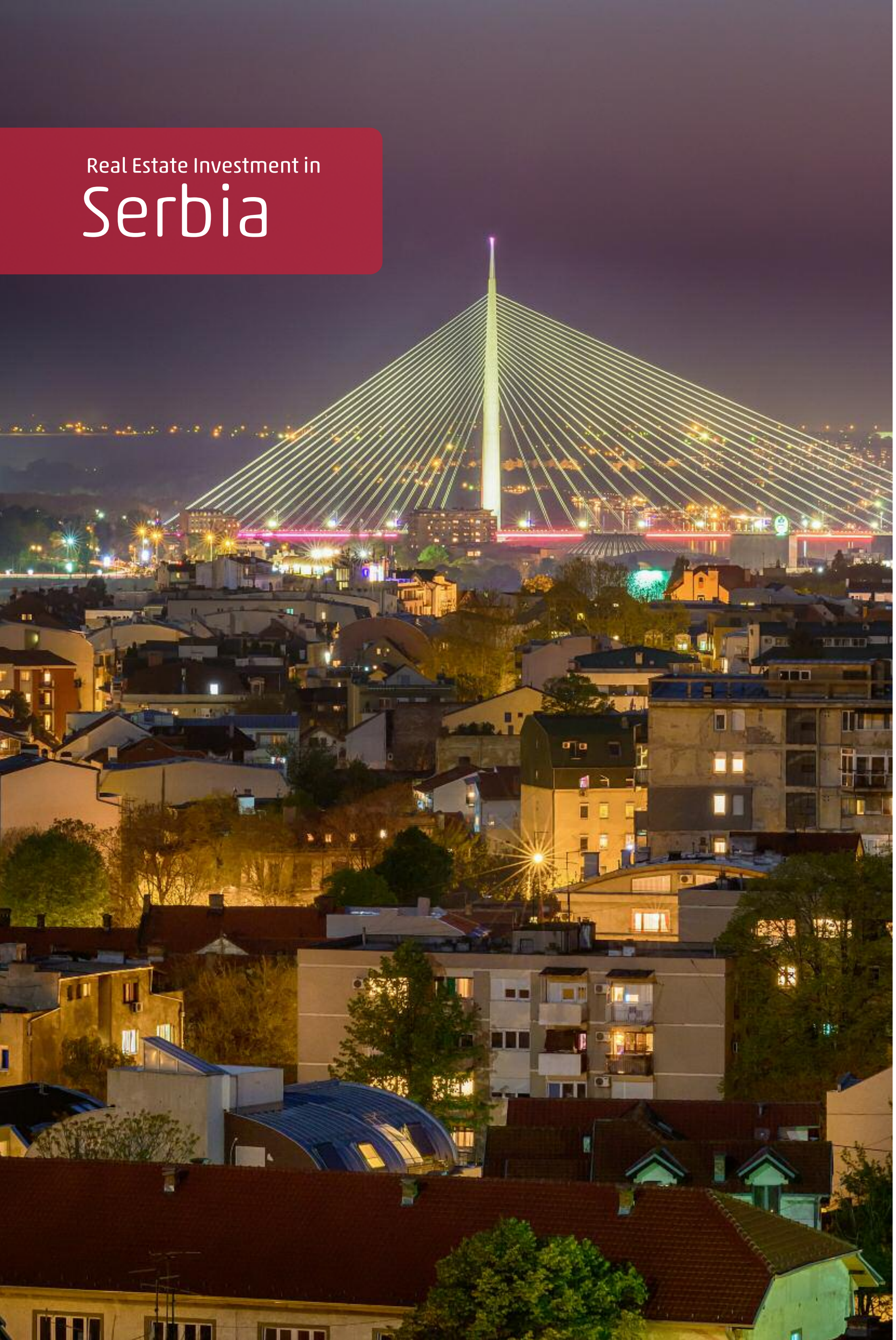
Russia imposes no capital taxes for contribution of equity into Russian entities.

2. Is there a stamp duty on debt granted to a local company?

Russia does not impose stamp duty to debt financing granted to a Russian entity.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Russian civil law does not contain trust concept. Therefore, there is no special tax regimes for Real Estate Investment Trusts.



Real Estate Investment in

# Serbia

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in Serbia? Does the acquisition have to be carried out by a Serbian corporation?

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Non-resident (foreign) individuals and non-resident (foreign) companies can acquire real estate "needed for performance of their business" or for personal use (residential property only) under the reciprocity principle.
When purchasing property non-resident individuals and non-resident companies are subject to tax on transfer of absolute rights and capital gains tax in Serbia.

Yet, in practice a Serbian subsidiary is frequently used for the purchase of real estate in Serbia (in order to avoid adverse interpretation of the term real estate "needed for performance of their business activities"). These special purpose vehicles are used in order to avoid administrative requirements imposed on a foreigner in order to acquire land and for taxation purposes.

### 2. Which importance does the land register have?

Rights of ownership over real property are acquired by their registration in the Real Estate Cadastre, which is the public record of real estate objects and the rights established on them. It contains information about factual and legal data of real properties. Prior to the registration of the ownership of the purchaser in the registry, the real estate is still in the ownership of the seller. The creditors of the seller can settle their receivables towards the seller from the real estate in question until the respective amendment has been effected. In such a situation, the purchaser would only have a claim for the refund of the paid price and potentially damage compensation if such damage occurred.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate:
  - 15%;
  - The Corporate Income Tax Act provides for a tax holiday for large investors. Large investors, who invest (currently) at least RSD 1bn (approx. EUR 8.5m) and employ at least 100 workers for an indefinite time, are entitled to a tax holiday of 10 years.

- Personal income tax rate – flat rates are implemented in Serbia and they usually range from 10% to 20%. Examples of tax rates are presented below:
  - Tax on earned interest and dividend: 15%;
  - Capital gains tax: 15%;
  - Tax on transfer of absolute rights: 2.5%.

- Participation exemptions:
  There is no international participation exemption. However, withholding tax on dividends received by a Serbian resident company holding for at least a year a minimum of 10% of the shares in the non-resident company, which is subject to tax in its state of residence, can be fully credited against the income tax of the Serbia holding company.

The Serbian legislation does allow tax-grouping for corporate income tax purposes. The parent company must own at least 75% of the shares or stock of the other company. Every individual company in the group calculates its taxable income, and after that the group can calculate its consolidated taxable income and submit a consolidated tax return (losses and gains of the group members from the same year are offset).

2. What is the tax depreciation period for real estate in Serbia?
   Are there depreciation categories? Which depreciation method is used?

Real estate is depreciated over its useful life at a single annual tax depreciation rate of 2.5%. Straight-line depreciation method is used. There are no different depreciation categories for real estate.



3. When is a foreign investor subject to limited tax liability in Serbia?

A resident company is subject to withholding tax (tax rate of 20%) in Serbia, when a non-resident company generates revenue from providing market research services, services of accounting and auditing and other services of business and legal consulting to a resident company. This also applies to interest, royalties, payment a rental service and dividends paid to a non-resident company. A resident company is not subject to withholding tax or is subject to a lower tax rate if it is regulated by Double Tax Treaty which Serbia signed with the country the non-resident company is from.

A foreign investor is subject to limited liability in Serbia on income from: dividends, interest, royalty, excess bankruptcy and liquidation mass distributed to shareholders, capital gains, lease of movable and immovable property and income from artistic, entertainment, sports and similar programs performed in Serbia. In addition, taxpayers from black-listed countries are subject to 25% tax rate.

4. Are asset deal and share deal possible in Serbia?
   What are the main consequences?

A foreign investment company has two available options of purchasing property in Serbia:

- Incorporation of an acquisition company and purchase of real estate:
  The Serbian Enterprise Law provides for very few conditions for the incorporation of a company. The usual form of a company is the limited liability company. The incorporation of a Serbian limited liability company does not trigger any taxation. Once the acquisition company is set up by the investment corporation, it can purchase real estate in Serbia.

- Purchase of a local company owning real estate:
  The investment company can opt to purchase an existing Serbian company which holds real estate. The purchase of a Serbian company is tax neutral, i.e. there is no CIT obligation.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

**Thin capitalization rules**

In case a loan is granted to the Serbian company by a related party, thin capitalisation rules need to be obeyed. A related party is a company or an individual holding directly or indirectly at least 25 % of the shares, stock or votes of the other company or if a company or an individual has control or influence concerning business decisions of the other company. According to Serbian Corporate Income Tax Law, the deductible interest is limited to 4*own capital of the Serbian tax payer.
For banks and financial leasing institutions, the deductible interest is limited to 10*own capital.

**Transfer pricing**

Transactions between related entities must be on arm's-length basis. Serbia has documentation requirements as of 2013.

6. Can acquisition costs/financing fees/interest be deducted?

The purchase price paid for the acquisition of real estate is capitalised. The only additional acquisition cost which is capitalised along with the purchase price is the property transfer tax at the rate of 2.5%, if it was paid by the purchaser. All other expenses (financing fees, interest from initial loan and refinancing, evaluation, lawyers' fees etc.) are immediately deductible, if they are considered to be costs ccording to international accounting standards.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

The Serbian Enterprise Law allows both up-stream and down-stream mergers. Mergers are tax neutral. After the merger is performed, all the financing costs (interest and similar) are deductible from the profit of the newly established company. Same refers to potential refinancing expenses. Serbian laws do not contain provisions on cross-border mergers.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Dividend distributions, i.e. interest payments from one Serbian company to another Serbian company are not subject to withholding tax. On the other hand, dividends and interest paid by a Serbian company to a non-resident shareholder are subject to 20% withholding tax unless reduced under an applicable Double Tax Treaty.
In case there is an applicable Double Tax Treaty, 20% withholding tax is paid on the positive difference between interest according to transfer prices and "out of reach" interest. Exceptionally, withholding tax on interest paid to a creditor from a black-listed country is subject to 25% withholding tax.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses incurred in a Serbian corporation can be carried forward for five years, if it is evaluated that a corporation will make profits that can be covered by incurred losses. No carry back is allowed.

## C. Real Estate Taxes

1. Does Serbia levy a real estate transfer tax on sale of real estate or shareholdings?
   Is it avoidable?

Every sale of real estate built after 1 January 2005 other then the first transfer (and provided no VAT is opted for) and sale of real estate built before 1 January 2005 is subject to 2.5% property transfer tax. The tax payer is the seller, but in practice the tax burden is regularly shifted to the purchaser. The taxable base is the market value of the real estate. Market value of the real estate can be valued by official tax authorities, if they suspect the market value is bigger than transaction value.
The seller is also a subject to capital gains tax. In case a seller uses earned funds to buy a new property in a period of a year after the transaction, a capital gains tax return has to be submitted.

2. Is real estate subject to any real estate tax? At which rate?

Serbian real estate (buildings and land plots) is subject to property tax. The tax depends on the location of the real estate. For taxpayers who maintain business accounts the tax rate is up to 0.4%, calculated on the market value. The properly tax rate and taxable base are set by the municipalities, which have the right to stipulate it up to the amount of 0.4%.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The real estate investor can acquire Serbian real estate by way of an asset deal (e.g. direct acquisition of real estate).

The sale of residential real estate is taxable at the rate of 10% VAT, the sale of other types of real estate is subject to 20% VAT, provided that the real estate is built after 1 January 2005 and that the sale of real estate represents the first transfer. More precisely, under the Serbian Value Added Tax Law, the first transfer of real estate built after 1 January 2005, is subject to VAT. In addition to the recent changes in the VAT Act, also every other transfer of real estate can be subject to VAT in case the seller and purchaser are registered for VAT purposes and if they opt for VAT in the sale-purchase agreement.

The sale of agricultural and forest area is not subject to VAT. Also, the sale of a construction site is not subject to VAT, neither is the sale of shares.

The right on VAT deductibles is granted only in case non-resident individuals or companies are registered for VAT purposes, which can be done by founding a local company or by a proxy.

### 2. What are the VAT consequences of renting/leasing of real estate?

The leasing of real estate for business purposes is subject to VAT at the rate of 20%.

Leasing of residential premises however is VAT-exempt. Therefore, only leasing of business premises qualifies the lessor to input VAT deduction, whilst the lessor of residential real estate bears the cost of VAT charged to it. Leasing of agricultural and forest land is not subject to VAT. Also, leasing of construction site is not subject to VAT.



## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

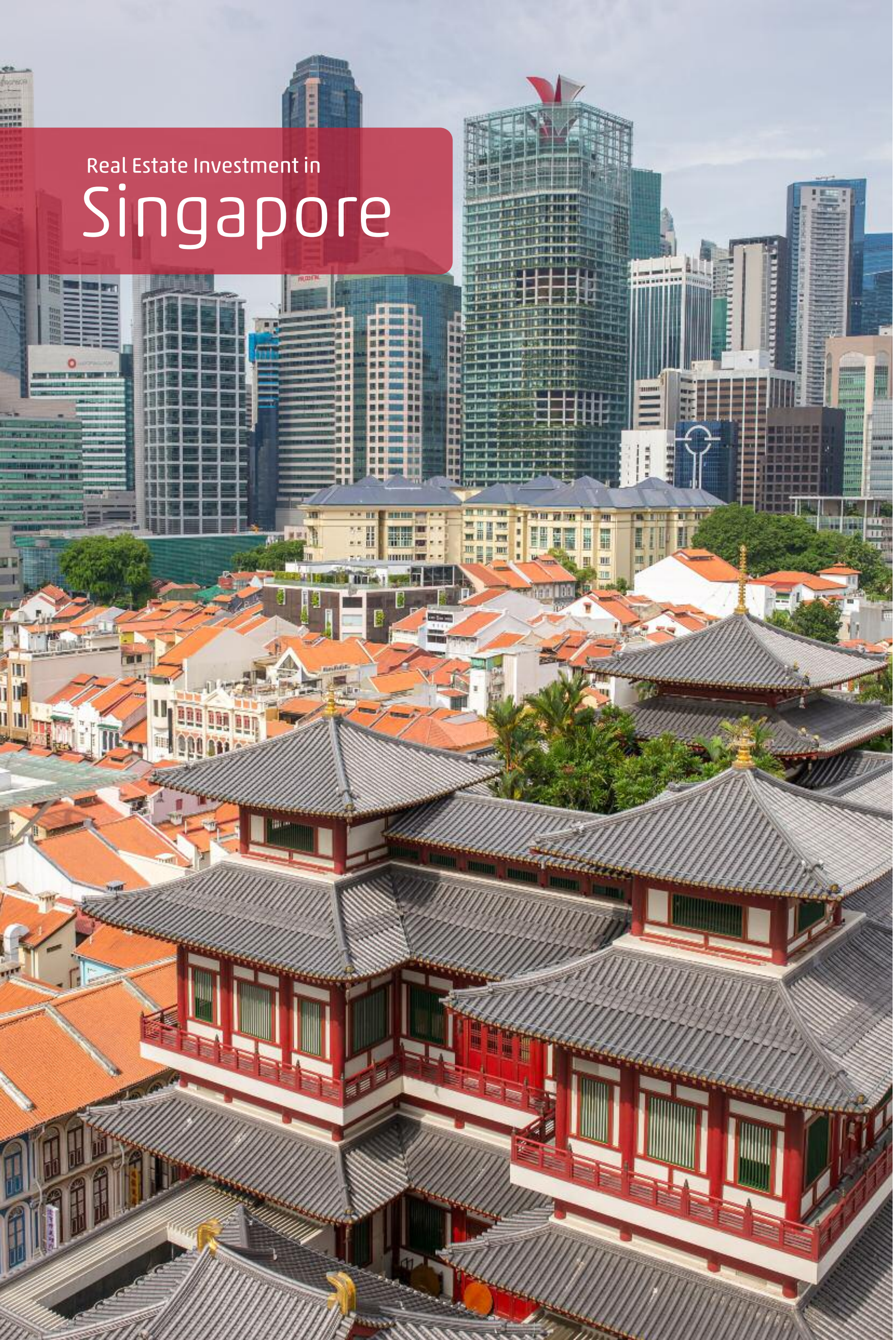
Serbia imposes no capital taxes for contribution of equity into Serbian entities.

### 2. Is there a stamp duty on debt granted to a local company?

No. However, every loan must be registered at the Central Bank (registration fee must be paid, roughly about several hundred euros per loan) and the debtor must report to the Central Bank about the loan quarterly and annually.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

Serbian law does not contain trust concept. Therefore, there is no special tax regimes for Real Estate Investment Trusts.



Real Estate Investment in

# Singapore

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Singapore? Does the acquisition have to be carried out by a Singapore corporation?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A foreign person (who is not a Singapore citizen ["SC"], Singapore company, Singapore limited liability partnership or Singapore society) is generally subject to foreign ownership restrictions for residential properties. Such foreign persons must obtain approval from the Land Dealings Approval Unit to buy certain categories of residential properties ("restricted properties").

Restricted properties include any vacant land; any house, building or other premises or any part thereof permitted to be used as a dwelling house or that is lawfully used as such; any land zoned for residential purposes; or such other land or building gazetted for residential purposes.

A foreign person may acquire a residential flat that is not a landed dwelling house; a condominium unit; or an executive condominium unit. Where a foreign person intends to acquire all the flats in every building in a residential development, or all the units in a condominium or executive condominium development (whether in a single transaction or a series of transaction), prior approval of the Land Dealings Approval Unit must first be sought.

It should be noted that approvals granted by the Land Dealings Approval Unit are typically accompanied with the condition that the restricted properties must be owner-occupied.

2. What importance does the land register have?

The Singapore Land Authority's Land Titles Registry handles the registration of all property transactions in Singapore, including:

- landed properties, such as bungalows, terrace houses and semi-detached houses;

- flats, whether private or public; and
- commercial and industrial properties.

The land register shows who owns the land and whether there are encumbrances, such as mortgages or charges affecting the land.

Two land registers co-exist, namely:

- The Register of Deeds for Common Law land under the Registration of Deeds Act; and
- The Land Titles Register for titles land under the Land Titles Act ("Torrens system").

Land in Singapore was progressively converted from the older system of registration under the Registration of Deeds Act over the years and the project to convert all land to the Torrens system was largely completed by 31 December 2002.

The registered proprietor of land under the Torrens system holds the land free from all "encumbrances, liens, estates and interests whatsoever" and has an indefeasible title except those that are registered or notified or those that are provided by law e.g. a statutory easement or a statutory charge. There are a very limited number of exceptions to indefeasibility such as fraud or forgery.

Land title searches can be carried out online using INLIS (Integrated Land Information Service) or manually at the Singapore Land Authority.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Income tax**

Singapore imposes tax on a quasi-territorial basis. Tax is imposed on all income accruing in or derived from Singapore and all foreign income remitted or deemed remitted to Singapore in the preceding year, subject to certain exceptions.

Taxable income includes gains or profits from a trade or business (e.g. frequent buying and selling of properties), dividends, interest, charges, rents and other profit arising from property. Rental income from the property is taxable at the prevailing corporate and personal income tax rates.

Foreign income remittances in the form of dividends, branch profits and services income to resident companies are exempt from tax, provided the income is received from a foreign jurisdiction with a headline (not actual) tax rate of at least 15% in the year the income is received or deemed received in Singapore and the income has been subject to tax in the foreign jurisdiction. Foreign income that has been exempt from tax in the foreign jurisdiction as a result of a tax incentive granted for substantive business operations carried out in that jurisdiction will be considered as having met the "subject to tax" test.

Expenses that are wholly and exclusively incurred to produce income (e.g. agents' commissions incurred in generating trading income from the buying and selling of property) may be deducted in computing taxable income.

Expenses incurred solely for producing the rental income and during the period of tenancy may be claimed as tax deductions. Examples of such expenses include interest paid on the loan or mortgage taken to purchase the property that is rented out (this includes interest incurred on refinanced loans or re-mortgages used solely to repay the prior loan), property tax incurred, fire insurance, repairs, agent's commission and maintenance fees.

**Losses**

In general, losses may be carried forward indefinitely so long as there is no change in the substantial shareholders and their shareholdings in the relevant period. Companies may carry-back unutilised capital allowances and trade losses arising in a Year of Assessment ("YA") to reduce the amount of taxes payable in an immediately preceding YA.

Losses from renting out property cannot be carried forward and used to offset against any other income (e.g. employment income) that the taxpayer may have in the same YA or in the future. However, as an administrative concession, taxpayers may use the rental loss of one property to offset the taxable rental income of another property in the same YA provided all the properties that have been rented out were at the prevailing market rate.

**Dividends**

Under Singapore's one tier corporate tax system, tax paid at the corporate level is final and dividends paid by Singapore resident companies are tax-exempt in the hands of the recipient.

Foreign-sourced dividends are taxable if received or deemed received in Singapore, unless certain conditions are satisfied.

The standard corporate income tax rate is 17%. From FY2019, 75% of the first SGD 10,000 of normal chargeable income and 50% of the next SGD 190,000 of normal chargeable income are exempt from tax. In addition, for a qualifying new private company, 75% of the first SGD 100,000 of normal chargeable income may be exempt from tax for its first three consecutive YAs, subject to certain conditions.

**Individuals**

Singapore tax resident individuals are subject to income tax on income accruing in or derived from Singapore. Foreign-sourced income received or deemed received in Singapore by an individual is exempt from income tax in Singapore. Non-residents are subject to Singapore income tax on income accrued in or derived from Singapore. Such income includes gains or profits from trading in property.

The individual income tax rates are as follows:

- Resident individuals: for chargeable income above SGD 20,000 annually, progressive tax rates apply from 2% to 22%; and
- Non-resident individuals: (i) higher of 15% flat rate (without deductions or allowances) or at the progressive tax rate for resident individuals for employment income; and (ii) a flat rate of 22% for non-employment income.

**Rental tax rates applicable to foreigners**

Net rental income earned by foreigners who are tax residents of Singapore are taxed at resident rates.

Net rental income earned by foreigners who are non-residents are taxed at the prevailing non-resident rate of 22% (20% prior to YA 2017).



**Capital gains**

Singapore does not tax capital gains. However, gains from frequent buying and selling property and shares, including listed real estate investment trusts ("REITs") and property stocks, may instead be characterised as income from engaging in a trade or business and brought to tax as such.

**Withholding tax**

There is no withholding tax on dividends paid by Singapore resident companies.

REIT distributions to unitholders which are non-resident non-individuals are subject to a final withholding tax of 10% or brought to tax at the prevailing corporate tax rate.

A non-resident non-individual is one which is not a resident of Singapore and:

- which does not have a permanent establishment in Singapore; or
- which carries on an operation in Singapore through a permanent establishment in Singapore, where the funds used to acquire the units in a REIT are not obtained from that operation.

Interest paid to non-residents is subject to 15% withholding tax unless the rate is reduced by treaty or under certain domestic concessions.

Management fees are subject to withholding at the prevailing corporate income tax rate. This tax is not the final tax. If the non-resident wishes to claim for the expenses incurred in deriving the income, it may forward the certified accounts and tax computation for the Inland Revenue Authority of Singapore to examine.

Royalties are subject to withholding tax at a rate of 10%.

A buyer of a real property or his solicitor is required to withhold tax at 15% on the purchase price of that real property upon completion of the sale if the seller is a non-resident property trader.

**Real estate related taxes**

Property tax is levied on all immovable property in Singapore and payable annually by the owner at the beginning of the year. The annual property tax is generally computed based on a percentage of the gross annual value of the property ("AV"), as determined by the property tax department. The rates are progressive, from 0% to 16% for owner occupied residential property, 10% to 20% for non-owner-occupied residential property and 10% for non-residential property.

**Stamp duties**

Stamp duties apply to instruments (written or electronic form) relating to stock and shares and immovable property, including sale of a mortgage and a lease of immovable property. The transfer of scripless shares that are listed on the Singapore stock exchange is generally not subject to stamp duties.

**Transfer document related stamp duty**

Buyer's Stamp Duty ("BSD") of up to 4% is payable on acquisition of residential properties (property which is set aside for residential purposes, such as a residential building or flat) and up to 3% on acquisition of non-residential properties (all other properties which are not residential properties). There are anti-speculative measures in the form of Additional Buyer Stamp Duty ("ABSD") payable by certain individuals and entities that purchase or acquire residential property (including residential land) at a rate that ranges between 5% and 30%, depending on the type of buyer (i.e. whether the buyer is a SC or permanent resident ["PR"], or a foreigner). Both BSD and ABSD are computed on the higher of the purchase price or the market value of the property. Seller's Stamp Duty ("SSD") may be applicable depending on date of acquisition and the holding period of the property (up to 15% for industrial properties; and up to 12% for residential properties).

BSD on the acquisition of stock and shares is 0.2% of the higher of market value or purchase price. The acquisition of equity interests in a company that primarily owns (directly or indirectly) residential property in Singapore also may attract additional conveyance duties (BSD and ABSD for buyers and SSD for sellers).

Additional Conveyance Duties ("ACD") applies in respect of certain qualifying acquisitions and dispositions of equity interests in residential Property Holding Entities ("PHE") on or after 11 March 2017. PHEs include a company, partnership (including limited liability partnership) or property trust. The ACD payable on the contract for purchase of equity interest in respect of a qualifying acquisition is a stamp duty equivalent to ABSD and BSD in addition to the usual share sale stamp duties. The ACD payable on the contract for sale of equity interest in respect of a qualifying disposition is a stamp duty equivalent to SSD at flat rate of 12%.



Other than contracts for sale and purchase of equity interests, conveyance via gift, settlement and assignment may also attract ACD.

Ad valorem stamp duties are chargeable on a lease or agreement for lease of any immovable property (e.g. tenancy agreements) with average annual rent exceeding SGD 1,000. Stamp duties are calculated on the actual rent or market rent, whichever is higher ("AAR"). Leases are subject to stamp duties at a rate of 0.4% of total rent for the period of the lease (where the least duration is 4 years or less); or at a rate of 0.4% of 4 times the AAR for the period of the lease (where the least duration exceeds 4 years). A tenancy agreement will only be admissible in the Singapore courts after stamp duty has been paid and all the relevant stamps and seals are in place.

For documents executed in Singapore, the document must be stamped within 14 days after the date it has been executed. For documents executed outside of Singapore and subsequently brought into Singapore, the document must be stamped within 30 days after it has been received in Singapore.

If a document relates to more than one matter, stamp duty will be charged for each matter. For example, two sets of stamp duty will be charged on a document for the sale and lease-back of a property.

**Overview of rates**

BSD on or after 20 February 2018 rounded down to nearest SGD:

| Purchase price or market value of the property | BSD rates for residential properties | BSD rates for non-residential properties |
|---|---|---|
| First SGD 180,000 | 1% | 1% |
| Next SGD 180,000 | 2% | 2% |
| Next SGD 640,000 | 3% | 3% |
| Remaining amount | 4% | 3% |

ABSD rates on the higher of the purchase price or market value:

| **Profile of buyer** | **ABSD rates from 8 December 2011 to 11 January 2013** | **ABSD rates from 12 January 2013 to 5 July 2018** | **ABSD rates on/after 6 July 2018** |
|---|---|---|---|
| SC buying first residential property | not applicable | not applicable | not applicable |
| SC buying second residential property | not applicable | 7% | 12% |
| SC buying third and subsequent residential property | 3% | 10% | 15% |
| PR buying first residential property | not applicable | 5% | 5% |
| PR buying second and subsequent residential property | 3% | 10% | 15% |
| Foreigners buying any residential property | 10% | 15% | 20% |
| Entities buying any residential property | 10% | 15% | 30% (for housing developers); or 25% (for non-housing developer buyers) |

**Mortgages**

When documents are signed to mortgage property to obtain a loan from a bank or a financial institution, stamp duties are computed based on the loan amount.

**Relief from stamp duties**

Stamp duties relief/remission may be available upon application under certain limited circumstances. Such circumstances include the transfer between associated enterprises of immovable property or shares or if the transfer occurs as part of a reconstruction or amalgamation scheme. With effect from 11 April 2018, stamp duties are remitted (i.e. exempted) on the following:

(i) Agreements for the sale of stock or shares not subject to ACD;
(ii) Agreements for the sale of book-entry securities including such securities subject to ACD (i.e. scripless shares); and
(iii) Subject to certain conditions, aborted agreements for the sale of equity interests in an entity, on or after 11 March 2017.

**Inheritance/estate tax/wealth/net worth tax**

None.

**Tax-grouping**

Tax-grouping for companies is allowed in Singapore, if certain conditions are satisfied. Generally, the companies must be incorporated in Singapore, belong to the same group of companies with at least 75% ownership relationship between the companies and have the same accounting year-end. This allows the company to transfer excess current year trade losses, current year tax depreciations and current year approved donations to another company within the group.

2. What is the tax depreciation period for real estate in Singapore? Are there depreciation categories? Which depreciation method is used?

There is generally no tax depreciation on the capital cost of real estate in Singapore.

There are certain incentives available. Under the Land Intensification Allowance, companies that qualify may claim qualifying capital expenditure incurred on the construction of a qualifying building or structure.

3. When is a foreign investor subject to limited tax liability in Singapore?

*See B.1. above.*

4. Are asset deal and share deal possible in Singapore?
   What are the main consequences?

A real estate investor can acquire Singapore real estate by way of an asset deal (e.g. direct acquisition of real estate) or a share deal (e.g. acquisition of a company owning real estate).

If assets and shares are deemed as capital assets, any gains derived therefrom will not be taxable in Singapore. On the contrary, if they are treated as trading stocks and/or the taxpayer is engaged in a trade or business, gains derived will be deemed as revenue rather than capital gain and will be subject to Singapore income tax.

For the purposes of calculating the trading gain, all costs attributable to the initial purchase can be included for the purposes of calculating the gain.

In an asset deal, BSD between 3% to 4% will apply. In addition, ABSD and/or SSD could also apply depending on the relevant situation *(see B.1. above)*.

In a share deal, stamp duties will only be applicable at the rate of 0.2% on the purchase price or market value, whichever is higher. Effective from 11 March 2017, ACD *(see B.1. above)* applies in additional to the existing BSD of 0.2% if the company is a PHE. This is intended to equalise the stamp duties position for both the asset and share transfers.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

There are no thin capitalisation rules in Singapore.

Interest arising from loans between related parties should be in accordance with the arm's-length principle pursuant to the Inland Revenue Authority of Singapore's Transfer Pricing Guidelines.

6. Can acquisition costs/financing fees/interest be deducted?

*See B.1. above.* For the purposes of calculating a trading gain, all costs attributable to the initial purchase can be included.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

There are no thin capitalisation rules in Singapore. Nevertheless, the tax consequences of debt push-downs will need to be examined in greater detail.

8. Is there a withholding tax on interest payments paid by local company to creditor?

*See B.1. above.* Interest paid to non-residents is subject to withholding tax at a rate of 15%, unless the rate is reduced by treaty or under certain domestic concessions.

9. Is a loss carry forward or carry back granted and what are the restrictions?

*See B.1. above.* Losses from renting out property cannot be carried forward and used to offset against any other income earned in the same year or in the future. Companies may carry back unutilised capital allowances and trade losses arising in a YA to reduce the amount of taxes payable in an immediately preceding YA.

However, as an administrative concession, a taxpayer may use the rental loss of one property to offset against the taxable rental income of another property in the same YA provided all the rented-out properties have been rented out at market rates.

## C. Real Estate Taxes

1. Does Singapore levy a real estate transfer tax on sale of real estate or shareholdings?
   Is it avoidable?

*See B.1. above.* Transfer of immovable property and shares is subject to Singapore stamp duties.

2. Is real estate subject to any real estate tax? At which rate?

Property tax is payable on an annual basis at the following rates:

- Residential properties:
  - owner-occupied: progressive tax rates from 0% to 16% on the AV;
  - non-owner occupied: progressive tax rates from 10% to 20% on the AV.
- Commercial and industrial properties: 10% of the AV.

In general, AV is the estimated gross annual rent of the property if it were to be rented out, excluding furniture, furnishings and maintenance fees. It is determined based on estimated market rentals of similar or comparable properties and not on the actual rental income received. The Inland Revenue Authority of Singapore provides an online service to check the AV and the name(s) of owner(s) of the property.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

Singapore's equivalent to VAT is the Goods and Services Tax ("GST"). The standard rate of GST is 7% and it is generally payable on a broad range of supplies by businesses in Singapore, including supplies of goods, services, real property, rights and obligations, and is generally applied at each stage of the supply chain.

Only the sale and lease of non-residential properties in Singapore are subject to GST. The sale and lease of residential properties in Singapore are exempt from GST. GST is also chargeable on the supply of movable furniture and fittings in both residential and non-residential properties. Real estate agents must charge GST on the brokerage fees received from the real estate agencies.

For properties that consist of both residential and non-residential portions, only the non-residential portion is subject to GST.

Taxpayers can claim credits or apply for refunds for GST incurred on the purchase of non-residential properties, subject to the conditions for claiming input tax credits or refunds.

2. What are the VAT consequences of renting/leasing of real estate?

*See D.1. above.*

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

There is no capital tax in Singapore.

2. Is there a stamp duty on debt granted to a local company?

*See B.1. above.* Dutiable documents relating to any immovable property in Singapore and any stock or shares are subject to stamp duties. Documents signed when you mortgage your property to obtain a loan from a bank or a financial institution will be subject to stamp duties.

No specific stamp duties are levied on debt granted to a local company in Singapore.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

REITs may apply for tax transparency treatment on certain specified income distributed by the trustee provided that the trustee and manager comply with certain conditions. The specified incomes under the tax transparency treatment are rental income, income ancillary to the management or holding of immovable property, rental support payments, and specified income from an approved sub-trust of the REIT.

Under the tax transparency treatment, the specified income will only be taxed in the hands of the unitholders based on the respective tax rates applicable to the unitholders (e.g. individuals, companies, branches, ETFs, etc.). This tax transparency treatment extends to REIT exchange-traded funds ("REIT ETFs") which derive their income from qualifying Singapore-listed REITS ("S-REITS").

Singapore resident unitholders of ETFs will not be taxed on distributions made from non-taxable income/non-income (such as capital gains) on the disposal of immovable properties, operating cash flows, and unrealised revaluation gains on the REIT's properties, etc.

Qualifying non-resident, non-individual investors and funds under certain Monetary Authority of Singapore-administered incentives can obtain a 10% concessionary tax rate on distributions received from S-REITS and REIT ETFs made during the period 1 July 2019 to 31 December 2025.

Further, S-REITS can enjoy tax exemption till 31 December 2025, on qualifying foreign-sourced income (e.g. foreign dividend income, interest income, trust distributions and branch profits) received by S-REITs and wholly-owned Singapore resident subsidiary companies of S-REITs, that is paid out of qualifying income or gains in respect of overseas property acquired on or before 31 March 2020 by the trustee of the S-REITs or its wholly-owned Singapore resident subsidiary.

Similarly, REIT ETFs can enjoy till 31 December 2025, tax transparency treatment on the distributions received by REIT ETFs from S-REITs, which are made out of S-REITs' specified income and 10% concessionary tax rate on such REIT ETFs distributions received by qualifying non-resident non-individuals.

There is tax exemption on S-REIT and REIT ETF distributions received by individuals, excluding such distributions derived through a partnership in Singapore or derived from the carrying on of a trade, business or profession, that is not subjected to any sunset clause.

Qualifying or approved funds under one of the fund management incentives administered by the Monetary Authority of Singapore can claim, by way of remission, GST incurred on expenses at a fixed recovery rate till 31 December 2024.

Real Estate Investment in

# Slovakia

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in Slovakia? Does the acquisitionhave to be carried out by a Slovakian corporation?

As of the date of accession of Slovakia to the EU on 1 May 2004, foreigners (all natural persons or legal entities not resident in Slovakia, including branch offices of foreigners – except branch offices of a foreign bank) may acquire ownership of real estate.

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There were some restrictions concerning agricultural and forest property till the end of the transitional period until 31 May 2014. Since 1 June 2014 a new law is effective that regulates transfer of ownership of agricultural land and determines conditions for persons to whom the transfer of the ownership can be executed.

The acquisition does not have to be carried out by a Slovakian corporation (possible exception: agricultural land).

### 2. Which importance does the Slovakian land register have?

The ownership to real estate that is transferred under the contract passes over to the buyer as soon as the ownership right is registered with the Cadastral Register ("kataster nehnuteľnosti"). The standard written application for registration of the ownership within a period of 30 days is charged with an administrative fee of EUR 66 or in an accelerated time period of 15 days with an administrative fee of EUR 266.

The electronic application within a period of 30 days is charged with an administrative fee of EUR 33 or in an accelerated time period of 15 days with an administrative fee of EUR 133.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate: 21%;
- Personal income tax rate: 19% (up to the amount of tax base of EUR 36,256.37) and 25% (tax base of EUR 36,256.37 and more);
- Participation exemptions: No.

There is no concept of group CIT in the Slovak Republic. Each company in a group is taxed individually.

2. What is the tax depreciation period for real estate in Slovakia?
   Are there depreciation categories? Which depreciation method is used?

Since 1 January 2015 there are six depreciation groups; buildings belong either to the fifth or to the sixth depreciation group. Buildings such as factories, warehouses, and shops fall under the fifth depreciation group with a tax depreciation period of 20 years. Buildings used for living, cultural and educational purposes, or for office work come under the sixth depreciation group with a tax depreciation period of 40 years.

Above mentioned tax depreciation periods are also applied if buildings were acquired by way of financial leasing. There is also the possibility of the component depreciation of the particular building equipment which is a part of buildings (e.g. computer networks, elevators and lifts, air conditioning), and which can be depreciated in a shorter time (six years, twelve years). For all depreciation groups a straight-line method is applicable. An accelerated method of depreciation is allowed only for assets belonging to the second and third depreciation group.

Land cannot be depreciated.

3. When is a foreign investor subject to limited tax liability in Slovakia?

**Individual non-resident investors**

An individual real estate investor is non-resident in Slovakia if he has neither a domicile nor permanent address nor his habitual place of abode in Slovakia.



Non-resident individuals are taxed on real estate only with respect to income from the following sources:

- Income from rentals, leasing and other usage if the immovable property is located in Slovakia;
- Income from the sale of real estate located in Slovakia within the five-year holding period in the case of ownership of the real estate.

Non-resident individuals with Slovak-source real estate income have to file tax returns. The 19% and 25% tax rates applies (depending on the amount of the tax base).

**Corporate non-resident investors**

A corporate real estate investor is a non-resident in Slovakia if the place of management or the legal seat is not situated in Slovakia.

Income of non-resident corporations (comparable to Slovak corporations) from immovable property (including capital gains) situated in Slovakia is taxable as business income.

The 21% flat tax rate applies.

4. Are asset deal and share deal possible in Slovakia?
   What are the main consequences?

The real estate investor can acquire Slovak real estate by way of an asset deal (e.g. direct acquisition of real estate) or a share deal (e.g. acquisition of a corporation owning real estate).

**Direct investment (asset deal)**

A foreign entity may directly acquire Slovak real estate. Interest expenses for a debt-financed acquisition may be deducted from the income from real estate if real estate is rented out or used for own business. No real estate transfer tax is applied.

If the investment fund is considered to be a transparent company in the state of its residence (outside Slovakia), it is considered to be a transparent company by Slovak law, too. The income of shareholders is subject to the personal income tax rates of 19% and 25%.

If the investment fund is considered to be a non-transparent company in the state of its residence (outside Slovakia), the tax base is computed by the company's income and is subject to the corporate income tax rate.

**Indirect investment (share deal)**

Investment through a resident corporation: the tax base is computed by the company's income.

Investment through a resident partnership: the income of a general partnership (v.o.s.) is split between the shareholders and is subject to the personal income tax rates of 19% and 25%. The income of limited partnerships (k.s.) is split between the unlimited and limited partners. Income of the limited partners is subject to the corporate income tax as a whole (21% tax rate applies). Income of the unlimited partners is taxed separately at the level of each unlimited partner. The tax rates are 19% and 25% for unlimited partners.

*For other tax consequences (VAT, capital tax, property tax etc.) see the sections below.*

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

**Thin capital rule**

Since 1 January 2015 thin capital rules are effective. New rules disallow interest and other financing charges on any debt funding between related parties in excess of 25% of adjusted earnings before interest, taxes, depreciation and amortization (EBITDA).

**Transfer pricing rules**

The Slovak rules for transfer pricing (governed by Income Tax Act) are in line with the OECD Transfer Pricing Guidelines, it means the arm's-length principle applies. As from January 2015, transfer pricing documentation in line with the OECD Code of Conduct is obligatory also in case of transactions domestic related entities (not only with foreign entities).

If requested by the tax authority during a tax audit, documentation must be submitted within 15 days. Three types of transfer pricing documentation are defined, depending on the size of the company and some other criteria (simplified, basic, full-scope documentation).



6. Can acquisition costs/financing fees/interest be deducted?

Acquisition costs can be deductible by shareholders. Interest expenses for a debt-financed acquisition may be deducted from the income from real estate if real estate is rented out or used for own business.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In general, each corporate entity is regarded as a separate entity for income tax purposes. Thus, parent corporations and subsidiaries are taxed separately. Resident parent corporations and resident subsidiaries may not elect for taxation as a fiscal unity. Any agreement in this regard is not valid for tax purposes.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Yes, generally the withholding tax rate on interest and royalty payments is 19% of the gross amount of income. A lower rate may be provided in the applicable double tax treaty and per applying the EU Interest and Royalty Directive for group purposes. Payments for financial leasing are considered as interest.

Dividends paid to juristic person are not subject to tax.

Since 2017 are dividends paid to individuals regarded as a taxable income. The tax rate applicable is 7% for individuals that has tax residence in Slovakia or in the other contract state. Tax rate 35% is applicable to the dividend income of individuals that resides in the non-contract states.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses generated in taxable periods that start after 1 January 2014, may be deducted from the tax base in four consecutive tax periods provided that the losses were computed according to generally accepted accounting principles and adjusted for purposes of the ITA.

There is no obligation to invest an amount equivalent to the losses. A loss carry forward is also possible for the legal successor (if the legal entity is not dissolved solely with the aim of reducing or evading its tax liability). It is not possible to carry back losses to previous periods.

## C. Real Estate Taxes

1. Does Slovakia levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

As from 1 January 2005, no real estate transfer tax is levied in Slovakia.

2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is levied on Slovak real property, which comprises land, buildings and flats. For land the taxable base is the assessed value of 1 square metre of land multiplied by the area in square metres.

Lower and higher annual tax rates are limited by law. The Slovak municipalities may apply their local tax rates and exemptions with effect from 1 January 2005.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The delivery (sale) of real estate or part of real estate is VAT-exempt if the delivery is carried out after five years from the first use, the change of usage purpose or from the finalization of significant reconstruction. The VAT registered person may opt to charge the VAT after this first five years. This do not cover the situations in which the flats or apartments are sold. The seller is only entitled to a full input VAT deduction for services received related to the acquisition of real estate and the acquisition costs if the following sale is subject to VAT without exemption.

The same has to be considered for input VAT by change of usage purpose within twenty years after the acquisition. If input VAT was deducted, a VAT-exempt sale within twenty years leads to a pro-rata reversal of input VAT deduction. This new period (twenty years) will be applied for real estate acquired after 1 January 2011.

For real estate acquired before 31 December 2010, the previous ten years period is valid.

The delivery of land which is used for construction purposes as a building plot is always subject to VAT.

The current tax rate is 20%.



2. What are the VAT consequences of renting/leasing of real estate?

In general, leasing or subleasing of immovable property or a part thereof is exempt from VAT. Excluded are rents of premises and sites for parking vehicles, accommodation facilities (hotel, hostel, pensions, etc.). The taxpayer who rents out immovable property to a taxable person (it is irrelevant if this taxable person is or is not registered for VAT purposes in Slovakia), may decide not to have the lease exempt from VAT. This do not cover the situation where flats and apartments are being rent/leased.

The leasing agreement with the obligation to buy the subject of the leasing is treated as delivery of goods. A leasing agreement with the right to buy is treated as a supply.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

There is no capital tax in Slovakia.

2. Is there a duty on debt granted to a local company?

No specific stamp duties are levied on debt granted to a local company in Slovakia.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There is no special tax regime for Real Estate Investment Trusts.

Real Estate Investment in

# Slovenia

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Slovenia?
   Does the acquisition have to be carried out by a Slovenian corporation?


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Citizens of the Member States of the European Union (EU) and the European Economic Area (EEA) may acquire real estate in Slovenia under the same conditions as Slovenian citizens. The same regime applies for citizens of the Member States of the OECD and individuals with a Slovenian status without being in possession of Slovenian citizenship.

Citizens of the countries having EU candidate status may acquire real estate in Slovenia under the reciprocity principle.

Citizens of other countries may become owners of real estate in Slovenia only in accordance with inheritance law and the reciprocity principle. However, each particular case shall be analysed on a case-by-case basis.

It is common practice that the acquisition of real estate for business purposes is carried out by Slovenian corporations.

2. Which importance does the Slovenian land register have?

According to civil law regarding real estate, the ownership right may only be acquired with the incorporation of the property right in the land register (Zemljiška knjiga). The registration normally takes place within approximately one month.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The corporate income tax rate is 19%. Additionally, there is a special tax rate of 0% that applies to:

- investment funds established under the law on investment funds if at least 90% of the profit generated in the preceding tax period is distributed by 30 November of the tax period;
- pension funds established under the law regulating pension and disability insurance; and
- insurance companies authorized to manage pension schemes under the law regulating pensions and disability insurance, within the qualified activities.

There is no concept of group CIT in Slovenia. Each company in a group is taxed individually.

For personal income tax the following progressive tax rates shall be applied (2020):

| Taxable income (EUR) | Tax rates (%) |
|---|---|
| up to 8,500 | 16 |
| 8,500-25,000 | 26 |
| 25,000-50,000 | 33 |
| 50,000-72,000 | 39 |
| 72,000 and over | 50 |

Capital gains, dividends, interest and rental income is taxed separately at a flat tax rate of 27.5%[1]. The capital gains are tax-free after 20 years of holding. There are no special tax rates for real estate.

The special tax rate of 70% applies for taxation of income where a taxpayer cannot explain its source. The 70% tax rate may apply only in the special tax assessment procedure started by the Tax Authorities when they find out that an individual disposes of assets or income which exceeds the income reported to the Tax Authorities. The Tax Authorities in this procedure determine the tax base by valuation.

[1] For capital gains the actual tax rate depends on the holding period.



Under the international participation exemption the taxpayer may exempt received dividends and other similar income, except hidden reserves, if the dividend payer is:

- a resident of an EU Member State for tax purposes under the law of that Member State and is not deemed to be a resident outside the EU due to a tax treaty with a non-Member State; and
- liable to pay tax comparable to the Slovenian CIT and not resident in a country or in the case of a business unit not situated in a country in which the general, average nominal corporate tax rate is less than 12.5%.

The above provisions also apply to a non-resident recipient if the recipient's participation in the equity capital or management of the person distributing profits is connected with business activities performed by the non-resident in or through a permanent establishment in Slovenia.

However, expenses relating to participation are not recognized in an amount which is equal to 5% of the received dividends.

2. What is the tax depreciation period for real estate in Slovenia?
   Are there depreciation categories? Which depreciation method is used?

The highest annual tax depreciation rate for building projects including investment property generally amounts to 3%. For parts of buildings, including investment property the highest annual tax depreciation rate is 6%. Depreciation over a shorter useful life is permitted for financial accounting purposes but not recognized for tax purposes. For tax purposes only the straight-line depreciation method may be used.

3. When is a foreign investor subject to limited tax liability in Slovenia?

A foreign investor is subject to limited tax liability in Slovenia if he receives income which has its source in Slovenia.

A non-resident corporation (i.e. with neither place of management nor legal seat in Slovenia) is subject to limited corporate tax liability from:

- Income attributed to a permanent establishment (PE) in Slovenia;
- Income from immovable property and from the rights pertaining to immovable property if the immovable property concerned is located in Slovenia;
- Income from agricultural and forestry activities if the activity is performed on land located in Slovenia;

- Income from exploitation or the right to exploitation of deposits of ores, sources or other natural resources if the deposits of ores, sources or other natural resources are located in Slovenia;
- Profits from disposal and dividends, including income similar to dividends and income from holdings sourced in financial instruments and/or of all types financial investments such as securities and ownership shares if issued by entities set up in accordance with the regulations of Slovenia, local authorities or the Bank of Slovenia, and/or from holdings in companies, cooperative societies and other types of organizations set up in accordance with the regulations of Slovenia;
- Interest if borne by a resident or non-resident through his/her business unit in Slovenia;
- Income from the use or the right to use copyrights, patents, brand names and other property rights, and income from other similar rights if borne by a resident or a nonresident through his/her business unit in Slovenia;
- Profit from disposal of a resident's or non-resident's business unit in Slovenia;
- Profit from disposal of the immovable property located in Slovenia (including also the profit from disposal of equity holdings and the rights arising from equity holdings in a company, cooperative society or other type of organization if over one half of the value thereof arises directly or indirectly from immovable property and the rights pertaining to immovable property located in Slovenia);
- Income from services provided by performing artists or sportsmen, belonging to another person if such services are provided in Slovenia;
- Income from services if services are performed in Slovenia or borne by a resident or non-resident through his/business unit in Slovenia.

A non-resident individual is subject to limited tax liability from:

- Employment income, directors' fees, social security pension, dividends, interest, income deriving from the transfer of intellectual property, rental income and any other income not listed below if it is paid out or economically borne by a Slovenian resident company or by a PE of a non-resident in Slovenia;
- Income attributed to a fixed base of an individual performing business activities in Slovenia;
- Income from immovable property and from the rights pertaining to immovable property if the immovable property concerned is located in Slovenia;
- Income from agricultural and forestry activities, which shall be considered to have its source in Slovenia, if the activity is performed on land located in Slovenia;
- Capital gains from disposal of shares in legal entities established in Slovenia and income deriving from investments coupons (including capital gains from disposal of the investment coupons) if the investment fund is established in Slovenia.

Certain exemptions are provided for capital gains and interests under special conditions.

## 4. Are asset deal and share deal possible in Slovenia? What are the main consequences?

A real estate investor may acquire Slovenian real estate in form of an asset deal or a share deal (e.g. acquisition of a corporation owning real estate).

Capital gains due to an asset deal or a share deal are not treated equally for corporate income tax purposes. Only 50% of capital gains due to a share deal are subject to corporate income if all conditions prescribed by the Corporate Income Tax Act are met. Capital gains due to an asset deal are subject to the general corporate income tax (no exemption).

Capital gains due to an asset deal or a share deal are treated equally for personal income tax purposes. The tax rate for capital gains depends on the holding period:

- 27.5% for a holding period of up to 5 years;
- 20% for a holding period from 5 to 10 years;
- 15% for a holding period from 10 to 15 years;
- 10% for a holding period from 15 to 20 years; and
- 0% for a holding period longer than 20 years.

This tax is a final (flat) tax. Capital gains derived from the direct disposal of immovable property acquired before 1 January 2002 are not taxable. Gains on immovable property used as a permanent home of the taxpayer for at least three years before the disposal are exempt under certain conditions. This will change from 1 January 2020 on, when the tax on capital gain will be either 30% up until the holding period of 10 years and 15% thereon.

In case of an asset deal the purchase price forms the new tax basis for depreciation. In case of a share deal the depreciation basis is rolled over to the acquirer.

*For other tax consequences (VAT, capital tax, property tax etc.), see the questions below.*

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Thin capitalization rules apply to loans from shareholders who hold directly or indirectly at least 25% of the capital or voting rights at any time during the tax period. The thin capitalization rule is applicable also to sister companies. According to the rules, the interest on loans from such shareholders may not be deducted if the loans exceed four times the value of the lender's share in the capital of the company unless the taxpayer provides evidence that he/she could have received the loan surplus from a lender who is a non-associated enterprise. The excess interest is treated as hidden distribution of profit.

The share capital of the shareholder for the purposes of the "thin-cap" rule is calculated so that the share capital includes all capital items according to the Companies Act and accounting standards with the exception of net profit or loss of the current financial year. The average capital is calculated as the average of the state of the capital items at the beginning and at the end of the tax year.

Pursuant to the general rule interest payments are not deductible if they are not required to acquire taxable income. These are considered to be interest for which, in respect of the facts and circumstances, it follows that:

- they are not a direct condition for performing activities and are not a consequence of performing activities;
- they are of a private nature;
- they do not conform with normal business practice.

There is a special rule regarding the interest paid to associated enterprises. Any interest rate exceeding the arm's-length rate shall not be deductible for corporate income tax purposes. However, even if the interest rate exceeds the arm's-length rate, it might be deductible for corporate tax purpose if a taxpayer provides evidence that it could have received the loan with a higher interest rate from a non-associated enterprise.

## 6. Can acquisition costs/financing fees/interest be deducted?

Interest on the debt-financing of the acquisition of a participation in a (resident or non-resident) corporation is in general tax deductible regardless of the fact that the participation exemption provides for a tax exemption on income from the acquired participation.



However, expenses relating to participation are not recognized in an amount which is equal to 5% of the amount of received dividends/capital gains.

Interest expenses for a debt-financed acquisition of real estate may, in general, be deducted from the income from real estate if the real estate is rented out or used for own business. The thin capitalization and arm's-length principle are applicable in case of debt-financed acquisition from associated enterprise.

## 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In Slovenia neither a tax group nor a conversion are legally possible to generate a debt push-down, whereas a corporate income tax neutral merger is in principle allowed. However, a debt push-down/up by down-stream or up-stream merger is not possible in Slovenia, since interest paid after mergers is not recognized as expenditures for tax purposes (official opinion of Tax Authorities no. DT 42150-1/2008-2).

## 8. Is there a withholding tax on interest payments paid by local company to creditor?

Generally, a withholding tax rate of 15% applies to interest if the creditor is a corporation. However, there are exceptions for interest on inter-bank loans, on loans raised by the Slovenian State and securities issued by the Slovenian State under certain conditions.

No withholding tax is levied on interest paid to a resident taxpayer or a PE of a non-resident if the latter notifies the interest payer of its tax number.

The EU Directive on the common system of taxation applicable to interest and royalty payments effected between associated companies of different Member States have been implemented in Slovenia as well. Thus, if the conditions from the Directive are met, the withholding tax may be eliminated. In addition, the withholding tax may be reduced or eliminated on the applicable tax treaty basis.

Interest paid to individuals is in general subject to a withholding tax at the rate of 27.5% from 1 January 2020 on.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Losses derived from business activity may be carried forward without limitation on the period of such loss carry forward, provided the loss was computed according to generally accepted accounting principles. A reduction of the tax base due to tax losses from previous preceding tax periods may only be allowed to a maximum of 50% of the tax base for the tax period. First the older losses must be used.

There is no loss carry back in Slovenia.

## C. Real Estate Taxes

1. Does Slovenia levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfer of real estate and comparable rights**

The real estate transfer tax is levied on the transfer of immovable property if VAT has not been charged on such property. Taxable transactions include the sale and – inter-alia – the exchange of immovable property. The same applies for financial lease.

In general, the person liable to tax is the seller of the immovable property.
The tax rate is 2% of the contractual price. If the contractual price is 20% lower than the general market value determined by a special rule, the tax base is 80% of the market value.

The following transfers of immovable property are exempt i.a.:

- transfers under the reorganizations regulated by the Companies Act; transfer in case of distribution of the property to the shareholders in liquidation procedure;
- transfers to diplomatic and consular missions and to other international organizations according to international contracts and conventions;
- transfers made under the privatization process;
- transfers of agricultural land and transfers connected to the enforcement of tax collection; transfers of immovable property as contribution in kind for the purposes of the establishment the company or increasing the share capital of the company.

The taxpayer must submit details of the transfer to the local tax administration on a prescribed form within 15 days of the contract date. The tax office must issue a tax decision within 30 days and the tax due is payable within 30 days.

**Transfer of shares**

Real estate transfer tax is not levied in the case of a transfer of shares in companies owning immovable property in Slovenia. Therefore, the real estate transfer tax may be avoided by establishing a new company and preferring a share deal to an asset deal. However, if this is done solely for tax purposes there is a high tax risk that the Tax Authorities would apply the general anti-avoidance rule and not consider the transaction for tax purposes.

**Tax on profit from land use change**

It is levied on the profit from the sale of land whose use, since the time of the acquisition, has been altered into building use. Land which was already designated for building use at the time of acquisition is not subject to taxation.

The person liable for the tax is the person (individual or company) selling the land. The taxable amount is the difference between the value of the land at the time of the disposal and the value of the land at the time of the acquisition (taking into account certain expenses incurred upon acquisition/disposal). If the land was acquired before 1 June 2012, the acquisition value is determined as of 1 June 2012 based on the mass valuation of real estate data. The taxable person can demonstrate a different value by means of acquisition document.

The applicable tax rates depend on the duration from the change of use until the sale are in 2019:

- 25% – less than 1 year
- 15% – from 1 to less than 3 years
- 5% – from 3 to incl. 10 years
- 0% – more than 10 years.

2. Is real estate subject to any real estate tax? At which rate?

There is no general real estate tax. The new Real Estate Tax was enacted in 2013, however, it was declared as unconstitutional by the Constitutional Court and consequently, does not apply. The new RET Act should be adopted by 2022.

However, a land and building compensation duty is imposed on owners or users (renters, etc.) of plots of land and buildings. The tax rates are set up by the municipalities. The duty is deductible if the property is used as business property.

In addition, a property tax is levied on individuals who own premises (including plots of land and buildings that are also subject to the above duty). The taxable base for premises is the value determined by law. In general, the first 160 square metres of an apartment are exempt from property tax if the owner or his family members live in the apartment. The tax rates are progressive and depend on the type of the premise and on its value. In general, the rates range from 0.1% to 1.5% of the value.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

Revenues from the sale of real property are VAT-exempt, with the option to taxation. However, the sale of buildings, parts of buildings and land on which thebuildings are located is not VAT-exempt:

- if the supply is effected before the buildings or parts of buildings are used for the first time; or
- if the supply is effected before two years after the first use.

The VAT rate for limited residential housing is 9.5%, for other real estate 22%. The limited residential housing is considered to be an apartment of max. 120 square metres usable area in an apartment house or an individual house of max. 250 square metres of usable area.

Transfer of building land is always subject to VAT. If VAT was deductible when buying real estate and later this real estate is sold under VAT exemption, an adjustment of the deductible input VAT has to be made over a period of 20 years (240 months), starting with the month in which the VAT was deducted. The same holds for other tangible assets whereby the correction period is 60 months.

### 2. What are the VAT consequences of renting/leasing of real estate?

The leasing of real estate for business purposes is, in general, VAT exempted. The lessor may opt for taxation if the lessee has a 100% right for VAT deduction which needs to be explicitly determined in written form, usually in the sale contract.

[2] Contract for the hire of goods for a certain period which provides that in the normal course of events ownership is to pass at the latest upon payment of the final installment.



In that case the lessor would charge VAT at a rate of 22% on the rent. The lessor is entitled to VAT deduction for services received in connection to his taxable activity – leasing by charging VAT. Financial leasing[2] has the same consequences as the sale of real estate.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

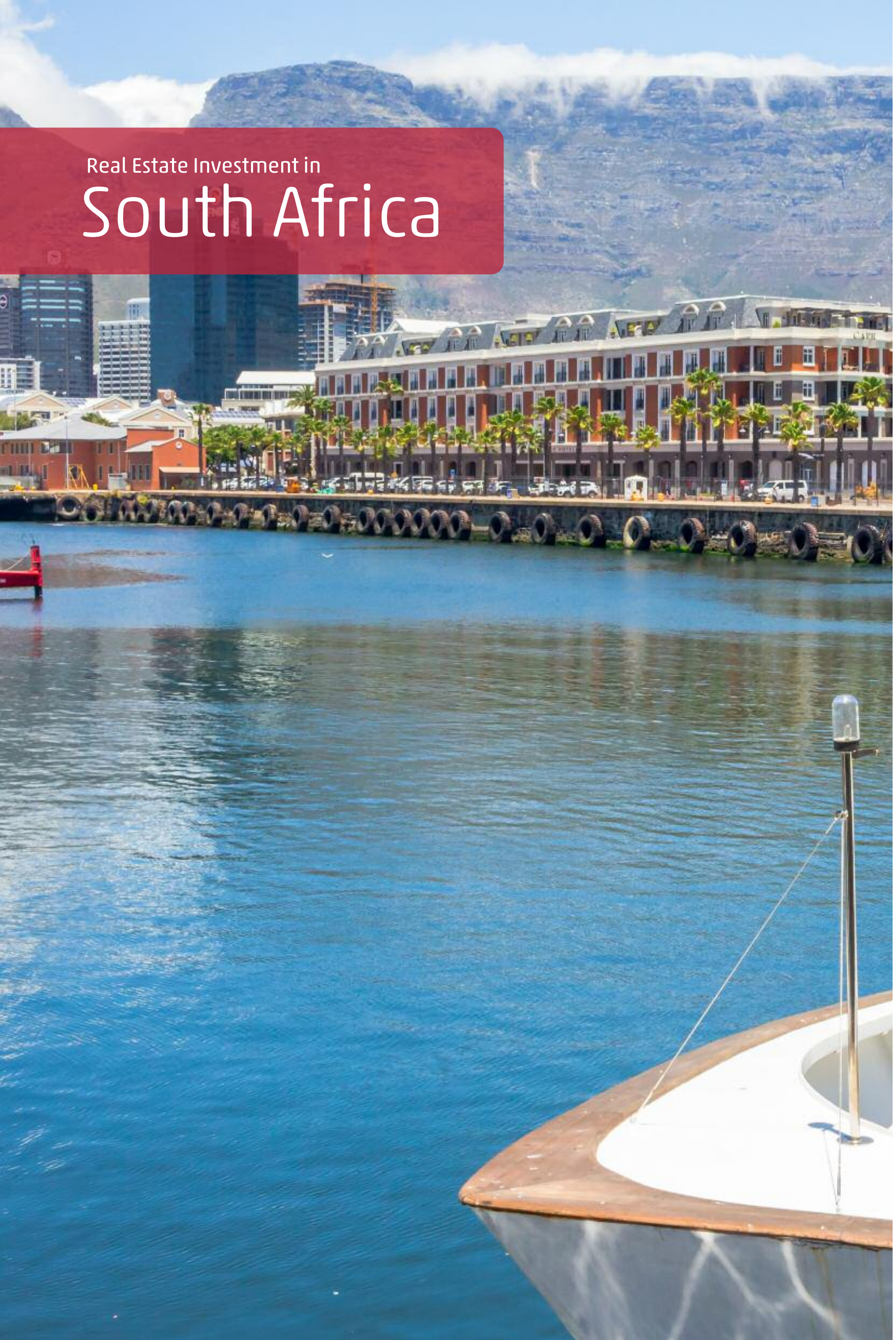
Slovenia imposes no capital taxes for contribution of equity.

### 2. Is there a stamp duty on debt granted to a local company?

Slovenia does not impose stamp duty to debt financing granted to a Slovenian entity.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There are no special regimes for REITs.




## A. Legal/General

1. Are non-residents entitled to acquire real estate in South Africa?
   Does the acquisition have to be carried out by a South African corporation?

It is possible for non-resident individuals and juristic persons to acquire real estate in South Africa and there is no requirement to conduct the acquisition through a South African company.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Proposed new legislation may result in foreign nationals being unable to acquire agricultural property in South Africa. Instead, foreign nationals will be able to acquire the use of such property under long-term leases with lease terms between 30 and 50 years. In line with constitutional requirements, the new legislation is unlikely to operate retrospectively.

Another important recent development is the publication on 6 December 2019 of proposed amendments to section 25 of the Constitution of the Republic of South Africa, for public comment. Should these proposed amendments be enacted, the State may be entitled to expropriate land from its owners without compensation in certain limited circumstances.

2. Which importance does the land register have?

The Registrar of Deeds is responsible for the registration, management and maintenance of the property registry of South Africa. Title deeds recorded in the registry set out the registered owner of a property, the conditions affecting such property, interdicts and contracts in respect of the property, purchase price of the property, servitudes and mortgage bonds registered against such property.

A property transfer must be affected by an attorney that is licensed as a conveyancer.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The corporate income tax rate is 28%.

The income tax rate for trusts is 45%.

Income tax rates for individuals for the 2021 year of assessment are as follows:

| Taxable income (ZAR) | Tax rates (ZAR) |
|---|---|
| 0 - 205,900 | + 18% of each 1 |
| 205,901 - 321,600 | 37,062 + 26% of taxable income above 205,900 |
| 321,601 - 445,100 | 67,144 + 31% of taxable income above 321,600 |
| 445,101 - 584,200 | 105,429 + 36% of taxable income above 445,100 |
| 584,201 - 744,800 | 155,505 + 39% of taxable income above 584,200 |
| 744,801 - 1,577,300 | 218,139 + 41% of taxable income above 744,800 |
| 1,577,301 and above | 559,464 + 45% of taxable income above 1,577,300 |

The disposal of real estate typically results in capital gains, which are included in the taxable income calculation at a rate of 40% for individuals and 80% for companies and trusts (resulting in an effective capital gains tax rate of maximum 18% for individuals, 22.4% for companies and 36% for trusts).

To the extent that the disposal of the real estate forms part of an active scheme of profit-making, the gains realised may be taxed at the maximum revenue tax rates noted above.

No relevant participation exemptions apply in relation to the disposal of local real estate.

No tax-grouping applies in South Africa. However, tax rollover relief is granted for transactions between South African group companies to allow for reorganisations, provided specific requirements are met.

2. What is the tax depreciation period for real estate in South Africa?
   Are there depreciation categories? Which depreciation method is used?

Land is generally not depreciable for tax purposes.

| Category | Annual allowance (straight-line) |
|---|---|
| Buildings that are used for manufacturing or research and development purposes | 5% |
| Other commercial buildings used for trade (must be new and unused) | 5% |
| Residential units used for purposes of trade (must be new and unused and taxpayer must own at least five residential units in South Africa) | 5% |

The above allowances are subject to certain specific requirements being met. Allowances and deductions that could relate to immovable property may be available for certain specific industries, for example, mine development costs and the hotel industry.

Incentives also exist for construction or improvements of buildings situated in urban development zones and for taxpayers who qualify for the benefits of the Special Economic Zones regime.

3. When is a foreign investor subject to limited tax liability in South Africa?

Non-residents are subject to income tax on income from a South African source. Non-residents are only liable for capital gains tax on the disposal of immovable property (or an interest therein) situated in South Africa and assets attributable to a South African permanent establishment.

A shareholding of at least 20% in a company where at least 80% of the market value of the company's shares is attributable to immovable property situated in South Africa (other than immovable property held as trading stock) would constitute an "interest in immovable property" ("property rich shares"), and may be subject to tax in South Africa, subject to potential Double Taxation Agreement ("DTA") relief.

To the extent that South Africa has taxing rights in relation to the disposal of immovable property situated in South Africa or property rich shares, special withholding tax rules apply, which require the purchaser to withhold a portion of the purchase consideration and to pay it over to the South African Revenue Service within a prescribed period of time.

### 4. Are asset deal and share deal possible in South Africa? What are the main consequences?

Real estate investors can acquire South African real estate by way of an asset deal (direct acquisition and ownership of real estate) or share deal (acquisition of a company owning real estate).

Rental income earned from property situated in South Africa will be from a South African source and should be subject to income tax. Related expenditure should be deductible. The sale or disposal of real estate situated in South Africa by non-residents is subject to capital gains tax.

Rental income earned by the company that owns immovable property will be taxable as indicated above. Profits distributed by such a company will be subject to dividends tax at a rate of 20%, with certain exemptions being available. This rate may be reduced in terms of a DTA if paid to a foreign person as beneficial owner. The sale or disposal of shares is only subject to capital gains tax where the shareholder owns at least a 20% interest in a company where at least 80% of the market value of the company's shares is attributable to immovable property situated in South Africa (other than immovable property held as trading stock).

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

In the first instance, in order to be tax deductible, interest incurred needs to meet the general deductibility requirements of section 24J, or 11(a), of the Income Tax Act, depending on the specific circumstances. Interest on loans applied for business purpose is generally deductible under these requirements.

Transfer pricing provisions require that cross-border connected party transactions be conducted at arm's-length conditions and such provisions equally apply to the deductibility of interest. This includes both the rate of interest as well as the amount of debt funding obtained from connected persons.



In addition to the transfer pricing provisions, certain provisions of the Income Tax Act may further limit the deductibility of interest, for example:

- Section 23M may limit the interest deduction allowed to a resident in respect of any interest paid on debt owed to persons which are not subject to tax in South Africa where such persons are in a controlling relationship in relation to that resident.
- Section 23N may limit the interest deduction where the debt was applied in respect of reorganisation and acquisition transactions in the year of assessment in which the transaction is entered into as well as the five years immediately thereafter.
- Section 8F may limit the deductibility of interest by residents where the debt funding instrument has certain equity features.

South Africa does not apply any "safe harbor" thin cap rules or ratios, however the interest limitation rules of sections 23M and 23N noted above, apply a formula with reference to the "adjusted taxable income" of the taxpayer.

### 6. Can acquisition costs/financing fees/interest be deducted?

Where immovable property is acquired as trading stock (i.e. with the intention to resell at a profit, as part of a scheme of profit-making), then the acquisition cost may be tax deductible.

Financing charges and interest may generally be deducted if incurred in the production of income and for purposes of trade (which includes the letting of property).

Other acquisition costs of a capital nature are not deductible but may be capitalized to the cost of the property for capital gains tax purposes or for claiming depreciation allowances.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In South Africa, every entity is regarded as a separate person for tax purposes, even where entities are related in some manner. The pooling of debt financed interest with the income of other taxpayers is therefore not possible. If debt funding is pushed down to a specific entity with taxable profits, the provisions of section 23N, as indicated in B.5. above, may be applicable, depending on how this outcome was achieved.

Generally, interest incurred in relation to debt used to acquire the shares of a target entity will not be tax deductible under the general deductibility requirements. However, section 24O of the Income Tax Act makes special provision for interest to be deductible in certain circumstances, related to the acquisition of at least a 70% shareholding in an "operating company".

8. Is there a withholding tax on interest payments paid by local company to creditor?

A 15% withholding tax applies on interest payments by residents to non-residents who do not have a physical presence or permanent establishment in South Africa. DTA's may reduce this rate.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Assessed losses may be carried forward and utilized as a deduction against income in subsequent years. Foreign assessed losses are ring-fenced and may only be utilized against foreign income. Companies that cease to carry on a trade are subsequently prohibited from carrying forward losses incurred prior to cessation of the trade (with certain exceptions, for example in the mining industry, where losses may have been capitalized as part of "unredeemed capital expenditure").

## C. Real Estate Taxes

1. Does South Africa levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfer duty**

Transfer duty is levied on the value of any property acquired by any person by way of a transaction or in any other way. "Property" is defined to include any right to minerals, right to mine for minerals and a share in a "residential property company". Transfer duty is payable by the purchaser.

The following transfer duty rates apply to properties acquired on or after 1 March 2020, and apply to individuals and juristic persons:

Transfer duty is calculated as follows:

| Value of property (ZAR) | Rate (ZAR) |
|---|---|
| 1 - 1,000,000 | 0% |
| 1,000,001 - 1,375,000 | 3% of the value over 1,000,000 |
| 1,375,001 - 1,925,000 | 11,250 + 6% of the value over 1,375,000 |
| 1,925,001 - 2,475,000 | 44,250 + 8% of the value over 1,925,000 |
| 2,475,001 - 11,000,000 | 88,250 +11% of the value over 2,475,000 |
| 11,000,001 and above | 1,026,000 + 13% of the value over 11,000,000 |

Where VAT is imposed on the sale of property *(refer to section D. below)*, the purchaser is exempt from paying transfer duty.

*Transactions may be exempt from transfer duty where the limited group taxation rules referred to in paragraph B.1. above applies.*

**Securities transfer tax**

Securities transfer tax is levied on every transfer of a security (shares or depository receipt in a company and a member's interest in a close corporation). The rate is 0.25% and the tax is typically payable either by the purchaser or by the company whose shares are transferred.

*Transactions may be exempt from securities transfer tax where the limited group taxation rules referred to in paragraph B.1. above applies.*

2. Is real estate subject to any real estate tax? At which rate?

Municipal property rates are imposed by local councils based on the market value of the property. The rates vary according to the use of the property and the size of the local council.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

VAT is imposed at a rate of 15% on the supply of goods and services. The definition of "goods" includes fixed property (real estate).

The sale of fixed property by persons registered as VAT vendors is therefore subject to VAT at 15%. Payment of this VAT is generally aligned with the cash flow from the transaction. Where VAT is imposed, there is an exemption from transfer duty.

No VAT applies to the sale of real estate where the seller is not registered as a VAT vendor. In these circumstances, transfer duty will likely apply.

*Transactions may be exempt from VAT where the limited group taxation rules referred to in paragraph B.1. above applies.*

### 2. What are the VAT consequences of renting/leasing of real estate?

The renting/leasing of commercial property is subject to VAT at 15%.
The renting/leasing of residential dwellings is generally exempt from VAT.

The supply of commercial accommodation (such as by hotels and guest houses) is subject to VAT at 15%. A minimum level of activity is, however, required for a person to be said to supply commercial accommodation.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no tax on the injection of equity into a local company.

### 2. Is there a stamp duty on debt granted to a local company?

Mortgage bonds are subject to registration levies imposed by the Deeds Office.
No other stamp duties apply.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

The special tax dispensation for Real Estate Investment Trusts ("REITs") came into effect in South Africa on 1 April 2013.

A REIT must be a South African tax resident company whose shares are listed on an approved South African stock exchange. The shares must furthermore be listed as shares in a REIT as defined in the relevant listing requirements of the exchange.



Key tax implications for REITs:

- REITs are partially treated as conduits for tax purposes. Amounts received by the REIT should not be subject to tax in the hands of the REIT if distributed to the shareholders.
- Qualifying dividends declared by a REIT are tax deductible in the hands of that REIT, subject to certain limitations and provided that at least 75% of the gross income received by that REIT consists of rental income.
- REITs are not entitled to the capital allowances on buildings set out in paragraph B.2. above.
- REITs are not subject to capital gains tax on the disposal of immovable property, property company shares or controlled company shares.

Key tax implications for investors in REITs:

- REIT dividends paid to non-residents are exempt from income tax, but are subject to dividend withholding tax at a rate of 20%, subject to treaty relief.
- Conversely, REIT dividends paid to residents are subject to income tax, but are exempt from dividends tax. Tax on REIT dividends will, for most individuals, be payable when the annual tax return is filed. If the REIT dividends received by an individual exceeds ZAR 30,000 in a tax year, that individual must register for provisional tax.
- The disposal of an investment in a REIT may result in a capital gains tax liability in the hands of the shareholder.
- Where a REIT investment is held via a unit trust, different tax considerations will apply.


Real Estate Investment in

# Spain

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1. Are non-residents entitled to acquire real estate in Spain?
   Does the acquisition have to be carried out by a Spanish corporation?

In Spain there is no restriction with regard to the acquisition of real estate. Residents as well as non-residents can purchase real estate.

Therefore, the acquisition of Spanish real estate does not have to be affected by using a Spanish acquisition company.

2. Which importance does the land register have?

The registration is not a prerequisite for rights with respect to real estate to become effective between the contracting parties. However, such rights are not effective against third parties until they are registered.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Personal income tax (IRPF)**

For rental and lease income, generally, the difference between income and all necessary expenses, including interest, is taxable. A 30% reduction applies to this net income if it is earned over a period of more than 2 years.

Furthermore, a reduction of 60% for housing rental is granted on the positive net income, provided the taxpayer reports these earnings. This means the reduction does not apply neither if the net income is negative nor if the income is not reported but discovered by the tax authorities.

In the case where the individual has available for managing this activity a full-time contracted employee, the activity performed would be considered as economic activity and special rules apply. The reduction of 60 % would not be applicable.

Urban properties (designated under land registry rules) that are (i) not rented/leased, (ii) not used for business purposes and (iii) not the owner's primary residence (e.g. holiday flats located in Spain), result in deemed annual income of 2% or 1.1% of the cadastral value. The rate depends on whether the cadastral value has been reviewed or charged and has come into effect within the tax period or within the ten previous tax periods.

The progressive IRPF tax rate depends on the respective autonomous region in which the taxpayer resides the tax rate depends on the region and varies from 19% to 48%.

**Capital gains**

This category refers mainly to profits from the sale of assets. The Spanish Personal Income Tax Act (LIRPF) contains a definition of this category and a list of valuation rules.

In addition, the capital gain derived from assets that are not used for business purposes and that were acquired before 31 December 1994, may be reduced to the percentage of taxable capital gains attributed to the period between the acquisition date and 20 January 2006.
With regard to capital gains, as part of the saving tax base, the applicable tax rates are 19% for the amount of the taxable base up to EUR 6,000, 21% for the amount between EUR 6,000 and EUR 50,000, and 23% for the exceeding amount of EUR 50,000.

**Corporate tax**

The general tax rate for corporate tax purposes amounts to 25%.

Requirements for the application of the participation exemption rule on dividends and on the transfer of shares:

- Minimum of percentage held of 5% or acquisition value greater than EUR 20m. This requirement must be fulfilled continuously at least for the entire year before the dividend is distributed or the sale is carried out. In the case of distribution of dividends, the year may also be completed after the dividend is distributed.
- If the participation is held in a non-resident entity, the distributing entity must be subject to a tax comparable to the Spanish corporate income tax with a minimum tax rate of 10%. This requirement is presumed when the company is resident in a country with an agreement to avoid double taxation containing a clause for the exchange of information. The minimum percentage of 5% also applies for non-resident holding entities.

A special corporate tax regime applies to companies whose principal business purpose consists of housing lease. Under this regime a 85% reduction of the tax portion corresponding to the income derived from such lease is granted.
The requirements are:

- Minimum stock offered for lease: 8 properties
- No transfer of the properties at least for a three-years period.
- Separate bookkeeping of the activity consisting of real estate development and housing lease with the necessary detail in order to determine the income corresponding to each property.
- At least 55% of company's income should derive from housing lease, and alternatively at least 55% of assets value should correspond to properties able to be used in lease activity.

Another special tax regime applies to Spanish REITs vehicles: SOCIMIs. Please find this regime description at *point E.3*.

Moreover, CIT Act foresees the possibility for the companies to take part of a tax group, ceasing to be taxed under the individual regime. The tax group must fulfill the following requirements:

- The tax group is considered the taxpayer, so that the entity representing the tax group will be subject to compliance with the material and formal tax obligations arising from the tax-group regime.
- The entities that take part of the group are also subject to the tax obligations arising from their individual taxation system, except for the payment of the tax debt.
- A tax group must be formed by companies in which at least 75% of the shares are directly or indirectly owned by the same shareholder, who must hold the majority of the voting rights.
- The shareholder owning of at least 75% of the shares can be resident or non-resident in Spain.

- The entities of the tax group shall be jointly and severally liable for the payment of the tax debt, excluding penalties.

**Non-resident income tax (IRNR)**

Income from business activities obtained through permanent establishments (PE) of non-resident entities and individuals are taxed at a 25% tax rate on the net income and capital gains. Spanish domestic legislation provides a 19% branch tax when income is transferred abroad; this is applicable to entities' PE but not to individuals. This tax could be avoided if the head office is situated in an EU Member State or in a country that has signed a treaty with Spain, which does not contain any provisions on branch tax, subject to reciprocal conditions.

Other income obtained without an intermediary PE by non-residents is taxed at a general rate of (i) 19% for residents in the EU, Iceland and Norway and (ii) 24% for other taxpayers. Reduced tax rates are applicable to certain types of income, such as 19% for capital gains, which can be lower under the provisions of certain tax treaties signed by Spain.

When a non-resident, without a PE in Spain, transfers a property located in Spain, the acquirer is obliged to withhold 3% of the price, on the account of the transferor's capital gains tax.

2. What is the tax depreciation period for real estate in Spain? Are there depreciation categories? Which depreciation method is used?

- Personal income tax: 3%
- Corporate tax: depreciation rates are
  - Industrial buildings and warehouses: 3%
  - Administrative buildings, commercial buildings and housing: 2%

Depreciation rates can be doubled in case of buildings considered as used assets.

As an alternative to the straight-line depreciation method a progressive or declining-balance depreciation method can be applied. Furthermore, if it can be justified, a special depreciation plan can be proposed to the tax authorities.

Land is not depreciable.



3. When is a foreign investor subject to limited tax liability in Spain?

According to Spanish law, individuals are considered to be subject to personal income tax on their worldwide income and capital gains when they have their habitual residence in Spanish territory. Individuals are deemed to have his habitual residence in Spanish territory either when they are in Spanish territory for more than 183 days during a calendar year or their main nucleus or base of their business activities or interest is situated therein.

Nevertheless, non-resident individuals are subject to tax on Spanish-sourced income (limited tax liability), such as income derived from Spanish real estate (income and capital gains), in accordance with tax treaties signed by Spain and Spanish domestic rules as contained in the Non-Residents Income Tax Act.

According to Spanish domestic law, resident corporations and entities are also considered to be subject to corporatetax on their worldwide net income and capital gains. Entities are deemed to be resident in Spain if (i) they have been incorporated in accordance with Spanish law; (ii) if their registered office is in the Spanish territory; and (iii) if their effective management is in Spanish territory. An entity having its headquarters in a low-tax country or a tax heaven can be deemed to be resident in Spain provided that its main assets are located, or its main activity is performed in Spanish territory, unless it can be proven that the effective management takes place abroad or the business purpose test is passed.

However, non-resident corporations and entities are solely subject to tax on Spanish-sourced income (limited tax liability), such as income derived from business activities performed through a PE located in Spain, returns or capital gains derived from real estate located in Spain, or from disposal of Spanish companies whose main assets consist of real estate located in Spain, in accordance with tax treaties and Spanish domestic rules as contained in the Non-Residents Income Tax Act.

4. Are asset deal and share deal possible in Spain? What are the main consequences?

Both ways of acquisition are possible in Spain.

In case of a share deal, tax risks and liabilities deriving from the business are transferred as well. In order to limit this risk, the business purchaser could request from the Spanish Tax Authorities a certification of tax debts before the transfer of business deal is sealed.

In case of a share deal regarding a company whose assets consist of more than 50% of real estate not used for business purposes (taking into consideration real values, not book values) the transfer is subject to transfer tax or VAT in the case that it would be applicable, if the purchaser acquires the control over such company. The tax base for such transfer tax is the real value of the real estate multiplied by the acquired stake.

5. Are thin capital rules applicable?
   Are there other limitations of interest deduction applicable?

For tax purposes, the amount of financial expenses exceeding the financial income (net financial expenses) is only deductible up to 30% of the operative profit of the company (EBITDA + financial income of investments in equity instruments). This limit does not apply if the net financial expenses do not exceed EUR 1m. Non-deductible financial expenses can be carried forward during the following years with no temporary limit.

6. Can acquisition costs/financing fees/interest be deducted?

**Personal income tax**

In case of lease income, interest is deductible within the limits of the income obtained.

In order to determine a capital gain, interest paid is not deductible.

**Corporate tax**

Interest does not increase the book value and is deductible within the limits mentioned in this document under B.5. and B.7. and within the limits of the arm's-length principle, where applicable.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Financial expenses derived from the indebtedness to entities belonging to the same group and incurred in order to acquire intergroup participations or to make intergroup contributions are not deductible unless a business purpose can be justified.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Interest payments within Spain are generally subject to a 19% withholding tax. Interest payments made to residents of other EU Member States are exempt from withholding tax. Interest payments made to non-EU residents are generally subject to a 19% withholding tax. If a double tax treaty is applicable, a reduced withholding tax rate may apply.

9. Is a loss carry forward or carry back granted and what are the restrictions?

**Personal income tax**

In general, losses can be carried forward during the following four years. Losses derived from lease can only be offset against profits derived from lease and other income included in the general tax base. Capital gains and losses not derived from the transfer of assets, can be offset against each other and a negative balance can be offset against a positive balance of other income included in the positive general tax base. In such cases there is a limit of 25%. Capital gains and capital losses derived from the transfer of assets can only be offset against each other.

A loss carry back is not granted.

**Corporate tax**

Tax losses can be carried forward to the following years with no temporary limit.

The loss carried forward that can be offset is subject to a limit of 70% of the previous taxable base (60% for year 2016), with a minimum of EUR 1m.

In general, a loss carry back is not granted. Nevertheless, small and medium sized companies (group's turnover not exceeding EUR 10m) are entitled to reduce 10% of its taxable base with a limit of EUR 1m. The amount reduced will be offset against losses obtained during the following 5 years. If no losses are obtained during this five-year period, the amount deferred will be integrated in the taxable base the fifth year.

## C. Real Estate Taxes

1. Does Spain levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Transfers undertaken by a non-entrepreneur**

These transfers are generally subject to transfer tax at a rate which varies from 6% up to 11% depending on the autonomous region where the property is located. Special reduced rates may apply in certain autonomous regions. The tax base is the real value of the real estate transferred.

**Transfers undertaken by an entrepreneur**

Transfer tax is triggered in case of rural land transfers and second transfers of buildings that are VAT-exempt *(see D.1.)*. The transfer is an additional cost of the transaction unlike VAT. *Also, see B.4. above regarding the transfer of shares or participations in entities holding real estate.*

Furthermore, it should be pointed out that renting/leasing of real estate exempt from VAT *(see D.2.)* is subject to transfer tax (progressive tax rates range from 0.3% to 0.4% depending on the amount of rent/lease for all contractual periods. In Catalonia the fixed tax rate amounts to 0.5%).

2. Is real estate subject to any real estate tax? At which rate?

**Wealth tax**

Resident individuals are subject to wealth tax on their worldwide net wealth (real estate properties included) at the end of the calendar year, and non-resident individuals on their net assets located in Spain. The region of Madrid has established a tax rebate of 100%. For the rest of the regions, the habitual residence is exempt up to EUR 300,000, and for the rest of the assets there is an exemption of EUR 700,000 (some regions have reduced it to EUR 500,000).

The tax rate is variable, from 0.2% to 3.75%, depending on the region where the taxpayer resides, or the property is located.

If the real estate is affected to a business activity, no wealth tax is levied.



**Local tax on property**

Real estate is subject to a local tax on property. This local tax is based on the value of rural and urban lands, and on immovable properties with special characteristics, and has to be paid by the owner, usufructuary or holder of a usufructuary right under public law. The tax base is the cadastral or land value determined by the tax authorities.

The tax rate is between 0.3% and 1.1% depending on the town hall where the property is located. The general tax rate on immovable properties with special characteristics is 0.6%. These tax rates may vary in different municipalities depending on the population and other facts.

**Local tax on the increase in value of urban land**

This local tax accrues upon the transfer of an urban land if there is an increase in value (compared to the acquisition value). The taxpayer is the seller. The tax base is calculated by applying coefficients of a maximum of 3 and 3.7 stated in every tax municipal ordinance to the cadastral value of the land depending on the periods of land tenure. The tax rate applicable varies upon tax municipality ordinance where the urban land is located within the limit of 30%.

**Local tax on construction, installation and works**

This tax is levied on construction, installation and works and is applicable to the effective costs of the work. The taxpayer is the owner of the construction work, which is not necessarily the owner of the building. The maximum tax rate can be up to 4%, depending on the municipality where the works are carried out.

**Local business tax**

Any business developed in Spain is subject to business tax, levied on a yearly basis. The business tax cost will depend on the specific activity carried out by taxpayers. For renting activity the tax charge is 0.10% of the cadastral value of the leased surface within the national territory. If the total cadastral value is lower than EUR 601,012.00, no business tax is charged under this concept.

Corporations with an annual turnover under EUR 1m (according to the last corporate income tax return filed) and individuals are tax-exempt. Furthermore, the first two years of activity are also exempt.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

In general terms, if the seller is an entrepreneur or professional, the transfers of new buildings or urban land are subject to VAT. The general VAT rate is 21%, but a reduced tax rate of 10% applies to the transfer of buildings or parts thereof fit to be used as dwellings, and their annexes (including up to 2 parking spaces) and 4% to transfers of dwellings qualified as subsidized housing by the Government and houses acquired by companies whose principal business purpose consists of housing lease applying the special corporate tax regime, as described in B1.

However, if the transferred assets represent an autonomous economic unit, which is able to develop its entrepreneurial activity independently, such transfer will not be subject to Spanish VAT.

In addition, transfers of rural land or second transfers of buildings are exempt of Spanish VAT. However, if the purchaser is an entrepreneur for VAT purposes and entitled to deduct the whole input VAT regarding a predictable use of the land only for business purposes, the seller can waive such an exemption and the transfer can be subject to VAT, the reverse charge mechanism then is applied.

Normally, a 0.5% to 2.5% stamp duty arises jointly with VAT as a result of real estate transactions that are documented in a public deed. The rate depends on the region where the asset is located, and special reduced rates may apply in certain regions.

### 2. What are the VAT consequences of renting/leasing of real estate?

Renting/leasing of real estate triggers Spanish VAT at the general tax rate of 21% if the rented/leased immovable properties are lands, offices or commercial properties, business facilities, etc. Nevertheless, renting for housing purposes constitute VAT-exempt services *(see C.1.)*, which prevent entrepreneurs from deducting input VAT related to such activities or may require a pro-rata adjustment of the input VAT.

This exemption cannot be resigned, thus in case of renting/leasing real estate for housing purposes there is no possibility to opt for VAT.



## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no capital tax in Spain.

### 2. Is there a stamp duty on debt granted to a local company?

No specific stamp duties are levied on debt granted to a local company in Spain.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

A special tax regime applies to Spanish REITs vehicles: SOCIMIs. These investment companies must comply to certain requirements such as minimum capital, purpose, term of the investment, or being registered in a stock market and profit distribution. Once the company complies with the requirements, its fiscal treatment is detailed below.

**Company tax treatment**

0% corporate tax rate. However, a special tax rate of 19% is applied when the dividends are distributed to a shareholder who owns at least 5% of the share capital and the distributed is tax-exempt in the shareholder's country of residency or levied with a tax rate lower than 10%.

**Investor tax treatment**

- Dividends are subject to withholding tax, but it is not applicable (i) if the dividends are derived from income subject to the special tax rate of 19% mentioned above and the shareholder is a non-resident in Spain or (ii) in case the EU Parent-Subsidiary Directive rules are applied.
- Spanish corporate tax payers or non-residents with a PE in Spain shall include dividends or capital gains in their tax base without entitlement to the exemption to avoid double taxation on dividends and capital gains (there is no double taxation as dividends are enjoying the SOCIMI regime).
- Spanish individuals shall include dividends or capital gains in their personal income tax, the rate is 19%-23%.
- Non-residents without a PE in Spain are liable to a withholding tax of 19% in case of dividends and capital gains, unless a reduced tax treaty rate, or the Parent-Subsidiary Directive is applicable.

Real Estate Investment in

# Sweden

## A. Legal/General

1. Are non-residents entitled to acquire real estate in Sweden?
   Does the acquisition have to be carried out by a Swedish corporation?

Residents as well as non-residents may acquire Swedish real estate.
It is not required that the real estate acquisition is carried out by a corporation orother legal entity.

2. Which importance does the land register have?


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The Swedish land register ensures security for real estate owners and provides for a functional credit sector.

The new owner should be registered in the land register when Swedish real estate is acquired. It is required that a registration of a change of ownership of a real estate is applied for within three months from the acquisition.

Further, easements, site leaseholds and mortgages on a real estate are also registered in the land register. Lantmäteriet is the Swedish land registry authority.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate? Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Corporations, such as limited liability companies (Swedish: aktiebolag)**

Corporate income tax

Corporate income tax is currently levied with 21.4%. The tax rate will, as of 1 January 2021, be decreased to 20.6%.

### Participation exemption

Under the Swedish participation exemption regime, dividends and capital gain on business related shares are tax-exempt (certain holding period requirements may apply as set out below).

The Swedish participation exemption regime covers business related shares in a Swedish limited liability company or equivalent foreign legal entities, which are held by e.g. a Swedish limited liability company or equivalent foreign legal entities. Further, the shares must be held as capital assets (not stock-in-trade) and (i) be unquoted or, if quoted, (ii) correspond to at least 10% of the voting rights in the company, or (iii) be held for organizational purposes in order to qualify as business related shares.

Partnership interests in Swedish partnerships or foreign equivalents are also covered by the Swedish participation exemption regime provided that the owner of the interest is e.g. a Swedish limited liability company or equivalent foreign entity. Further, dividends and capital gain received by a Swedish partnership held by e.g. a Swedish limited liability company or equivalent entities are tax-exempt under the Swedish participation exemption provided that the dividend and/or capital gain would have been tax-exempt under the Swedish participation exemption regime should the owner of the interest in the partnership have received the dividend/capital gain directly.

Shares in companies holding real estate are generally covered by the Swedish participation exemption regime. However, shares in companies holding real estate may constitute stock-in-trade if the shareholder conducts e.g. trading in real estate, and/or building and construction services. Additionally, shares may also constitute stock-in-trade if the shareholder conducts trading with shares or securities.
If the shares are stock-in-trade, they should not be covered by the participtation exemption regime.

With regard to quoted shares a minimum holding period of one year is required for tax exemption. In order for a disposal of quoted shares to be tax-exempt it is thus – provided that the requirements above are fulfilled – also required that the shares have been held by the seller for a minimum of one year prior to the disposal.

A capital loss on shares covered by the Swedish participation exemption regime is not deductible for tax purposes.



### Tax consolidation

Each company is taxed separately under Swedish tax law and group companies cannot file a consolidated tax return. Tax consolidation is instead achieved through group contributions that are tax deductible for the payor and taxable for the payee.

Certain requirements must be fulfilled in order to be able to exchange group contributions. One of the fundamental requirements is that the payor and the payee are corporate entities taxable in Sweden. A permanent establishment in Sweden held by a foreign company within the EEC is generally considered as qualifying for the tax liability requirement.

In addition, the following requirements need to be met for a group contribution between a parent company and its subsidiary:

- Disclosure: the group contribution must be fully disclosed in the tax returns by both the payor and the payee.
- Ownership: the parent company must have held at least 90% of the shares in the subsidiary during the entire fiscal year of both companies or since the subsidiary started to conduct business.
- Tax exemption: if the group contribution is distributed by the subsidiary to the parent company, dividends distributed from the subsidiary to the parent company in the same fiscal year must be tax-exempt (i.e. the shares in the subsidiary must be business related and qualify for the Swedish participation exemption).

Group contributions may also be exchanged between wholly-owned subsidiaries and other Swedish companies within the same corporate group. A group contribution may also be transferred through a chain of companies, as long as the criterions stated above are fulfilled in every step of the chain and provided that the payee is tax liable in Sweden. A foreign company established within the EEC may be part in the chain of companies, provided that the payee of the group contribution is tax liable in Sweden.

### Income and capital gain on real estate

Income and capital gain assignable to real estate is subject to normal corporate taxation.

A capital loss assignable to real estate is generally only deductible against capital gains on real estate. Such loss may also be deducted against a capital gain on real estate incurred in another company within the same group of companies, provided that the company reporting the capital loss and the company reporting the capital gain may exchange group contributions. A capital loss from the sale of real estate may be carried forward indefinitely.

**Individuals**

**Personal income tax rate**

The personal income tax rate on salary income is progressive.
Personal income tax rate (2020):

- up to SEK 509,300: approx. 30% (local/municipality tax);
- from SEK 509,300: the abovementioned local/municipality tax plus 20% state tax;

**Capital income/gains tax**

Capital tax is levied at a rate of 30% on capital income and capital gains. However, with regard to certain income, the actual tax rate may sometimes be reduced depending on the type of underlying asset.

For example, a capital gain assignable to disposal of real estate held for housing is subject to an effective tax rate of 22% and a corresponding capital loss on real estate is tax deductible to 50%. A capital gain assignable to real estate held for business purposes by individuals is subject to an effective tax rate of 27% and a corresponding capital loss is tax deductible to 63%.

## 2. What is the tax depreciation period for real estate in Sweden? Are there depreciation categories? Which depreciation method is used?

The acquisition cost for real estate, including stamp duty, may be depreciated for tax purposes as set out below.

Cost for acquiring land cannot be depreciated for tax purposes; however, for other parts of a real estate different depreciation rates and methods are applied depending on the category type.



Acquisition cost for building is subject to depreciation of 2%-5% p.a. in accordance with recommendations from the Swedish Tax Agency. The applicable depreciation rate is based on the estimated economic lifetime of the building and depends on the type of building (e.g. rental building or industrial building etc.). Costs for new, -add- or rebuilding of a property are added to the acquisition cost for the building and, thus, also subject to depreciation.

Land improvements are subject to depreciation with 5%-10% p.a.

Acquisition costs for building- and land equipment are subject to depreciation at a rate of 20%-30% p.a. It is also possible to depreciate at a rate of 25% based on the tax base value.

Subject to certain requirements, maintenance costs, such as e.g. repairs and customizations for tenant purposes, can be deducted immediately for tax purposes.

## 3. When is a foreign investor subject to limited tax liability in Sweden?

In general, foreign investors are subject to limited tax liability in Sweden and are thus only taxable for certain income deriving from Sweden.

Foreign corporate investors with a limited tax liability are taxable in Sweden for income assignable to a permanent establishment or real estate located in Sweden.

Further, foreign corporate investors with a limited tax liability are in general subject to Swedish withholding tax on dividends distributed from Swedish limited liability companies at a rate of 30%. However, corporate investors may be exempt from the liability to pay Swedish withholding tax under a business related shares exemption (that is similar to the Swedish participation exemption regime *[please see section B.1.]*) or under the EU Parent-Subsidiary Directive. The withholding tax may also be fully or partly reduced under a tax treaty.

Individual foreign investors with a limited tax liability are taxable in Sweden for e.g. income and capital gain deriving from a Swedish real property, a Swedish permanent establishment or for certain salary income deriving from Sweden.

Further, individual foreign investors with a limited tax liability are subject to Swedish withholding tax on dividends distributed from Swedish limited liability companies at a rate of 30%. However, the applicable withholding tax may be reduced under a tax treaty (normally to 15%).

## 4. Are asset deal and share deal possible in Sweden? What are the main consequences?

A real estate investor may sell and acquire a Swedish real estate by way of an asset deal or a share deal. In general, no limitations apply from a tax perspective.

**Asset deal**

In general, capital gain from the sale of real estate is subject to taxation. A capital gain or loss from the sale of real estate is generally equivalent to the difference between the purchase price and the tax residual value. For corporate tax purposes, a capital loss is normally only deductible against capital gain on real estate (as set out above). For capital tax purposes a loss is deductible.

In an asset deal, the purchase price for the real estate (plus transaction costs such as stamp duty) becomes the buyer's acquisition cost for the property. The acquisition cost should be divided into certain categories and, depending on the classification, such costs may be depreciated for tax purposes. *Please see section B.2.*

An asset deal may trigger Swedish stamp duty. *Please see section C.1.*

An asset deal is exempt from Swedish VAT. *Please see section D.*

**Share deal**

A share deal can be carried out without any tax implications for the seller if the shares in the disposed company qualifies for the participation exemption regime. This may also apply for the disposal of interest in partnerships. *Please see section B.1.*

A capital gain from the sale would then not be subject to tax and a corresponding loss would not be deductible for tax purposes.

In a share deal, the tax residual value of the real estate is not subject to a step-up and the tax depreciation plans remain unchanged in the target company. Further, the buyer may not depreciate the acquisition cost for tax purposes.

A share deal does not trigger Swedish withholding tax or stamp duty.

A share deal is exempt from Swedish VAT. *Please see section D.*



## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Currently, Sweden does not have any thin cap rules.

In January 2019, Sweden introduced a new regime on limitations on interest deductions. Under the new rules, specific limitation rules apply to intra-group debt that may limit the right to deduct interest expenses within a group of companies. Should the specific limitation rules not be applicable, the right to deduct interest expenses on internal as well as external debt may be limited by the general interest deduction limitations rules that are based on taxable EBITDA. The rules are highly complex, but could in brief be described as follows:

Initially it should be determined if the interest rate on intra-group loans are at arm's-length (since only arm's-length interest expenses may be deductible). Market rate intra-group interest expenses are then assessed against the specific limitation rules. These rules cover interest on all debt between affiliated companies regardless of the purpose of the debt, Companies are considered affiliated if (i) one of the companies, directly or indirectly, has a  substantial influence over the other company (typically if the company directly or indirectly owns more than 40% of the shares of the other company), or (ii) the companies are mainly under joint-control.

If the lender and the borrower are affiliated, the deductibility of interest expenses on the loan should as a general rule not be limited by the specific limitation rules if

- the beneficial owner of the interest income is resident within the EEA;
- the beneficial owner of the interest income is resident in a state that Sweden has concluded a tax treaty with that is not limited to certain income (and the beneficial owner is covered by the treaty); or
- the beneficial owner of the interest income is subject to a tax rate of 10% or more.

If any of these requirements are fulfilled, the deductibility of the interest expenses should not be limited under the specific limitation rules provided that the exclusive, or as good as exclusive, reason for the debt is not that the affiliated parties should achieve a substantial tax benefit.

It should be noted that in addition to the interest deduction limitations rules for intra-group debt, Sweden also has interest deduction limitation rules in relation to hybrid instruments and profit participating loans.

Arm's-length interest expenses that are not restricted by the specific limitation rules should as a general rule be tax deductible. However, since 1 January 2019 Sweden also has general interest deduction limitation rules. These rules are based on the EU Directive 2016/1164 that lays down rules against tax avoidance practices that directly affect the functioning of the internal market. Under the new Swedish rules, a general limitation for interest deductions in the corporate sector is introduced by way of an EBITDA-rule. Under the EBITDA-rule, net interest expenses, i.e. the difference between the taxpayer's interest income and deductible interest expenses, are only deductible up to 30% of the taxpayer's EBITDA for tax purposes.

6. Can acquisition costs/financing fees/interest be deducted?

If the acquisition costs are funded by debt, the interest costs could be deducted from the acquiring company's profits. However, certain restrictions as to the right to deduct interest apply. *Please see section B.5*.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

In general, debt push-down into the target company is possible. However, certain interest-deduction limitation rules may apply for the target company. *Please see section B.5*.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Swedish withholding tax is not levied on interest payments.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses can generally be carried forward for an unlimited period of time and be set off against future profits or group contributions received (losses may not be carried back).

Certain restrictions as to this general rule apply, e.g. when a loss company is subject to a change of ownership whereby the new owner/owners obtain(s) the direct/indirect decisive control over the company (i.e. generally more than 50% of the voting capital), there are certain restrictions as to the right to set off tax losses carried forward from previous fiscal years (the capital restriction and the group contribution restriction).
Briefly, the capital restriction triggers that losses exceeding 200% of the total consideration paid for obtaining the decisive control of the loss company are forfeited.



When calculating the total consideration paid, the consideration should normally be reduced by any formal/informal capital contributions, such as e.g. shareholder's contributions made to the acquired company (or other companies within the same group of companies both before and after the acquisition) during the acquisition year or the two previous fiscal years.

Briefly, the group contribution restriction results in that surviving tax losses carried forward may not be set off against group contributions received from companies that did not belong to the same group of companies as the target company prior to the change of ownership. The restriction applies during a five-year period after the year of the change of ownership.

Tax losses incurred in the year of the change of ownership are not subject to any restrictions.

Further, company mergers may affect tax losses carried forward in both the transferring company and the surviving company. Firstly, the capital restriction is triggered if the surviving company has no decisive control over the transferring company prior to the merger. Secondly, a merger restriction could affect the possibility for the surviving company to utilize own tax losses carried forward as well as tax losses carried forward by the transferring company during a six-year period following the merger.

## C. Real Estate Taxes

1. Does Sweden levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Stamp duty is levied on acquisitions of real estate. No stamp duty or other transfer taxes are levied on transfer of shares.

With regard to real estate acquisitions stamp duty is levied at a rate of 4.25% (1.5% if the acquirer is an individual) of the highest of the purchase price and the real estate tax assessment value for the year prior to the year when the acquisition is registered in the Swedish land registry.

Certain types of real estate acquisitions are exempt from stamp duty, e.g. land mergers and company mergers. However, the majority of real estate acquisitions triggers stamp duty.

If a real property is acquired due to an intra-group transaction, the stamp duty may normally be deferred as long as the seller and the acquirer are part of the same group of companies or until the real estate is transferred.

2. Is real estate subject to any real estate tax? At which rate?

Real estate tax is normally levied with 1% for commercial premises and 0.5% for industrial premises based on the real estate tax assessment value. However, other tax rates apply (between 0.2% and 1%) depending on the type of real estate. A real estate which is used for certain specific purposes, such as e.g. nursing, communications or education, may be exempt from real estate tax.

As a general rule, the real estate tax assessment value should be equivalent to 75% of the market value of the real estate.

The owner of the real estate is liable to pay the real estate tax at the beginning of each calendar year (1 January). Real estate tax is deductible for tax purposes.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

A sale of real estate through an asset deal is exempt from Swedish VAT. In general, the exemption applies to all transfers of real estate for consideration in return. A sale of real estate as a share deal is also VAT-exempt in Sweden. With regard to optional VAT treatment for letting of buildings the optional VAT treatment normally follows the transfer of the real estate. *Please see section D.2.*

A sale of real estate normally involves a transfer of rights and obligations to adjust input VAT on investments. The owner is responsible for adjusting input VAT on investments for ten years from the time of the investment. The seller of real estate is required to issue a document that specifies the necessary adjustment information. The document is used by the acquirer if adjustment of input VAT has to be reported to the Swedish Tax Agency before the end of the 10-year adjustment period of each investment.

Should the rights and obligations to adjust input VAT on investments not be transferred, or not be possible to transfer, the sale of the real estate will result in VAT adjustment.

2. What are the VAT consequences of renting/leasing of real estate?

As a general rule, letting of buildings is exempt from Swedish VAT. However, letting of buildings or part of buildings may be subject to optional VAT. Where the requirements for optional VAT are met, a commercial landlord would normally opt for VAT so that the most possible extent of the lettings are subject to VAT with a right to deduct input VAT to the same extent.

As from 1 January 2014, letting of buildings or part of buildings is subject to optional VAT if VAT is charged on the rent and the other requirements for optional VAT are met (e.g. that VATable business is conducted in the leased premises). If the usage of the building is changed so that it is no longer let according to the provisions of optional VAT, optional VAT and the right to deduct VAT connected to the premises ceases. The right to deduct VAT applies only to the extent the costs are related to the area for which optional VAT applies.

Deductions of input VAT on investments on real estate can be subject to adjustment for a period of ten years after the investment was carried out. Adjustments could be made either due to a change in the usage of the investment that increases or decreases the right to deduct input VAT or due to a sale of the real estate. However, in case of a sale the buyer normally succeeds into the seller's legal position with regard to the input VAT corrections. *Please see section D.1.*

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

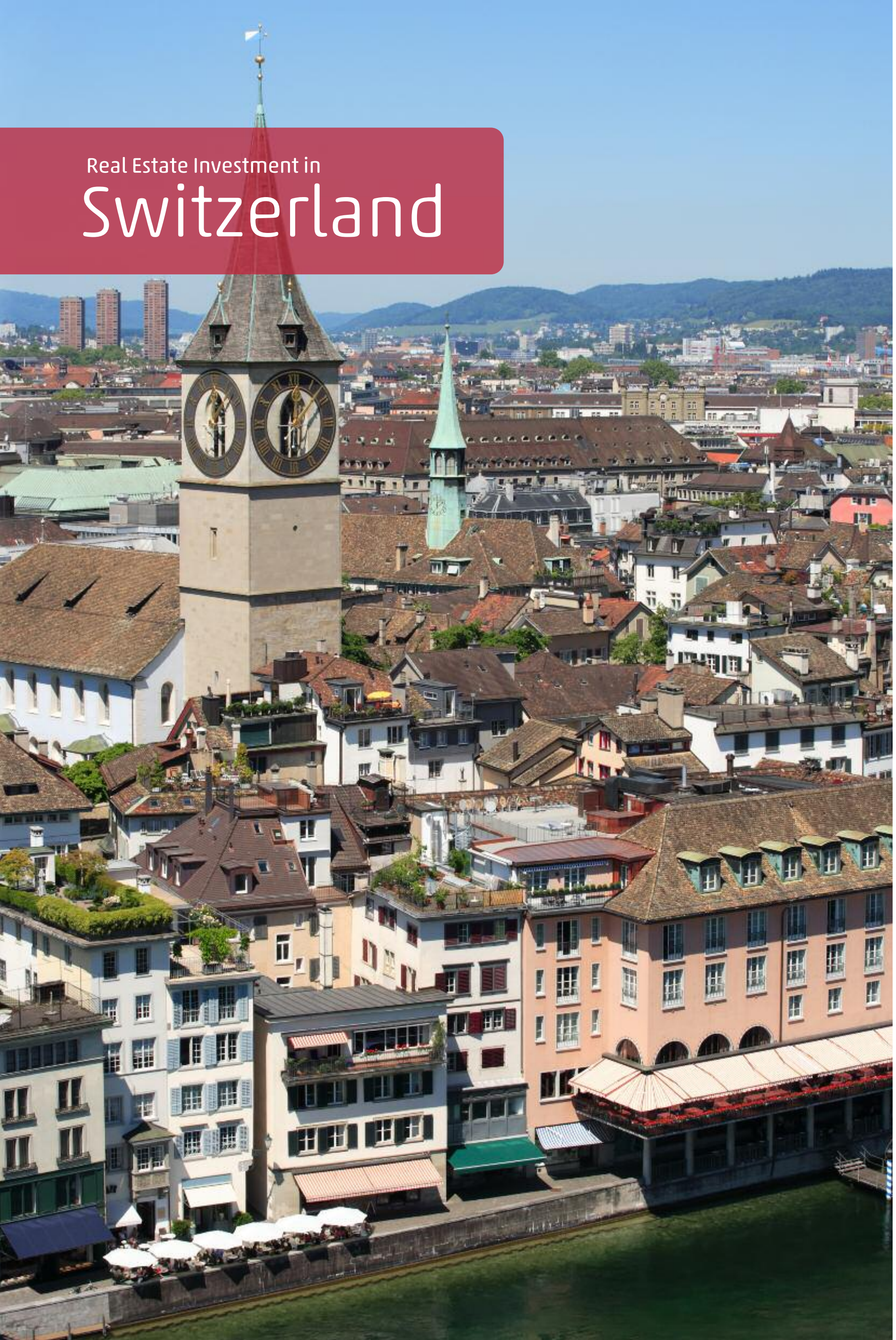
N/A

2. Is there a stamp duty on debt granted to a local company?

N/A

3. Does a special regime for Real Estate Investment Trusts exist?
   If yes, what are the requirements?

Sweden does not currently have a special regime for Real Estate Investment Trusts.



Real Estate Investment in

# Switzerland

## A. Legal/General

### 1. Are non-residents entitled to acquire real estate in Switzerland? Does the acquisition have to be carried out by a Swiss corporation?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In Switzerland restrictions exist with regard to the acquisition of real estate by non-residents. The respective requirements are defined in a specific legal act called "Lex Koller". The fulfillment of these requirements will be checked by the responsible land register of the canton where the real estate is located.

The acquisition of real estate for commercial purposes is not affected by "Lex Koller".

In case the potential buyer of a real estate has the citizenship of an EU or EFTA country and has the permission for residency, the purchase of a real estate in Switzerland should be possible. Otherwise, the option to purchase real estate has to be clarified in detail.

In case the acquisition of the real estate should be carried out by a corporation, a similar law as mentioned above will be applicable. This means that the ultimate beneficial ownership of a corporation will also be a criterion to consider if the purchase of the real estate is in line with the existing legal requirements.

### 2. Which importance does the land register have?

Rights with respect to real estate are to be recorded in the land register as such rights only come into existence upon registration.

In Switzerland the land register is in the competence of each of the 26 cantons. Therefore, the concrete procedure and also the costs of the acquisition of a real estate may vary depending on the canton where the real estate is located.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

The tax system in Switzerland is organized on three different levels. Any individual or legal person is liable for taxation on federal, cantonal and communal level. The tax rates on cantonal and communal level depend on the domicile of the taxpayer while on federal level – depending on whether the taxpayer is an individual or a legal person – the tax rates are uniform.

**Corporate tax rates**

- On federal level the income tax rate is 8.5% flat (statutory rate) respectively 7.83% (effective rate).
- On cantonal and communal level, a broad range of income tax rates exists. Depending on the domicile of the company the income tax rates may vary between 5.02% and 18.32% (flat rates or progressive rates). Furthermore, on cantonal and communal level a capital tax, calculated on the amount of the company's taxable equity by end of the tax period, is levied. The rates for capital taxes are 0.001% up to 0.500%, in some cantons the income tax is counted towards the capital taxes.
- In Switzerland, all taxes due by corporate taxpayers are tax deductible costs, which is different to most other countries. Therefore, the overall effective income tax rates on all levels for corporations vary between 11.91% and 21.15%.

**Tax rates for individuals on income and wealth**

- The personal tax rates depend on the domicile (canton and municipality) of the individual. In general, Swiss income and wealth tax rates are progressive. Different rates may apply for married and single taxpayers, as the income of the spouses is aggregated and taxed together.
- On federal level the maximum income tax rate is 11.5%, while no wealth tax is levied.
- The cantonal and communal rates vary considerably. Usually, the tariff mentioned in the cantonal tax act only results in basic rates. These rates are subject to annually fixed cantonal and municipal multipliers. Church taxes may be levied in the same way. Maximum income tax rates on all levels for individuals vary between 22.3% and 45%, respectively, up to 1% for the wealth tax.

**Participation exemption on federal and cantonal/communal level for corporations**

- Dividend income generated by qualifying participations will be indirectly to a substantial part tax-exempt – using a special calculation method – due to the so-called participation relief. A qualifying participation means a participation in a legal entity, corresponding to a portion of the share capital of such a legal entity of at least 10% or having a fair market value of at least CHF 1,000,000.
- Capital gains generated by the disposal of a participation in a legal entity which corresponds to a portion of at least 10% of the share capital of such legal entity are also subject to the participation relief, but only if the holding period of the relevant participation is at least one year before the disposal and only on that part of the sales price of the participation which exceeds the initial acquisition costs.

**Participation exemption on federal and cantonal/communal level for individuals**

- On federal level only 70% of the net dividend income (and similar income such as liquidation proceeds) derived from a participation in a legal entity with at least 10% of the share capital is taxable in case the participation is qualified as business asset respectively 70% in case the participation is qualified as private asset.
- On cantonal/communal level there exists in most cantons a similar taxation for participations with at least 10% of the company’s capital. In some cantons the percentage of the tax exemption of the dividend income is even more favorable than the solution on federal level. According to the corporate tax reform the taxable portion has to be at least 50% on cantonal level.

For income tax purposes a tax-grouping system does not exist in Switzerland, a parent company and its Swiss subsidiaries are always taxed separately.

## 2. What is the tax depreciation period for real estate in Switzerland? Are there depreciation categories? Which depreciation method is used?

For real estate held by individuals and qualifying as private assets no tax effective depreciation is possible.

For real estate held by companies or by individuals in their business assets the straight-line or declining depreciation method is possible. Using the declining method the general annual depreciation rates are 1.5% to 2% for apartment buildings, 3% to 4% for office buildings, 4% to 6% for hotels and 7% to 8% for industry buildings, depending on whether the depreciation is calculated only on the value of the building or on the value of the building and the ground. Generally, there is no depreciation on the value of the ground.

## 3. When is a foreign investor subject to limited tax liability in Switzerland?

Non-resident taxpayers as individuals may be subject to Swiss taxes only with respect to income from certain Swiss sources. Important examples – as long as not restricted by double tax treaties – are:

- income from Swiss real estate;
- income from business performed through a permanent establishment located in Switzerland;
- income from employment performed in Switzerland if paid by an employer being resident in Switzerland or having a permanent establishment in Switzerland;
- director's fee;
- interest income secured by mortgage on Swiss real estate;
- income from dealing with Swiss real estate or acting as a broker;
- pensions and similar payments related to a former employment in Switzerland.

Non-resident companies may be subject to Swiss corporate taxation if they:

- are partners of a business in Switzerland;
- have a permanent establishment in Switzerland;
- own Swiss real estate;
- have claims secured by mortgage on Swiss real estate;
- deal with Swiss real estate or act as a broker.



## 4. Are asset deal and share deal possible in Switzerland? What are the main consequences?

According to Swiss civil and tax law both possibilities, an asset or a share deal, can be chosen.

The below tax statements on asset and share deals refer to corporates or individuals owning their assets respectively shares as business assets.

**Asset deal**

A taxable capital gain is realized by the seller in the amount of the difference between the purchase price and the tax basis of the assets. The assets can be depreciated according to the official tax depreciation tables.

**Share deal**

The book value of the assets and liabilities at the level of the target company remain unchanged. A capital gain arising from alienation of shares is basically tax-exempt if the shares are held as private assets. If the shares are held as business assets the capital gain is taxable. The transfer of shares of a real estate company might be subject to real estate gains tax (economic transfer of ownership).

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

According to federal and cantonal tax law detailed thin capitalization rules exist. The basis to calculate the potential thin capitalization are the assets of a company (book value or fair market value if higher) and – due to a pre-defined percentage as per asset-category – the calculation of the maximal allowed debt. Afterwards, the total of the calculated debt capacity is compared with the effective debt of the company. In case of an existing shareholder or related party loan – or a bank loan guaranteed by a related party – the portion of the company's debt above the calculated limit will be qualified as equity for tax purposes.

Any interest expenses on the debt exceeding the tax allowed debt capacity of a company, i.e. identified thin capitalization, will not be accepted as tax deductible expense. This will lead to an increase of the company's taxable profit. Furthermore, due to the qualification as deemed dividend, in general federal withholding tax of 35% is to be paid by the company.

Withholding tax must be charged to the recipient of the dividend payment. Otherwise, a gross-up will be calculated, resulting in an effective tax rate of 53.8%.

With regard to interest on loans from or to the shareholder or group-companies safe haven rules exist. At the beginning of each calendar year the federal tax authority publishes the minimal and maximal interest rates for related parties in Swiss francs and in other currencies. In case a company is not in line with these "official" interest rates, the fulfillment of the dealing at arm's-length principle needs to be proven, otherwise the exceeding part of the interest will be added up to the taxable profit and will be subject to federal withholding tax.

### 6. Can acquisition costs/financing fees/interest be deducted?

If all requirements are fulfilled, e.g. no interest on hidden equity exist, any acquisition costs as well as financing fees and interest should be fully tax deductible.
The acquisition, financing and interest costs of a holding company cannot be charged to the target company, i.e. no debt push-down *(please refer also to section B.7.)*.

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Compared to other countries the possibility of creating a tax group does not exist for income tax purposes. Due to that, a direct pooling of debt financed interest with the income from the target is not possible. Generally, a down-stream or up-stream merger of the target company with the acquiring company is possible, but any debt push-down realised by such a merger is not accepted for income tax purposes.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

In case the interest paying company is not qualified as a bank or the debt is not qualified as a bond in the sense of the federal withholding tax law and the interest payment is not qualified as deemed dividend due to other reasons (hidden equity, interest rate is not in line with the safe haven rules, *see above under section B.5.*) there is no withholding tax on interest payments effected by a local company to the creditor.

With regard to the qualification as a bank in the meaning of the Swiss withholding tax law and the qualification of a loan as a bond (interest payment subject to withholding tax), the following general remarks can be made:

- Status of a bank:
  A company qualifies as a bank in the meaning of the Swiss withholding tax law if it shows more than 100 non-bank creditors of interest-bearing loans and if the total amount of such loans exceeds CHF 5,000,000.
- Qualification of a loan as a bond:
  If there are more than ten non-bank creditors granting a loan to the Swiss issuer based on debt securities having identical conditions and if the overall debt amount exceeds CHF 500,000 or if a Swiss resident borrows funds from more than twenty non-bank creditors to variables conditions on an ongoing basis and if the overall debt amount exceeds CHF 500,000.

Creditors or usufructuaries – with residence, registered office or place of effective management abroad – of claims secured by mortgages or deposits on real estate in Switzerland are liable to tax on the interest paid to them. This withholding tax is levied on cantonal and federal level. The effective tax rate in the canton of Zurich for example is 19.70% as of 2021 and 18.19% as of 2023 of the gross income.
If applicable a Double Tax Treaty is applied, under which a lower tax rate or even no tax applies.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

According to federal and cantonal tax law any loss of the company may be offset against taxable profits for a period of seven years. However, a loss carry back does not exist due to federal and cantonal tax laws except in the canton of Thurgau for cantonal and communal tax purposes. In case of financial restructuring longer periods apply.

## C. Real Estate Taxes

### 1. Does Switzerland levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

Most of the cantons of Switzerland levy a real estate transfer tax of up to 3% on the purchase price of a real estate. Not only the legal change of ownership of a real estate but also the economic transfer of ownership – e.g. the purchase of the shares of a real estate company – may be liable to the cantonal real estate transfer tax. The assessment of the real estate transfer tax depends on the canton where the real estate is located. Therefore, in case a company is owner of a real estate, the domicile according to the commercial register is not decisive. The real estate transfer tax is only avoidable in case the requirements for a tax neutral restructuring are fulfilled.

In addition, please note that the cantons of Switzerland also levy a real estate gains tax. Two different systems of taxation of real estate gain exist. Some of the cantons levy a special real estate gains tax for each sale of real estate, regardless of whether the real estate was owned as private or business assets. Some cantons only levy real estate gains tax on transactions on private real estate assets. In such case, capital gains from the disposal of real estate would be subject to corporate/personal income tax as described in section B.1. if the real estate was held in a company or the individual held the real estate as business instead of private assets.

### 2. Is income from real estate subject to any real estate tax? At which rate?

In case the real estate is owned by an individual, the income derived from the real estate is taxed as part of the overall income of the person. In case of a personal use of the real estate there exists a special system in Switzerland. For such real estate a notional rental income is taxed but also relevant costs for financing and for maintenance may be deducted.

For real estate owned by companies the realized income is taxed with the other income according to the statutory accounts of the company.

Some cantons have a property tax which is based on the tax value of the real estate. Even if a company has realized a loss in the relevant tax period a minimum property tax of up to 2‰ of the tax value may be levied.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

Based on the federal VAT law, the sale of real estate is exempt from VAT. Therefore, the sales price of a real estate is generally not subject to VAT *(see below)*. In case of a sale without VAT, any input tax in connection with construction costs deducted in the past must be corrected for VAT purposes and the remainder must be repaid by the seller.

In case the real estate is not exclusively used for private purposes, the seller may opt to treat the sale of the real estate as subject to VAT (under the condition, obviously, that the seller is registered for VAT purposes). In that case, the seller has – except for the value of the land which cannot be subject to VAT in any case – to calculate VAT of currently 7.7% on the sales price. No input tax correction at the level of the seller occurs in this scenario *(see above)*. If all requirements are fulfilled, the purchaser may recover the paid VAT as input tax. Alternatively, to subject the sale of a real estate to VAT (opting) the notification procedure may be applied if (among other conditions) the purchaser is also registered for VAT purposes. Instead of paying VAT, the form 764 has to be filed with the federal tax authority by the seller.

### 2. What are the VAT consequences of renting/leasing of real estate?

Like the sale of a real estate also the renting or the leasing of such is generally exempt from VAT. For renting or leasing of a real estate – except for real estate which is exclusively used for private purposes – there exists the possibility of opting for VAT as well. The rent or lease will then be subject to Swiss VAT of 7.7%. The consequences of such opting for VAT are that the owner of the real estate can deduct VAT on ongoing costs in relation with the real estate as input tax. Also, a possible input tax correction can be avoided with regard to costs that are used for both revenues subject to VAT and renting that was not opted for VAT purposes.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

Any incorporation respectively increase of equity of a Swiss company is subject to Swiss issuance stamp duty of 1% calculated on the value contributed to the company but at least on the newly founded share capital. The first CHF 1,000,000 newly created equity (share capital and share premium) is exempt from stamp duty. Furthermore, if a transaction is qualified to be a tax neutral restructuring, no issuance stamp duty is levied, but it will reduce the mentioned CHF 1,000,000 exemption limit.

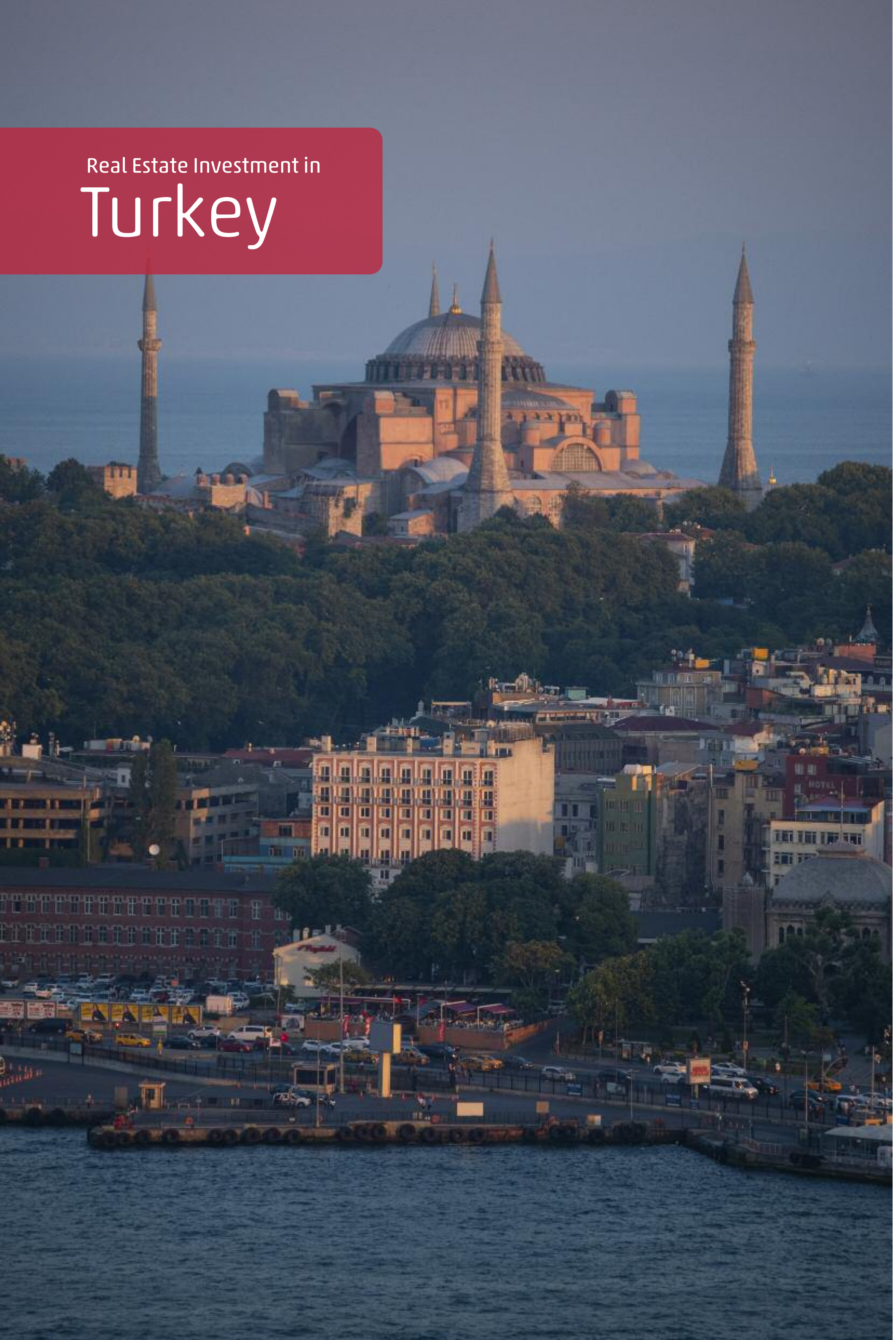
### 2. Is there a stamp duty on debt granted to a local company?

On federal level there is no stamp duty on debt granted to a local company.
On cantonal level (i.e. canton of Ticino) it is possible that such stamp duty may be levied on certain financial contracts.

### 3. Does a special regime for Real Estate Investment Trusts (REIT) exist? If yes, what are the requirements?

Switzerland doesn't have any REIT regime. However, under certain circumstances a collective capital investment which is similar to REIT is possible.

Real Estate Investment in
# Turkey



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Turkey? Does the acquisition have to be carried out by a Turkish corporation?

Turkish Laws had provided strict conditions and procedures and applied reciprocity principle until 2012 but with the amendments brought to Article 35 of the Deed Code Numbered 2644, reciprocity requirement was abolished, and the conditions have been softened. Thus, the amount of acquisition by foreigners have increased accordingly.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Currently, foreign nationals may acquire real estate and limited immovable rights in Turkey provided that they are a citizen of one of the 183 countries that have been listed by the Council of Ministers of Turkish Parliament.

Additionally, foreign commercial companies having legal personality established abroad according to the laws of those countries can acquire real estate in Turkey only in accordance with the provisions of Private Laws (Law for Encouragement of Tourism Numbered 2634, Petroleum Law Numbered 6326, Industry Zones Law Numbered 4737).

Other foreign legal entities (e.g. foreign charities, foundations, societies) cannot buy property in Turkey.

Legal entities established in Turkey by foreign investors can acquire real estate in Turkey in line with operational purposes set in the company's articles of association.

The same rule applies to properties that are acquired by other companies established in Turkey by foreign investors or if a foreign investor acquires a Turkish company owning a property. With respect to the definition of the "companies with foreign capital", a foreign capital Turkish company is defined by Law No. 6302 as:

- a company having a legal personality and established in Turkey; and
- 50% or more shares of which belong to foreign nationals, international institutions, or legal entities established under the laws of foreign countries; or

- where the above listed persons have the right to assign or depose the majority of the persons having the management rights in that company.

The limit of the amount of land that a foreigner can acquire is 30 hectares and this limit can be doubled per person by the decision of the Council of Ministers.

Notwithstanding the above, the amount of land that can be acquired by a foreign national in one district cannot exceed 10% of the total surface area of private properties of the district concerned.

It is compulsory for foreign nationals and foreign legal entities to submit a "project plan" regarding the acquired real estate that does not have any construction on it to the relevant Ministry within two years and obtain an approval from there. Non-compliance with the project plan submitted or realized would cause a compulsory sale of the relevant real estate.

### 2. Which importance does the Turkish land register have?

In Turkey, the entry in the property register is performed by an official of the Property Registry Department. It is legally compulsory for both sides (the seller and the buyer) to be present at the entry. It is possible to authorize another person to do so. Agreements of commitment to sell real estate may only be concluded at a public notary, otherwise they are considered null and void.

Rights on real estate such as rights of pre-emption, rights of repurchase, or rights of construction (superficies) can only be established at the Property Registry Department. Rights of this type that have not been registered at the Property Registry Department shall be deemed null and void. A charge at the rate of 0.683% is applied on the rights of redemption in accordance with the section I-4 of List 4 attached to the Charges Law.



## B. Income Tax

### 1. What are the corporate and the personal income tax rates? Are there special tax rates for real estate? Are there international participation exemptions? Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate: the standard Corporate Income Tax rate was 20%. However, it was increased to 22% for the fiscal periods of 2018, 2019 and 2020.

- Personal income tax rate: 15%-40%. Nevertheless, an income tax rate increase was realized within an amendment to the tax legislation that was approved in the parliamentary Planning and Budget Commission on 1 November 2019. In accordance with this income tax rate increasing provision; highest income tax rate to be applied for the individuals who earn more than TL 500,000 (600,000 for FY2020) in a year will be 40%. However, this increased income tax rate of 40% will be applied to employment income and earnings for the taxation period staring from 1 January 1 2020.

  Personal income tax rates on income and earnings for the employment income and earnings as of 1 January 2020 will be as mentioned below:

| **Taxable income (in TRY)** | **Tax on column 1 (in TRY)** | **Tax on excess percentages** |
|---|---|---|
| 0 - 22,000 | - | 15% |
| 22,000 - 49,000 | 3,300 | 20% |
| 49,000 - 180.000 | 8,700 | 27% |
| 180,000 - 600,000 | 44,070 | 35% |
| 600,000 and above | 191,070 | 40% |

  Personal income tax rates on income and earnings other than the employment income and earnings as of 1 January 2020 will be as mentioned below:

| **Taxable income (in TRY)** | **Tax on column 1 (in TRY)** | **Tax on excess percentages** |
|---|---|---|
| 0 - 22,000 | - | 15% |
| 22,000 - 49,000 | 3,300 | 20% |
| 49,000 - 120.000 | 8,700 | 27% |
| 120,000 - 600,000 | 27,870 | 35% |
| 600,000 and above | 195,870 | 40% |

- Participation exemptions:
  - National participation exemption: dividends derived by a resident company from a participation in another Turkish corporation are exempt from corporate income tax.
  - Foreign participation exemption: dividends derived from a participation in a foreign corporation or limited liability company are exempt from corporate tax under the following conditions:
    - equity participation of at least 10% in a foreign corporation for a minimum uninterrupted period of one year;
    - the profits out of which the dividends are paid were subject to a foreign income tax of at least 15%[1];
    - participation income should be transferred to Turkey until due date of the corporate tax declaration of the respective financial year.
  - Capital gain exemption: the capital gain exemptions which might be applicable based on certain conditions can be seen below:
    - 50% of the capital gains derived from the sale of a property which are owned by companies for more than two years;
    - 75% of the capital gains derived from the sale of participation shares which are owned by companies for more than two years.

- Tax-grouping: in accordance with the current legislation, each company is regarded as a separate taxpayer and thus, consolidation of the accounts of group companies for tax purposes is not possible in Turkey.

- 5% tax reduction for compliant taxpayers: Tax Authority had reconstituted the Article 121 of Income Tax Law Numbered 193. In this respect, below sated taxpayers which are satisfying the necessary conditions sated in the law will be able to benefit this reduced tax rate:
  - taxpayers who are generating income from commercial, agricultural or professional activity;
  - taxpayers of corporate income tax (except the ones that are dealing with finance, banking, insurance & reinsurance and retirement & pension funding activities).

  The necessary conditions to be satisfied in order to be able to benefit from tax reduction is as follows:

[1] The profits out of which the dividends are paid were subject to a foreign income tax of at least 20% if the corporate subject of the respective entity falls under financial institutions, insurance providers and real estate investors.



  - All the tax returns regarding the year the tax reduction will be applied, and the two preceding years should be declared and submitted within the legal statuary period. Moreover, the payment of those corresponding due taxes must also be paid within the statuary period as well. Thus the 2015, 2016 and 2017 years period will be taken into consideration in order to consider whether the tax reduction might be applied or might not.
  - There shouldn't be any tax assessment for the year the tax reduction will be applied, and the two preceding years. Submitting correction declaration or submitting declarations for voluntary disclosure purposes will not be taken into consideration as a violation of the necessary conditions to be satisfied.
  - Taxpayers should not have any overdue tax debts including tax penalties exceeding the amount of TRY 1,000.

  The tax reduction might be applied for both income and corporate tax returns which is submitted after 1 January 2018. Furthermore, the calculated reduced amount cannot exceed TRY 1,4 million since 1 January 2020.

  Taxpayers who did commit any tax evasion within four calendar years back will not be able to benefit from this tax reduction.

  Tax reduction for compliant taxpayers' implementation is extended for the annual income and corporate tax returns to be submitted as of January 2019. The necessary conditions to be satisfied in order to be able to benefit from tax reduction in the year 2019 is adopted generally in line with the former implementation.

  The only amendment which was made is as follows:

  - The threshold of TRY 10 regarding the payment of those corresponding due taxes which must also be paid within the statuary period was updated as TRY 250.

## 2. What is the tax depreciation period for real estate in Turkey? Are there depreciation categories? Which depreciation method is used?

The general depreciation period for buildings is 50 years. Buildings which are used as factories that are built from concrete, iron or steel are depreciated over 40 years, factory buildings which are built from other material than the ones mentioned will be depreciated over a period between 10-25 years depending on the material used.

Leasehold additions and improvements on buildings are depreciated over the life of the lease agreement (i.e. over the lease period).

### 3. When is a foreign investor subject to limited tax liability in Turkey?

Those individuals who are not "settled" in Turkey are taxed solely upon the earnings and revenues they have acquired in Turkey as they are considered as "limited tax liable".

Those whose residence is in Turkey and those who reside in Turkey for more than six months during one calendar year are considered as settled in Turkey and their taxation is made according to the rules of full tax liability.

The foreigners who are businessmen, scientists, experts, officials, press correspondents, and other individuals whose situation resembles these, as well as those who have arrived in Turkey for purposes of education, medical treatment, rest, or of travel shall not be considered as settled in Turkey, even if they have stayed in the country for more than six months in a calendar year.

### 4. Are share deal and asset deal possible in Turkey? What are the main consequences?

Generally, capital gains derived by a foreign company

- from the disposal of Turkish company shares (share deal);
- from the asset sales transaction (asset deal)

are subject to 22% corporate tax on the profit realized from the sales transaction. (In Turkey, the standard corporate income tax rate was 20%. However, it was increased to 22% for the periods of 2018, 2019 and 2020.)

There is a 75% capital gains exemption for the sale of shares (share deal) and 50% capital gains exemption for the sale of immovable property (asset deal) which has been owned by the company for a minimum period of two years and of which the proceeds have been kept within the company for a period of five years. This provision is not applicable to companies that are active in trading of marketable securities and immovable property and have been holding these assets for trading purposes.

For certain Turkish joint stock companies, capital gains generated from sales of participation shares that are held at least for two years in foreign companies are exempt from corporate income tax. This rule applies to Turkish joint stock companies, if 75% of their assets are constituted of at least 10% of shares of foreign corporations or foreign limited liability companies. *For other tax consequences see the questions below.*

Furthermore, in accordance with the Article 7/7 of the Income Tax Law Numbered 193, non-resident companies might be subject to capital gain taxation stemming from the disposal of the shares only if:

- the sale transaction that the capital gain is stemming from is "realized" in Turkey;
- the sale transaction that the capital gain is stemming from is "utilized" in Turkey.

In this respect, it is possible to point out that there should be no capital gains taxation in Turkey if both the seller and buyer are outside of Turkey (i.e. non-residents), the transaction is realized outside of Turkey (i.e. contract signing, notarization and registration with public authorities) and the transaction is not utilized in Turkey.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Under Turkish thin capitalization rules, if a loan obtained by a corporation directly or indirectly from shareholders or from related parties is more than three times higher than the net equity at any given day within an accounting period, the exceeding amount is considered as thin capitalization (debt-to-equity ratio 3:1). Expenses (interest expense and foreign exchange losses) related to the exceeding amount are not only treated as non-deductible expenses when determining the corporate tax base but they are also regarded as disguised profits. If the shareholder or related party is a bank or finance institution, the debt-to-equity ratio applied is 6:1.

In accordance with the Article 13 of Corporate Income Tax Law, the term of "related parties" broadly consists of shareholders and the persons who are related with the shareholders who own 10% or more of the shares, voting rights or right to receive dividends of the company.

### 6. Can acquisition costs/financing fees/interest be deducted?

Interest expenses as well as foreign exchange differences incurred by Turkish corporate taxpayers in connection with the business purpose are considered as deductible expense.

Interest expenses and foreign exchange losses accrued within the purchase year for loans acquired for financing the purchase of fixed assets should be capitalized as a part of the cost of the asset in accordance with the article 262 of Turkish Tax Procedural Law. Corresponding article states that; "Cost" refers to the total of payments rendered due to the acquisition of a commercial asset or else for the increase in its value, as well all expenses associated with them.

In accordance with the Turkish Tax Procedural Law general communiqué Numbered 334 it is also stated that; interest costs and f/x results stemming from the investment financing should be capitalized until the end of year in which investment had been finalized. Afterwards, in the following year, taxpayer should decide whether related interest costs and f/x results arising from the revaluation of loans requires to be capitalized each year or requires to be considered as financial cost in the P/L. Furthermore, once this decision is made, taxpayer should keep on the same implementation of process after that.

Interest expenses incurred for the acquisition of participation shares are also considered as deductible expenses.

### 7. Are there any possibilities to allow pooling of debt financed interest with income of target (dept push-down)?

The Turkish Corporate Tax Code allows Turkish corporate taxpayers to merge in a tax-free manner under certain conditions stipulated by law. Accordingly, Turkish companies may accomplish a tax-free merger if all the items of the balance sheet of the merged entity are transferred to the acquiring entity. Typically, if one of the companies has an outstanding debt in principle, there is no restriction to transfer the loan to the acquiring entity. The interest expenses arising from this loan can still be deducted at the level of the acquiring entity.

There is no tax consolidation (fiscal unity) regulation under Turkish tax rules.

In this respect, in Turkey, debt push-down implementation might be realized via a merger either by initially having loans in the holding company or by the replacement of capital with interest bearing loans following the merger. Both alternatives will eventually end up with the result of debt push-down.

As per the current legislation, there is no article that explicitly forbids debt push-down structures. Debt push-down is also not a tested instrument in Turkey yet.



But since a debt push-down structure naturally aims to gain tax deductibility for financial expenses related to an acquisition in the acquired company, it would become an easy and lucrative target for inspectors. Therefore, debt push-down structures must be carefully analysed from a legal form and substance point of view.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

If the interest is being paid for a loan received from a foreign government, international financial organization, or from a foreign bank or financial institution, the withholding tax to be imposed on such payments is 0%. In other words, there is no withholding tax to be applied regarding these loans.

For loans that are obtained from non-resident persons or entities other than mentioned above, the withholding tax rate on interest payments is 10%.

Dividends distributed from Turkish companies to non-resident entities and non-resident persons are subject to 15% withholding tax. The withholding tax can be reduced in line with the provisions of applicable double tax treaties.

"Resource Utilization Supporting Fund" (RUSF) is applicable to the loans. RUSF is a type of charge levied on the loans (as well as importations made with delayed payment) obtained by Turkish companies and real persons. The rate and application of the RUSF charge depends on the maturity, type and currency of the loan. RUSF is not applicable to foreign currency loans obtained from foreign countries which have an average maturity of three years or longer.

Current applicable RUSF rates on foreign loans obtained by Turkish resident real persons or companies (banks & financial institutions are excluded) in terms of foreign currency or gold borrowings (fiduciary transactions are excluded) was restructured based on the average maturities as follows:

| **Average maturity of the foreign currency loan (fiduciary transactions are excluded)** | **RUSF rate to be applied** |
|---|---|
| Up to 1 year | 3% |
| Between 1 year and 2 years | 1% |
| Between 2 and 3 years | 0.50% |
| More than 3 years | 0% |

The RUSF rates on Turkish Lira (TRY) denominated loans are as follows:

| Average maturity of the TRY loan (fiduciary transactions are excluded) | RUSF rate to be applied |
|---|---|
| Up to 1 year | 1% |
| More than 1 year | 0% |

On the other hand, in accordance with the Law Regarding Amendments on Income Tax Law and Other Tax Laws ("The Law") which had been entered into force on 19 July 2019, RUSF will not be applicable on the loans which were/will be granted under the financial restructurings that were realized in line with the framework agreement.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

Under Turkish tax regulation, fiscal losses provided on the condition that loss corresponding to each fiscal year is specified in corporate income tax return can be carried forward for a period of five years. There is no tax loss carry back.

## C. Real Estate Taxes

### 1. Does Turkey levy a real estate transfer tax on sale of real estate or shareholdings?

In general, the sale of legal title to Turkish property is subject to totally 4% title deed charge on the higher of the value on which the property tax is based or the transaction value which will be applied separately for buyer and seller (each bearing 2%)

This corresponding title deed fee payment should be made to the tax office before-hand the transaction is realized at the registrar.

### 2. Is real estate subject to any real estate tax? At which rate?

Property tax is applied and levied on immovable properties such as land, lots and buildings on an annual basis. It is paid to the municipality of the area where the concerned real estate is located.

The value that will be taken as basis in the calculation of the tax is determined through appraisal procedures that are performed every four years. The tax value is determined separately for each street and road.



An annual property tax[2] on the tax value applies to residences (0.1%), buildings other than residences (0.2%), cultivated land (lots) (0.3%) and uncultivated land (0.1%). The tax value is determined via appraisal procedures that are performed every four years. The procedures are performed for each city, each street and each road.
The rates are applied twice (increased from 0.1% to 0.2% for residences and from 0.2% to 0.4% for other buildings) for property located in the metropolitan municipality areas like Istanbul, Ankara or Izmir.

Furthermore, an additional property tax was introduced through the Law No. 7194 on 1 November 2019. In accordance with this new additional property tax provisions, valuable residential properties will be subject to an additional property tax as mentioned below:

| Additional property tax rate to be applied | Residential property value (in TRY) |
|---|---|
| Exempt | up to 5,000,000 |
| 0.3% | 5,000,000 - 7,500,000 (for the part exceeding 5,000,000) |
| 0.6% | 7,500,000 - 10,000,000 (for the part exceeding 7,500,000) |
| 1% | more than 10,000,000 |

However, the implementation of this additional property tax is postponed. The corresponding tax liability will begin as of 2021.

## D. Value Added Tax

### 1. What are the VAT consequences of a sale of real estate?

The supply of real estate is subject to VAT. The general VAT rate is 18%.

For Turkish corporate taxpayers that are engaged in real estate business, the sale of residential and commercial property is subject to 18% VAT. VAT is not applied on the sale of real property held for a period of at least two years by corporate entities who are not engaged in the trading of real estate.

Under Turkish VAT rules, input VAT is offset against output VAT. As a general rule, if input VAT is larger than output VAT, VAT that cannot be credited is deferred to the following month.

[2] Stated rates are increased by 100% if the property is within the boundaries of metropolitan municipality.

VAT rate to be applied on the deliveries of houses was amended by a Council of Ministers Decision No. 2012/4116. Before this amendment, the effective VAT rate to be applied on the delivery of houses with a net area smaller than 150 sqm was 1%.

However, the amendment made it complicated and specified several different elements to be considered during the determination of the VAT rate to be applied on the delivery of the houses (1%, 8% and 18%) starting from 1 January 2018 which can be seen below as:

- the acquisition date of building license;
- the luxury rankings of the buildings (luxurious or first-class construction);
- net area of the houses (based on sqm);
- municipal status of the location where the house is built (whether it is metropolitan municipality or not);
- property tax value per sqm of the land where the house is built;
- the status of the area in accordance with the Law No. 6306 on Transformation of Areas under Disaster Risk where the house is built.

In accordance with the Council of Ministers Decision No. 2018/11674 and 2018/11750 and together with the circulation of Presidential Decree No. 843, effective VAT rates on the delivery of residential units had been amended and the latest legislation clearly states that VAT rate to be applied on the delivery of the houses and office units which should have been subject to 18% VAT is decreased to 8% until 31 December 2019.

The Tax Authority also introduced a new VAT exemption for the delivery of the residential and office units via "Law Regarding the Restructuring of Certain Receivables and Amendments on Certain Laws and Statutory Decrees" (The Law No. 6824). Accordingly, the VAT exemption is basically applicable for Turkish citizens who live/work abroad for more than six months and for non-resident foreign national real persons who live/work in Turkey with valid work and residence permits.

This exemption is also only applicable in the first deliveries of buildings constructed with residential and office purposes and the transfer of the foreign currency denominated sales is required to be brought to Turkey. Although the major necessary conditions to be satisfied is as above, there are several other conditions to be satisfied in order to be able to benefit from this exemption.

In accordance with the provisions of VAT Communique Series No. 27 which was promulgated in the Official Gazette dated 15 October 2019, the determination of the satisfaction of the requirement of the transfer of the foreign currency denominated sales to Turkey was amended. In the corresponding legislation, it is clearly stated that, the rules with respect to the consideration of whether foreign currency was brought into Turkey or was not brought into Turkey will be determined regarding the foreign exchange transfers to the seller accounts was realized by natural or legal persons via banks.

The natural or legal persons which are not the buyers of the corresponding housing/workplace deliveries will also be able to transfer the foreign currency denominated sales price to Turkey if the below-mentioned conditions are satisfied:

- the bank receipt regarding the transfer of foreign currency denominated sales price to Turkey should contain information with respect to the; buyer, housing/workplace which is subject to delivery (name of the real estate project, address and number of independent unit); or
- the natural or legal persons who are not the buyers of the corresponding housing/workplaces should submit a consent letter to the seller. This consent letter should contain necessary information which states that the transfer of foreign currency denominated sales price was realized on behalf of the buyer and it should also contain detailed information regarding the housing/workplace which is subject to delivery (name of the real estate project, address and number of independent unit).

### 2. What are the VAT consequences of renting/leasing of real estate?

The rental of real estate is also subject to the general VAT rate of 18%. Renting of immovable properties that are not held for commercial purposes is VAT exempted.

However, in accordance with the Presidential Decree No. 2812 which was published in 31 July 2020 dated Official Gazette, 8% VAT will be applied on workplace rental services until 31 December 2020.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

There is no capital tax application in Turkey. The equity amounts injected into companies are not subject to taxation.

The equity contribution is only subject to a fund (i.e. contribution to the Competition Board) of 0.04% (4 per 10,000).

A deemed interest deduction over cash injection as capital had been regulated through the provisions of the "Law on Amendment to Certain Laws and Decree Laws" (Law No. 6637). This regulation mainly aims to promote capital increase in cash.

The deemed interest deduction provisions were added to the Corporate Income Tax Law in Article 10-(1)/ı. In the corresponding article, it is briefly stated that 50% of the interest amount calculated over the capital increase in cash of the paid-in capital of the companies can be considered as deductions during the calculation of the corporate income tax base.

Furthermore, in line with the corresponding regulation provisions, there are several elements, factors and indicators available which will substantially and vastly affect upon the implementation of deemed interest deduction on cash injection as capital.

Therefore, companies should carefully evaluate their current situation beforehand a possible implementation of deemed interest deduction on cash injection as capital.

## 2. Is there a stamp duty on debt granted to a local company?

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Stamp tax is levied as a percentage of the monetary value stated on the agreements. In case of an asset deal, 0.948% stamp duty of the contracts is triggered.

An amendment on the stamp tax liabilities of several types of agreements related to the real estate sector was made by the Tax Authority through the Law Regarding the Restructuring of Certain Receivables and Amendments on Certain Laws and Statutory Decrees No. 6824 which was promulgated in the Official Gazette dated 8 March 2017.

In accordance with the provisions of corresponding law, several sub-clauses had been added to the Clause A. Documents retaining certain amounts of money existing in the section I. "Documents pertinent to contracts" of the table No. (1) of Stamp Tax Law No. 488. These sub-clauses and stamp tax rates to be applied on related documents before and after the amendment respectively might be seen in the below table:

| Document type | Stamp tax rate to beapplied before the amendment | Stamp tax rate tobe applied after the amendment in 2017 |
|---|---|---|
| Officially drafted construction agreements on flat for land basis or revenue sharing | 0.948% | 0% |
| Construction and contracting agreements drafted among building contractors and sub-contractors within the scope of officially drafted construction contracts on flat for land basis or revenue sharing | 0.948% | 0% |
| Advisory service agreements with respect to the construction work on flat for land basis or revenue sharing | 0.948% | 0% |
| Service agreements with respect to the construction inspection of buildings | 0.948% | 0% |

Furthermore, in case of signing of an agreement subject to stamp tax, corresponding agreement would trigger stamp tax with a ceiling of TRY 3,239,556 (approximately EUR 381,000 under the current foreign exchange rate – subject to annual revaluation) for the year 2020. Although the parties of an agreement reach a mutual understanding with respect to the stamp tax payment, stamp tax provisions clearly state that all signatory parties of an agreement are jointly held liable for the stamp tax payment.

## 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

The concept of a "trust" is not available in Turkey. Therefore, REICs are structured as Real Estate Investment Companies (REICs). Definition of REICs is made by the Turkish Capital Markets Board (CMB) pursuant to the Capital Market Law and related Capital Market Law Communiqué as capital market institutions which do mainly make investments in income-generating real estate properties, and in capital market instruments based on real estate, real estate projects etc.

REICs are entirely exempt from Turkish Corporate Income Tax, and 0% dividend withholding tax is applicable to the REICs.

A REIC must be a stock corporation. A REIC can either be established immediately as a new joint-stock company, or an existing joint-stock corporation might convert to a REIC by simply changing its Statue in accordance with the legal procedure of the Communiqué.

New and existing joint-stock corporations that will operate as a REIC should satisfy the mandatory requirements for the founders and shareholders of a REIC which was regulated under Article 7 of the related Communiqué that specifies certain necessary qualifications to be satisfied for shareholders.

Regardless of the fact that being a new corporation or an existing corporation, the founders of REIC must make an application in order to get an approval from CMB.

The minimum capital requirement determined by the CMB for a REIC is TRY 30,000,000. If REIC's sole purpose is to invest in infrastructure and infrastructural services portfolios, minimum capital requirement is TRY 100,000,000. 25% of the REIC shares' circulation in BIST or sale to the "qualified investors" is mandatory. The CMB might also amend minimum capital requirements annually if appropriate.

The companies which are listed on BIST are allowed to buy their own shares by the permission of CMB in case of satisfying the necessary conditions specified by the CMB decision.

Valuation of assets and rights of Turkish REICs on a yearly basis is mandatory.

According to the Communiqué, REICs are allowed to invest in capital market institutions which do mainly make investments in income-generating real estate properties, and in capital market instruments based on real estate, real estate projects etc. Capital market instruments must be traded on the stock exchange or an organized market.

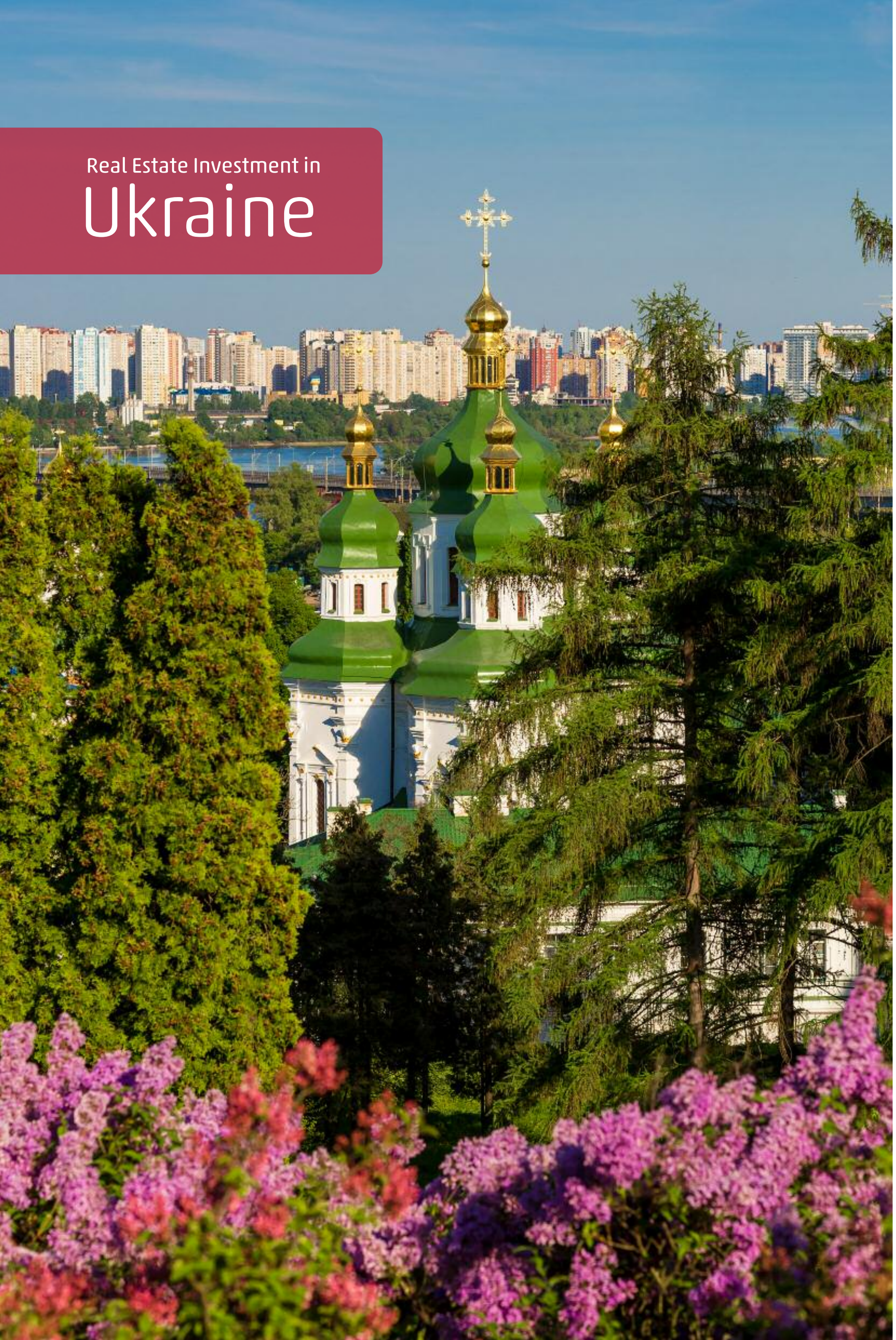
REICs are:

- totally exempt from corporate income tax;
- dividend distributions to resident and non-resident individual and corporate shareholders of a REIC do not trigger a dividend withholding tax burden;
- the determination of the REIC's taxable income is totally the same of the determination of taxable income for ordinary companies in Turkey;
- REICs do have corporate income tax exemption on their foreign corporate income.

In general, 18% VAT is applied on the most transactions carried out by REICs. However, there are some sort of several transactions that are not subject to VAT which requires further analyse in detail.

Real Estate Investment in

# Ukraine



## A. Legal/General

1. Are non-residents entitled to acquire real estate in Ukraine?
   Does the acquisition have to be carried out by a Ukrainian corporation?

In general, non-resident citizens as well as foreign legal entities may acquire real estate, buildings or structures, freely on the same grounds as Ukrainian citizens or Ukrainian companies.

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However, the rights of non-residents to acquire plots of land are limited.

The Land Code of Ukraine, which is in effect since 1 January 2002 strictly prohibits foreign citizens, legal entities and governments from acquiring any agricultural land. Moreover, most transactions regarding agro-industrial land even between Ukrainian residents are prohibited.

Foreign citizens may acquire non-agricultural land within the boundary of populated areas. However, foreign citizens may only acquire ownership rights to a non-agricultural plot of land outside the boundaries of populated areas if they have privately-owned real estate already located on such property.

Foreign legal entities may acquire ownership rights to land plots of non-agricultural designation (a) within populated areas, if the property acquisition of real estate will be improved by buildings or other objects related to the company's business activities in Ukraine; or (b) outside the boundaries of populated areas in case of an acquisition of real estate.

In other cases (except transactions with agro-industrial land) acquisition have to be carried out by a Ukrainian corporation. Ukrainian corporation means legal entity incorporated in Ukraine by Ukrainian citizens or resident Ukrainian companies.

On 31 March 2020, the Ukrainian parliament has adopted the Draft Law on amendments to legislative acts of Ukraine on the turnover of agricultural land No. 2178-10 of 10.10.2019 ("Land market law"). It is anticipated that the law will come into force on 1 July 2021. The new rules gradually remove restrictions of the land moratorium. During the first 2.5 years since the law come into force, citizens of Ukraine will be able to acquire earlier restricted agricultural land plots (up to 100 hectares) into their ownership. After that, Ukrainian legal entities (with exclusively Ukrainian beneficiaries) will obtain such right too and the total amount of land which could be acquired will be up to 10,000 hectares. The banks from the very beginning obtain the right to acquire agricultural lands in case of foreclosure as collateral. Land market law introduces new restrictions for the acquisition and possession of agricultural lands for companies with foreign beneficiaries. These rules apply to all types of agricultural land, including those which have not previously been subjected to a land moratorium and could been freely purchased. Violation of these requirements creates the risk of confiscation and compulsory sale of such lands. *For more information please visit: http://kmp.ua/en/analytics/infoletters/law-on-land-market-change-of-the-game-rules/*

2. Which importance does the Ukrainian land register have?

As of today Ukraine has a two-level system of registration of land resources, including the State Land Cadaster and the State Register of Proprietary Rights to Real Estate.

Initial registration of a newly allotted, consolidated or divided plot of land is conducted with the State Land Cadaster, which keeps detailed technical information on registered plots of land including cadaster number, coordinates, area, land category and designated purpose, restrictions, as well as normative land valuation. Registration with the State Land Cadaster is mandatory, and information from the State Land Cadaster has official status. In accordance with Article 286.1 of the Tax Code information of the State Land Cadaster is a basis for the charging of land tax.

Some information of the State Land Cadaster is available online through the Public Cadaster Map of Ukraine (http://map.land.gov.ua/kadastrova-karta). This map has no official status but it usually allows to see the location of the registered plots of land within the territory of Ukraine, their area and designated purpose. Also, it can be used to order an Excerpt from the State Land Cadaster of Ukraine with other information.

The proprietary rights to land (as well as to other immovable property) are subject to registration with the State Register of Proprietary Rights to Immovable Property (since 1 January 2013). This is a measure of precaution and recognition of such rights by the state. Under Article 125 of the Land Code of Ukraine the title to the plot of land, as well as lease rights under the land lease agreement may be considered as fully acquired only after state registration of such rights in the state register.



Registration is performed by public state registrars. Rights to land which existed and were duly registered before 1 January 2013 do not require immediate re-registration until there are no transactions with such land.

The State Register of Proprietary Rights to Immovable Property is open for public (each information request is charged with a minor fee) and available online through the site of the Ministry of Justice (https://kap.minjust.gov.ua/). The register, in particular, allows checking the owner (long-term tenant) of certain immovable property, or what property is owned (leased) by a certain person or legal entity.

Additionally, owners (users) of agricultural land are obliged to keep the Agricultural Chemical Passport of the plot of land, which contains detailed information regarding chemical and radiation conditions of the soil on the plot of land. Data of the Agricultural Chemical Passport should be updated by the owner (user) every five years and is taken into account, among other, during normative and expert plot of land evaluation.

## B. Income Tax

1. What are the corporate and the personal income tax rates?
   Are there special tax rates for real estate?
   Are there international participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

- Corporate income tax rate:
  - starting from 1 January 2014 the rate is set at 18%;
  - 15% general rate of withholding tax is applicable to income of non-residents from Ukraine sources;
  - 0% for life insurance companies;
  - simplified taxation for small legal entities is possible (optional): a 3% tax rate is imposed on sales proceeds for VAT registered and 5% on sales proceeds for non-VAT registered entities. Ukrainian law does not provide for consolidation or group relief (grouping) for tax purposes with each legal entity within a group being recognized as a separate taxpayer.

- Personal income tax rate:
  - 18% for the income in most cases (salaries, other remuneration under labour/civil agreements).

In addition, a temporary military contribution (some kind of surcharge of personal income tax) was introduced for not specified period of time (until lifted). The rate is 1.5% of taxable personal income tax base.

Inherited or gifted property may be taxable at 0%/5%/18% rate of income tax:

- 0% for the inheritance (gift) from relatives of the first order of succession (spouse, parents and kids);
- 5% for the inheritance (gift) from distant relatives;
- 18% if the recipient is a non-resident person.

Tax on individual income in the form of interest, dividends, royalty and investment profit for dividends:

- 18% for passive income including dividends/investment certificate paid by institute of joint investment;
- 5% for the dividends on shares and corporate rights accrued by resident companies that are corporate profit taxpayers.

Dividends received by a taxpayer at the standard tax regime of corporate income tax from the taxpayer at the same standard tax regime are not included into the taxable profits of such recipient.

For the sake of completeness please note that the income received by a natural person from a purchase and sell transaction shall not be object of personal income tax if the following conditions are met: (1) it is the first sale of real estate during the reporting year; (2) the tax payer holds the real estate at least three years (except for inheritance). In other cases 5% of personal income tax and 1.5% of temporary military contribution shall be paid.

## 2. What is the tax depreciation period for reas estate in Ukraine? Are there depreciation categories? Which depreciation method is used?

Under the Ukrainian Tax Code, for tax depreciation purposes fixed assets are classified into 16 groups. Buildings, constructions and transmitting terminals belong to the third group. The depreciation period ("minimum period of beneficial use") is 20 years for buildings, 15 years for constructions and 10 years for transmitting terminals.

Normally land is not depreciable unless the real estate and the corresponding land are purchased together. In this case, the land can be depreciated together with the value of the real estate.

The Tax Code envisages that the financial result for tax purposes shall be decreased by the depreciation amount calculated in accordance with national/international financial standards (depending on the way the taxpayer conducts its financial accounting). Some additional limitations, which should be taken into account when computing the profit tax base are stipulated in the Tax Code. Namely, it is not allowed to depreciate goodwill or costs related to nonproduction fixed assets.

The following depreciation methods are available for real estate:

- straight-line depreciation;
- diminishing-balance method;
- cumulative method (the depreciation expense is computed by multiplying the depreciated value by the cumulative coefficient; the cumulative coefficient is determined by dividing the remainder of years of beneficial use by the overall number of years of beneficial use).

## 3. When is a foreign investor subject to limited tax liability in Ukraine?

A foreign investor (hereinafter "non-resident") is subject to limited tax liability in Ukraine on income from Ukraine sources.

According to Article 160 of the Ukrainian Tax Code non-resident entities are subject to withholding tax at a rate of 15% on Ukraine-sourced income. Ukraine-sourced income subject to withholding tax includes:

- interest;
- dividends;
- royalties;
- income from freight and engineering work;
- lease payments and rentals;
- income from the sale of real estate located in Ukraine;
- profit on transactions in securities, derivatives and other rights in companies;
- income from joint ventures and long-term contracts carried out in Ukraine;
- income from cultural, educational, religious, sports and entertainment activities conducted by non-resident within the territory of Ukraine;
- insurance payments;

- commission/brokerage fees and remuneration;
- other income from business activity in Ukraine, except for proceeds from the sale of goods, services or works preformed by non-residents for Ukraine residents.

Ukrainian entities paying the income are responsible for withholding and paying the tax.

If the activity of a non-resident in Ukraine triggers a permanent establishment recognition, the permanent establishment must be registered with the Ukrainian tax authorities (except for dependent agent permanent establishments already registered as corporate income tax payers). The general definition of "permanent establishment" is provided for in the Ukrainian Tax Code. It is generally in line with the OECD Model Income Tax Treaty definition, yet there are differences.

Permanent establishments are subject to general Corporate Income Tax and must conduct respective accounting and submit periodic tax returns under the general rules. special corporate income tax payment regimes may be available for the permanent establishment, for example the imputed profit method. According to this method, a taxable profit is assumed at 30% of the revenue received during the period in question, without the permanent establishment having to account for expenses.

As recently amended (May and August 2020), the Tax Code makes transfer of control of real estate located in Ukraine between non-residents by way of share deals subject to tax in Ukraine. Namely, gain on sale by a non-resident of shares of an entity (resident or non-resident of Ukraine) deriving their value mainly from real estate located in Ukraine is subject to tax in Ukraine at the tax of 15% unless otherwise is not provided by the applicable tax treaty of Ukraine. For this purposes the non-resident buyer of the corporate rights is required to register in Ukraine with the tax and withhold the tax from the payments to the seller for such corporate rights.

## 4. Are asset deal and share deal possible in Ukraine? What are the main consequences?

### Asset deal

The feasible option for an asset deal will be to set up an acquisition company in Ukraine. The real estate is purchased under the agreement between the acquisition company and the Ukrainian company owning the real estate. The acquisition company may be financed by loans from a non-Ukrainian investment corporation or a bank.



For the Ukrainian company (as the seller) the positive margin between the book value of real estate and the sale price will be taxable with the profit tax at the regular rate of currently 18%.

### Share deal

The share deal is quite frequently used for acquiring real estate in Ukraine. There are two principal options for the share deal.

First, a non-Ukrainian investment corporation directly acquires 100% of the shares of the Ukrainian company owning the real estate. The sum paid by the non-Ukrainian investment corporation for the purchase of the shares (corporate rights, which are not in the form of securities) may be deducted only from the revenue gained in case respective shares are alienated in future. In case of securities, a taxpayer may use the expenses for offsetting against the revenue from the sale of other securities.

The Ukrainian Tax Code stipulates that in case of proceeds from trading with shares it is the profit (rather than the revenue) from such trading that constitutes Ukraine-sourced income of a non-resident. Respectively, a Ukrainian withholding tax at the general rate of 15% shall be applied to the profit rather than the revenue.

Second, an alternative structure which provides the opportunity for a debt push-down is to incorporate an acquisition company in Ukraine. This acquisition company will acquire the shares in the Ukrainian company owning the real estate.

Share deals of non-residents resulting in transfer of control of real estate located in Ukraine are taxed as noted in the above section.

## 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

### Thin capitalization

The Tax Code envisages that the object of the corporate profit tax is the financial result of the taxpayer (calculated in accordance with national or international financial standards) with due account for the tax differences. One of the tax differences concerns the tax payers in case when the overall value of debt obligations (loans, credits, interest-free loans etc.) received from non-resident related persons exceeds the equity capital of the tax payer more than 3.5 times (more than 10 times for financial institutions and lease companies). In such a case, the portion of accrued interest that exceeds the threshold increases the financial result of taxpayer. The threshold of allowed interest deductions is computed as 50% of the financial result of the taxpayer before taxes, financial and depreciation expenses.

The remaining portion of accrued interest not deducted in the current reporting period may be carried forward with due regard for the abovementioned limitation. Yet, the amount of such carried forward interest is reduced annually by 5%

**Transfer pricing rules**

The transfer pricing (TP) rules are envisaged in Article 39 of the Tax Code and are applicable only with respect to "controlled transactions". Namely:

- transactions with non-resident related parties;
- transactions on sale of goods through non-resident commercial agents;
- transactions with non-residents registered in low tax jurisdictions according to the list, adopted by the Cabinet of Ministers of Ukraine;
- transactions between related parties with the involvement of the formally independent persons provided that such persons do not perform any significant functions and/or do not use significant assets and/or do not bear significant risks in transactions between related parties.

The transactions according to the list are deemed controlled under the following conditions:

- the taxpayer's annual income from any sources, which is reported in accordance with accounting requirements exceeds UAH 50m (excluding indirect taxes) for the reporting year;
- the value of such transactions between the taxpayer and its contractor, defined in accordance with accounting requirements, exceeds UAH 5m (excluding indirect taxes) for respective fiscal year.

The established TP methods are in line with the OECD Guidelines. Taxpayers are required to file annual reports on controlled transactions before 1 May of the year following the reporting one.



### 6. Can acquisition costs/financing fees/interest be deducted?

**Share deal**

Costs which are related to the purchase of a Ukrainian company (e.g. due diligence costs, valuation costs etc.) are deductible. In some cases, there is a timing limitation on the deduction of interest, as outlined above.

**Asset deal**

The interest under the loan used for the acquisition of assets shall be immediately deductible. Other expenses of the acquisition company for the purchase of real estate will be capitalized and subject to depreciation for profit tax purposes.

### 7. Are there any possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

**Merger**

The principal option that may allow pushing down the debt to the operating level under Ukrainian legislation is a merger under universal succession. The merger is corporate income tax and VAT neutral.

**Group**

Ukrainian law does not provide for consolidation or group relief (grouping) for tax purposes with each legal entity within a group being recognized as a separate taxpayer.

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

Foreign legal entities deriving income from Ukraine – but not through a permanent establishment in Ukraine – are subject to withholding tax in respect of types of income that are specifically listed in the Tax Code. The general withholding tax rate for interest, dividends and royalties is 15%. Normally Ukrainian withholding tax may be capped at a lower rate by virtue of the double tax treaties concluded by Ukraine. The applicable rate may be substantially lower in case the loan is granted by a non-resident financial institution.

9. Is a loss carry forward or carry back granted and what are the restrictions?

Tax losses can be carried forward for an unlimited period of time.

The Ukrainian Tax Code does not provide for a loss carry back.

## C. Real Estate Taxes

1. Does Ukraine levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

For the transfer of real estate according to Ukrainian legislation the state duty at the rate of 1% or notary fee (if the deal is done through private notary rather than the state notary, where private notaries are made recently free in respect of pricing) and the contribution to the pension fund at the rate of 1% shall be paid based on the value of the agreement on transfer of real estate, i.e. the purchase price of the real estate. Literally only transfer under sale-purchase agreement is subject to the above-said charge to the pension fund.

The transfer of shares in a real estate owning company is not subject to any transfer tax in Ukraine.

2. Is real estate subject to any real estate tax? At which rate?

The Tax Code provides for property tax, which consists of three components:

- land fee;
- the tax for real estate other than plot of land;
- transport tax.

For owning and using land a land tax is charged in Ukraine. The level of the tax rate varies depending on the nature and location of the land. If the land has an estimated value then the tax rate shall not exceed 3% of that estimate for agricultural lands and 1% for general use lands. In case when the plots of land are used on a regular basis by a business entity (except for the state or communities) the rate shall not exceed 12% of its estimate value.

Natural persons and legal entities (including non-residents) owning residential real estate (other than a plot of land) are subject to tax on real estate in Ukraine.



The rate differs depending on the type of residential real estate object and its space. The rate is set by local authorities and shall not exceed 3% of the minimum salary (minimum salary as of 1 January of 2019 amounts to UAH 4,173, which is about EUR 149) per square meter of the object of real estate.

Transport tax is imposed on the owner of a motor vehicle in certain circumstances. However, this tax will not be elaborated on in further detail.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The sale of real estate will be subject to Ukrainian VAT at a regular rate of 20%. For residential premises VAT is applicable only for the so-called “first supply”. Subsequent resales of residential premises are exempted from VAT.

The sale of pure land is exempt of VAT.

Sale purchase of shares is not subject to Ukrainian VAT provided that the shares are paid with monetary funds or sold in return for other shares (securities).

2. What are the VAT consequences of renting/leasing of real estate?

The leasing of real estate (including land) for businesses is subject to VAT in Ukraine at the standard rate of 20%. Leasing out as private deal is normally not subject to VAT unless the whole activities in total may qualify as de-facto entrepreneurial activity.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

The equity injected into a local company is not subject to a capital tax in Ukraine. For the sake of completeness, if the injection of equity into a local company is accompanied by the issue of securities (i.e. in joint stock companies), such issue would be subject to the state duty at the rate of 0.1% of their nominal value. However, this amount must not exceed 50 times the annual minimum wage as of January of the relevant year.

## 2. Is there a stamp duty on debt granted to a local company?

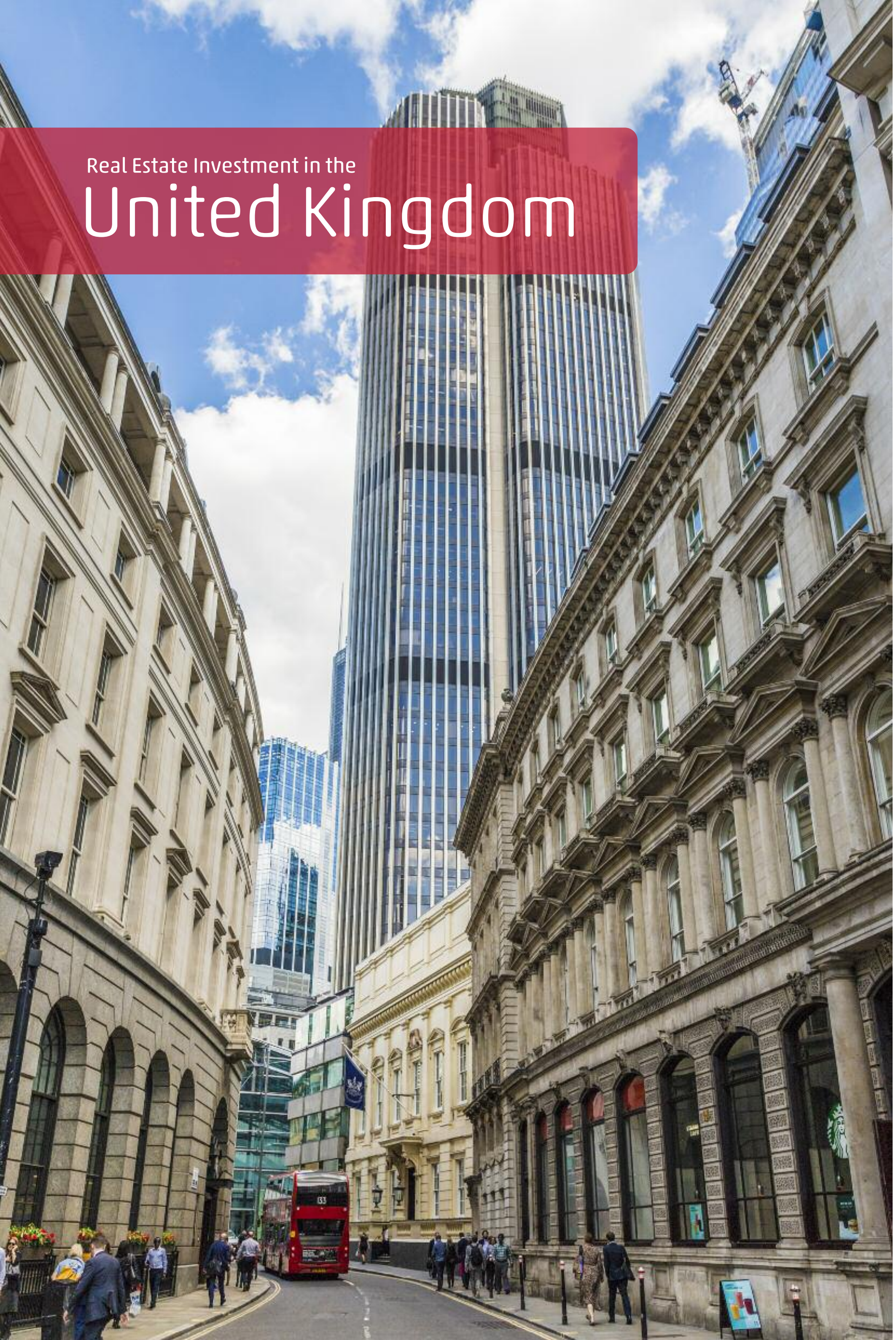
No stamp duty is payable on debt granted to a local company.

## 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

There are no Real Estate Investment Trusts as such. There are so-called Funds for Financing Real Estate Construction under banks as special instruments for financing real estate development and mutual funds (as specialized financial institutions) that may operate with certain instruments of the real estate developers (e.g. bonds that may be redeemed by exchange for real estate) and which practically may allow keeping gain on these special institutions where the profits are not subject to taxation until distribution.

Real Estate Investment in the

# United Kingdom



## A. Legal/General

1. Are non-residents entitled to acquire real estate in the UK? Does the acquisition have to be carried out by a British Corporation?

Yes, non-UK residents are entitled to acquire real estate in the UK. The acquisition can be carried out through any vehicle and is not restricted to a UK company.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2. What importance does the land register have?

The Land Registry registers the ownership of property. The most common types of title to be registered are estates in land, which broadly covers both freehold and leasehold estates where the lease has been granted for a term exceeding seven years.

A registered title has three parts:

- The property register describes the property and any beneficial rights.
- The proprietorship register records who owns the property.
- The charges register gives details of mortgages or rights that may affect the property.

Registering title provides an up-to-date official record of who owns the land. This register is guaranteed. So, if somebody suffers a loss because of a mistake or an omission from the register, they may be able to get compensation.

## B. Income Tax

1. What are the corporate and personal income tax rates?
   Are there special tax rates for real estate?
   Are there any participation exemptions?
   Does a tax-grouping exist? If yes, what are the requirements?

**Income tax**

UK resident individuals are, generally, liable to UK income tax on their worldwide income. Non-UK resident individuals are, in general, liable to income tax only on income that arises in the UK (with certain specific exemptions) and are not liable to UK tax on income arising outside the UK.

Previously, up to 5 April 2020, a non-UK resident company receiving rental income in respect of a UK property would also have been subject to income tax at the basic rate (currently 20%) under the Non-resident Landlords Scheme, described in further detail below. However, those taxpayers are now subject to UK corporate tax.

The position for non-resident trusts is more complicated, and they could either be subject to income tax or UK corporate tax, depending on their constitution.

For individuals, the income tax rates for the 2020/21 tax year are as follows:

| Taxable income | Rate |
|---|---|
| GBP 0 - 12,500 | 0% |
| GBP 12,501 - 50k | 20% |
| GBP 50,001 - 150k* | 40% |
| Over GBP 150k | 45% |

* *Note that the tax-free personal allowance of GBP 12,500 (for 2020/21) tapers to zero on a straight-line basis between incomes of GBP 100k and GBP 125k.*

Income tax is usually paid as part of the half-yearly payments on account on 31 January in the tax year and 31 July following, with a balancing adjustment on the next 31 January.

**Corporate tax**

UK tax resident companies are subject to corporate tax on their worldwide income and gains. The corporate tax rate is currently 19%. Legislation was passed to reduce the rate to 17% from 1 April 2020, this has now been reversed, such that the reduction will no longer take place.

UK resident companies pay corporate tax on all their profits under self-assessment. The payment due date is normally nine months after the end of the accounting period, except for certain large companies who are required to pay their tax by instalments. The filing due date is 12 months after the end of the accounting period.

The property business profit assessed to UK corporate tax is the income accrued in the accounting period. This income is pooled together with other income streams in calculating the UK tax charge due.

Previously, a non-UK resident company was chargeable to corporate tax only if it carried on a trade in the UK through a permanent establishment (broadly, a fixed place of business). The company was liable to tax on profits, wherever they arise, that are attributable to the permanent establishment. These rules were amended (with effect from 1 April 2016) such that a non-UK resident company is liable to a UK corporate tax charge when developing UK land with a view to disposing of the UK land to make a profit. This charge applies regardless of whether the seller has a UK permanent establishment.

In addition, from 6 April 2020, non-UK resident entities owning UK investment property will become subject to corporate tax on their property income *(in addition to capital gains as of 6 April 2019, see Non-resident Landlords Scheme section below)*. This will result in the corporate interest restriction, anti-hybrid mismatch and modified loss relief rules detailed in sections B.5. and B.9. below being applicable to such entities.

**Non-resident Landlord Scheme**

Where a non-UK resident receives rental income (whether an individual, trustee or a company), there are special regulations that apply. Known as the Non-resident Landlords Scheme, their tenants or property agent will be liable to withhold (and account to HMRC) UK income tax at the basic rate, currently 20%, on property income.

However, a landlord can apply to receive the rents paid gross, provided that it agrees to complete a UK self-assessment tax return for each tax year and pay UK income tax.

In that case, tax is charged on the property income, net of allowable expenses and net of any VAT on the rent (where this has been charged). For companies, the tax rate is now UK corporate tax rate of 19% (previously this was the basic rate of income tax, at 20%). For individuals, the tax rates and thresholds are as shown in the table above. It should be noted that since April 2017, for individuals the deduction of finance costs is being progressively restricted, such that from April 2020 only a basic rate tax reduction will be obtained.

As noted above, from 6 April 2020 non-UK resident corporates, and certain trusts, owning UK property will be subject to UK corporate tax on their income instead of UK income tax *(see section on corporation tax above)*.

There is no tax-grouping for income tax. However, under the corporate tax regime, companies automatically form a tax group where, broadly, they are under common corporate control amounting to at least 75% beneficial ownership. This does not treat group companies as a single entity for tax purposes but allows losses to be surrendered between companies. *See section B.9. for further details*.

Until 5 April 2019, as a general rule, non-UK residents were not subject to UK tax on the disposal of commercial properties that had been held for investment purposes *(see section B.3. below)*. However, from 6 April 2019 gains realised on direct disposals of UK commercial property investment assets by a non-UK resident corporate are subject to UK corporate tax (currently at 19%). Gains realised on an indirect disposal of a non-UK resident entity owning UK property are also subject to UK corporate tax where:

- a non-UK resident person disposes of an interest in a company (including entities deemed to be companies for capital gains purposes);
- that disposal is of an asset that derives at least 75% of its gross asset value from UK land (subject to a "property richness" test that traces property asset value through ownership structures); and
- that person holds at least 25% investment in that company (subject to a "substantial indirect interest" test that looks through ownership structures and groups together connected parties). Note, there is no such threshold where the investment held is directly or indirectly an interest in a collective investment vehicle;
- non-UK residents have been subject to UK capital gains tax on disposals of residential property since April 2015, subject to certain exemptions, primarily for widely held companies.

Note that, for commercial properties acquired by non-UK residents prior to 6 April 2019, gains will only be taxable in relation to increases in the value of property (or shares/partnership interests in UK property-rich structures) from its value as at 5 April 2019.

To the extent gains and losses are realised within a corporate group, it may be possible to elect the taxable gains to be offset against the losses. *See section B.9. for further details.*

**Dividends and other distributions**

Distributions received by a UK company are in principle chargeable to corporate tax on the recipient, although in practice most distributions will be exempt. However, details of the provisions are complex and therefore it is important to review each distribution on a case-by-case basis.

There is, in general, no UK withholding tax on dividends by a UK company.

**Withholding tax on REIT dividends**

The UK does not normally impose a withholding tax on dividends. However, a UK REIT is required to withhold tax at 20% (i.e. basic rate of income tax) on distributions except where the recipient is a company subject to UK taxation (or an exempt body such as a sovereign immune investor or charity). *See also section E.3*.

2. What is the tax depreciation period for real estate in the UK? Are there depreciation categories? Which depreciation method is used?

**Capital allowances**

Depreciation charged in the accounts is not an allowable deduction for tax purposes. Instead, it is replaced by a system of capital allowances which are available on certain types of fixtures, fittings, and other plant and machinery within a commercial building. Broadly, if available, they can be claimed on a reducing balance basis at either 6% or 18%, depending on the type of equipment purchased. They are also available to a purchaser of UK property where part of the purchase price is attributable to plant and machinery.

An Annual Investment Allowance allows a 100% deduction for qualifying expenditure up to the value of GBP 1m per corporate group, from January 2019. (AIA was GBP 200k in 2018/19).

In addition, there is a Structures and Buildings Allowance, which enables the majority of other new capital expenditure contractually committed to and/or incurred after 29 October 2018 on construction or refurbishment of a non-residential building (that does not qualify for the enhanced rates of relief detailed above) to be deducted against rental profits over a period of 33 years (i.e. 3% per annum on a straight-line basis). Note that on disposal of a property, the tax base cost will be reduced by the amount of Structures and Buildings Allowances claimed, potentially increasing the amount of any taxable gain realised.

Capital allowances are not available on residential property, except for furnished holiday lettings and communal areas in student accommodation buildings.

**Other methods of relief for capital expenditure**

In place of capital allowances, for furnished residential lettings (except for furnished holiday lettings) a deduction is available for capital expenditure on furniture, furnishing, appliances and kitchenware, provided it is used in the dwelling.

The amount of the deduction is:

- limited to the cost of an equivalent item if it represents an improvement on the old item (beyond the reasonable modern equivalent) plus
- the incidental costs of disposing of the old item or acquiring the replacement less
- any amounts received on disposal of the old item.

If a capital gains calculation is required upon disposal of the property, the following expenditure can be deducted from the UK proceeds received in respect of the property when calculating the capital gain on the property:

- the cost of acquiring the land plus any incidental costs;
- incidental costs of disposal, valuation of disposal such as professional fees, and advertising costs; and
- capital expenditure incurred on the enhancement of the property.

In addition, for properties acquired before 1 January 2018, an indexation allowance is available to reduce a capital gain, although indexation was withdrawn on 31 December 2017, so the calculation of the allowance only runs up to this date.

In respect of leased properties, dependent on the term of the lease an annual deduction may be available for any premium on the purchase of the lease.



## 3. When is a foreign investor subject to limited tax liability in the UK?

**Individuals**

As a general rule, prior to 6 April 2019, a non-UK resident individual was not liable to capital gains tax (CGT) upon the disposal of UK commercial real estate held for investment purposes. Non-resident individuals have been subject to CGT at 28% on gains accruing since April 2015 on the disposal of UK residential properties.

Prior to 6 April 2019, if the year was a split year (such that individual was only non-UK resident for part of the year), gains accruing during the overseas part of the year were not chargeable to capital gains tax. Residency can be a complex area and would need to be reviewed on a case by case basis.

**Companies**

As mentioned in section B.1. above, prior to 6 April 2019 companies were generally not subject to CGT on gains on disposal of commercial properties held for investment purposes. Non-resident companies are subject to CGT at 20% on gains accruing since April 2015 on disposal of residential investment properties (subject to some exemptions, primarily for widely held companies).

From 6 April 2019 gains realised on (i) a direct disposal of a UK property by a non-UK resident entity; or (ii) an indirect disposal of a non-UK resident entity deriving at least 75% of its value from UK property (subject to the significant interest rule, if applicable) will be subject to UK corporation tax.

For commercial properties acquired before 6 April 2019, only gains accruing from that date are subject to tax, therefore companies should carry out a valuation of their commercial properties as at 5 April 2019 to confirm the rebased value. There is also an option to retain the original base cost of the property, for example, if the 5 April 2019 valuation as lower than the historical base cost, however this cannot be used to generate an allowable loss.

Gains realised by both UK and non-UK resident companies, and certain other non-natural persons, on a disposal of a high value (meaning valued over GBP 500k) UK residential property that falls within the ATED regime *(see section C.2.)* were chargeable to "ATED-related" CGT (at 28%), on gains accruing from 6 April 2013, in the case of disposals prior to 6 April 2019. However, ATED-related CGT was abolished when the scope of capital gains tax for non-residents was expanded, with the effect that gains on such disposals from 6 April 2019 will be subject to corporate tax (based on the increase in value from 6 April 2013, with indexation allowance available up to 31 December 2017).

As noted above a non-UK company is now also liable to a UK corporate tax charge when developing UK land with a view to disposing of the UK land to make a profit. This charge will apply regardless of whether the seller has a UK permanent establishment.

## 4. Are asset deals and share deals possible in the UK? What are the main consequences?

Asset deals and share deals are possible in the UK. The main tax driver for share deals from a purchasers' perspective has historically been the stamp duty land tax (SDLT) saving as acquisitions of shares in UK property-rich companies are not subject to SDLT – although commercially sellers often seek to share in such a saving. (Note UK share acquisitions may be subject to stamp duty, but the rate is much lower and the tax base typically lower too – *refer to section C.1.*). Another tax-related benefit of a share deal is the potential for brought forward losses to be offset against future profits. *For further details see section C.*

Consideration should be given to whether a share deal could be subject to a price reduction as a result of the latent taxable gain on the property in the company, this will become more relevant following the changes to the capital gains tax regime for non-UK residents from 6 April 2019, due to the prevalence of non-UK companies holding UK property. For a non-UK investor, a share disposal itself is also likely to be subject to tax on the increase in value from 6 April 2019, and therefore there is a possibility that tax is effectively (economically) paid twice by the seller.

It should be noted that there are other tax and non-tax factors to be considered when assessing the merits of an asset deal versus a share deal, such as due diligence costs and compatibility with the purchaser's structure.

## 5. Are thin capitalisation rules applicable? Are there other limitations of interest deduction applicable?

**Thin capitalisation, transfer pricing**

There is no "safe-harbour" debt-to-equity ratio within the UK tax legislation. The UK's thin capitalisation provisions form part of the transfer pricing regime. The rules have the effect that transfer pricing adjustments may be required in cases where related party debt is on non-arm's-length terms or where third-party debt results in a company being thin capitalised as a result of guarantee from a related party.

The UK transfer pricing provisions require non-arm's-length transactions between associated persons to be adjusted for tax purposes to the normal arm's-length price. These provisions apply not only where one of the companies is non-resident but also where both are UK resident. There are, however, exemptions for most small and medium-sized companies.

**Interest limitation rules**

Pursuant to Action 4 of the BEPS process, corporate interest restriction rules were effective from April 2017 for companies' that are subject to UK corporation tax. These rules introduced a fixed ratio rule limiting corporation tax deductions for interest expense to 30% of a group's UK EBITDA, or alternatively a group ratio rule limiting interest deductions to the same proportion of UK EBITDA as the ratio of third-party financing to worldwide group EBITDA. These rules apply above a de minimis of GBP 2m for each corporate group. Interest deductibility is also subject to debt cap rules, which broadly limit the amount of financing costs for which the UK group can claim a deduction to the amount of the gross consolidated finance expenses of the worldwide group.

There is an exemption (subject to certain conditions and making an election) which broadly enables entities that hold UK real estate that is let to third parties on leases under 50 years to deduct all interest in relation to third party financing.

From 6 April 2020 this also now applies to non-resident companies carrying on a UK property business.

**Anti-hybrid rules**

Hybrid mismatch rules were introduced for UK corporate tax payers effective from 1 January 2017. These generally apply where hybrid instruments or entities exist within a financing structure. Typical examples of this are companies that are elected as "disregarded" for US tax purposes, or financing instruments which are treated as debt for the borrower and equity for the lender. Note that the rules are not restricted to related party arrangements; as such they may apply to third party debt if the lender's own structure includes hybrid instruments or entities. Further, the rules do not contain a motive test, so can apply to wholly commercial transactions.

### 6. Can acquisition costs/financing fees/interest be deducted?

The UK's interest deductibility rules are complex and specific advice should be sought, when entering into any financing transaction, to confirm the tax implications. Tax deductions are typically available for the financing costs related to the acquisition and development of property, including but not limited to: interest payable; costs of obtaining loan finance; and abortive expenditure and expenses incurred in connection with a loan facility which is never drawn. The deduction for the interest and other costs is normally given on the same basis as in the accounts.

*Please refer to section B.5. which discusses some of the restrictions that may apply to interest deductions.*

Property acquisition costs (such as SDLT, broker fees and professional fees) are capital items and cannot be deducted in computing the income tax or corporate tax liability on rental profits. However, such expenditure will increase the tax base cost of the property, therefore reducing the tax liability on a gain on eventual disposal (if UK tax is applicable).

### 7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

A debt push-down may be effected by refinancing the acquired company (target). However, for that purpose the loan amount will be restricted to the original cost of the property plus any subsequent capital expenditure. Alternatively, interest expenses may be surrendered to another UK group company (within a 75% group) to offset against its profits under the group relief provisions. Group relief provisions only apply if both companies are within the scope of UK corporate tax.

*Please refer to section B.5. which discusses some of the restrictions that may apply to interest deductions.*

### 8. Is there a withholding tax on interest payments paid by local company to creditor?

UK domestic law generally requires companies making payments of interest to withhold tax at 20%. However, there are a number of exceptions, the main relevant ones being as follows:

- payments by UK resident companies to other UK resident companies;
- payments to a UK bank or UK branch of a foreign bank;
- payments that qualify for exemption under a tax treaty or the EU interest and Royalties Directive (although the applicability of any EU Directives should be monitored in light of the departure of the UK from the EU);
- payments of interest on private placement debts by UK companies;
- payments of interest on a "quoted Eurobond" (broadly a loan note that is listed on a recognised stock exchange and carries a right to interest);
- payments of "short" interest (broadly a loan of less than one year); and
- payments of interest that do not "arise" in the UK. There is no legislative definition on whether interest is "UK source" and instead the definition is based on case law. In determining the source, HMRC will consider the residence of the debtor, the source of funds for payment of interest and the location of any security for the debt.

Where treaty relief applies, a lender can register with the HMRC Double Taxation Treaty Passport Scheme (DTTPS) enabling interest to be paid gross by the borrower providing it notifies HMRC for the loan in accordance with the conditions of the DTTPS. In the absence of the DTTPS applying, a stand-alone treaty relief application must be made to HMRC.

### 9. Is a loss carry forward or carry back granted and what are the restrictions?

All lettings carried on by a particular person are amalgamated for UK tax purposes and treated as a single property business. Thus, if some properties are loss-making and others profitable, the set-off for tax purposes is made automatically.

**Income tax**

An income tax UK property business loss is carried forward against any future income from that business. It cannot be set against income from other sources, with the exception that a rental loss by a builder from a property held as trading stock can, by concession, be allowed as a trading expense instead of being carried forward as a UK property business loss.

Non-resident landlord companies were previously subject to income tax and could not form a group to enable losses to be offset between companies (until 5 April 2020). Losses carried forward at 5 April 2020 will be available as, effectively, brought forward losses for those companies under corporate tax.

**Corporate tax**

A UK property business loss of a company chargeable to corporate tax can be set against total UK profits of the accounting period. It can also be surrendered to another group company that is subject to UK corporate tax.

Previously, any unutilised loss carried forward could only be relieved against the future profits of the same company. Since 1 April 2017, carried forward losses arising after that date are capable of being offset profits of other companies within the group. However, a restriction was also introduced from this date whereby loss relief is limited to 50% of profits where those profit exceed GBP 5m. The GBP 5m allowance applies to the group as a whole. This restriction applies to both income losses and capital losses, from 1 April 2020.

These modified loss relief rules will apply to non-UK companies which own UK real estate when they are brought into the scope of corporate tax from 1 April 2020, including the ability to form part of a group for loss relief purposes. Losses previously generated under the income tax regime can be carried forward into the new regime, however they will be ringfenced and therefore only able to be offset against future UK property rental profits of that company.

In the event of a change in ownership, losses can be forfeited in certain circumstances. Broadly, this is where there is either a major change on the nature or conduct of the trade/investment business of a company, or, only in the case of an investment business, a significant increase in the company's capital.

## C. Real Estate Taxes

1. Does the UK levy a real estate transfer tax on sale of real estate or shareholdings? Is it avoidable?

**Stamp duty land tax (SDLT) on the purchase of real estate**

SDLT is chargeable on the VAT-inclusive price paid for the acquisition of any interest in UK property. It is payable by the purchaser.

The current rates of SDLT in England and Northern Ireland are set out in the tables below. Note that the SDLT charge is paid on the portion of the property price falling within each band on a tiered basis:



| **SDLT on non-residential or mixed-use property, based on consideration** | **Rate** |
|---|---|
| Up to GBP 150k | Nil |
| >GBP 150k to GBP 250k | 2% |
| >GBP 250k | 5% |

| **SDLT on residential property, based on consideration** | **Rate** |
|---|---|
| Up to GBP 125k | Nil |
| >GBP 125k to GBP 250k | 2% |
| >GBP 250k to GBP 925k | 5% |
| >GBP 925k to GBP 1.5m | 10% |
| >GBP 1.5m | 12% |

The acquisition of residential property in the UK is subject to a 3% SDLT surcharge in addition to the rates set out above, if the purchaser already owns a residential property or a share in a residential property in the UK or elsewhere (subject to certain exclusions). In addition, from 1 April 2021 an additional 2% SDLT surcharge will apply for non-UK residents purchasing residential property in England and Northern Ireland. Also, note that SDLT is charged at 15% on the acquisition of residential property costing more than GBP 500k by a company, unless certain conditions apply – broadly being if the property is used as part of a business.

Where a transaction involves the acquisition of 6 or more dwellings, for example, an apartment block or certain student accommodation, the purchase would ordinarily be treated as non-residential for SDLT purposes. Where two or more dwellings are acquired, there is the option of claiming Multiple Dwellings Relief, which can reduce the overall SDLT liability. This works by applying the residential rates based on the average price per dwelling, subject to a minimum of 1% (or higher if a surcharge is applied).

From 1 March 2019 the filing deadline for SDLT returns has reduced to 14 days after a transaction instead of 30 days.

Note that Scotland and Wales have implemented separate regimes for the equivalent of SDLT, with slightly different rates and bands, and some differences in the way some reliefs operate.

**Stamp duty on the purchase of shares**

There is a charge to stamp duty in the UK on the sale or transfer of stock or marketable securities (which is ordinarily limited to the transfer of UK company shares or stock). The charge is a percentage of the consideration given for the transfer of the shares. The percentage rate is 0.5% and the stamp duty is rounded up to the nearest multiple of GBP 5. Stamp duty is payable by the purchaser.

Note that the stamp duty liability is calculated on consideration paid for the shares and therefore is usually equal to the net asset value of the company. As such if a property-owning company is financed with debt, the stamp duty charge will usually be predominantly based on the net of the property value and the outstanding debt. As noted above, stamp duty is not ordinarily applicable on the purchase of shares in non-UK companies or units in non-UK property unit trusts.

There are various reliefs available in order to minimise stamp duty and SDLT. These are complex rules and are applied based on the facts on a case by case basis. The most common stamp duty and SDLT relief is on intra group transfers between group companies.

2. Is real estate subject to any real estate tax? At which rate?

**Annual tax on enveloped dwellings (ATED)**

ATED applies to UK residential property worth more than GBP 500k that is acquired by companies and certain other non-natural entities.

For properties acquired prior to 1 April 2017, the value for ATED purposes is based on the 1 April 2017 market value for periods from 1 April 2018 onwards. Otherwise the value is based on the acquisition price.

The annual ATED chargeable amounts are as follows:

| Taxable value of the interest on the relevant day | Annual chargeable amount* |
|---|---|
| >GBP 500k to GBP 1m | GBP 3,700 |
| >GBP 1m to GBP 2m | GBP 7,500 |
| >GBP 2m to GBP 5m | GBP 25,200 |
| >GBP 5m to GBP 10m | GBP 58,850 |
| >GBP 10m to GBP 20m | GBP 118,050 |
| >GBP 20m | GBP 236,350 |

* *For the 2020/21 tax year. The annual chargeable amounts for ATED are increased each year in line with the Consumer Prices Index (CPI).*

There are reliefs (e.g. for property rental businesses and property developers) and exemptions (e.g. for charities) that may apply to eliminate an ATED liability.

ATED returns must be filed (and any ATED paid) annually by 30 April for any eligible property held at 1 April.

**Business Rates**

In addition, the UK imposes a local property tax, called "Business Rates" (or referred to simply as "Rates"), collected from the property occupiers. Rates are based on the annual rental value of the property as assessed by the Valuation Office Agency, an executive agency of HMRC.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

**Commercial property**

The sale of a commercial property is generally exempt from VAT and as such no VAT can be recovered on costs directly relating to the sale. However, there are two instances where the standard rate of VAT will apply (currently 20% in the UK):

- where it is the outright sale (freehold) of an incomplete or new (completed in the three years prior to sale) commercial property; and
- where the owner of the property has opted to tax (i.e. elected to charge VAT on the sale or letting).

Charging VAT on the sale enables VAT to be recovered on the transaction and any development costs. Therefore, it is not uncommon for sellers to opt to tax the property prior to sale. While there are no restrictions as to who can opt to tax a property, it should also be noted that anti-avoidance provisions can disapply an option to tax in certain instances which can give rise to significant VAT costs on disposals. These anti-avoidance rules are complex and can apply in a broad range of scenarios. However, they generally apply to circumstances where a disposal is made to a connected party who cannot recover the majority of the VAT they incur.

Where the property is let to a third party prior to the disposal and the purchaser intends to continue letting the property, then a sale may be treated as a "Transfer of a Going Concern", or TOGC, provided certain conditions are met. In that situation, the sale will not be subject to VAT, which will reduce funding costs and SDLT (which is charged on the VAT inclusive consideration).

Where the property is a "Capital Goods Scheme Item", significant adjustments to VAT previously recovered on Item may be required by the seller on sale of the property. This is particularly the case where the sale is exempt from VAT where a claw-back of VAT, previously recovered can arise. A Capital Goods Scheme Item will exist where in the preceding ten years, GBP 250,000 was spent on acquiring, constructing, altering, extending or refurbishing land or buildings.

**Residential property**

The sale of a residential building is generally exempt from VAT and as such no VAT can be recovered on costs directly relating to the sale. However, the first sale of the freehold (or grant of a lease of more than 21 years) by a person constructing a residential building is subject to VAT at the zero rate. In those instances, VAT incurred on the construction (with the exception of certain goods) or sale can be recovered by the seller.

The sale of refurbished existing residential property is exempt from VAT. Therefore, the seller is unable to recover VAT incurred on the refurbishment.

### 2. What are the VAT consequences of renting/leasing of real estate?

**Commercial property**

Where an owner of a property has opted to tax (i.e. elected to charge VAT on the sale or letting), then the rental or lease of a commercial property will be subject to VAT at the standard rate (subject to a small number of exceptions). Otherwise, the rental or lease will be exempt from VAT.

If a landlord does not opt to tax the property, it will not generally be able to recover any of the VAT it pays when acquiring, maintaining or refurbishing the property, and that VAT will become an absolute cost.

**Residential property**

The rental or lease (other than the first grant of a lease exceeding 21 years by the person constructing) of a residential property is exempt from VAT, and VAT on costs relating to the letting such as maintaining the property is not recoverable.

## E. Other Taxes

### 1. Is there a capital tax for equity injected into a local company?

No.

### 2. Is there a stamp duty on debt granted to a local company?

There is no stamp duty payable on debt granted to a UK company. However, if there is debt involved in respect of the sale or transfer of shares then this may form part of the "chargeable consideration" used to calculate the stamp duty payable on the shares *(see in conjunction with the answer to section C.1.)*.

### 3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

A special regime exists for Real Estate Investment Trusts (REITs). Under the REIT regime, there is no corporate tax on property business income or gains on disposals, either of properties directly or shares in property-rich companies.

Broadly, in order to qualify for the regime a REIT must:

- distribute 90% of its property income to shareholders every year;
- derive at least 75% of profits from property rental, and 75% of the company's assets must be involved in the property rental business;
- have at least 3 properties (though this can include floors in an office let to different tenants, or units in a shopping centre) with no property exceeding in value 40% of the total value of the portfolio;
- be a close-ended company;

- have its shares admitted to trading on a recognised stock exchange (although there is no requirement for the shares to actually be traded);
- be tax resident only in the UK;
- have one class of ordinary shares; and
- not have any "non-commercial loans".

Dividends from REITs are treated as property income to the investor, and are taxed accordingly. These dividends are subject to a withholding tax at the basic rate of income tax (currently 20%), except for certain classes of investors who can register to receive gross rather than net payments. These include charities, UK companies and UK pension funds. In addition, investors in countries with a tax treaty with the UK may be able to access a reduced rate of withholding tax (typically 15% where applicable).

Real Estate Investment in the

# United States of America

## A. Legal/General

1. Are non-residents entitled to acquire real estate in the US? Does the acquisition have to be carried out by a US corporation?

In general non-residents may acquire US real estate and are treated the same as US persons. Some states, however, have laws restricting foreign ownership of certain types of real estate, such as land used in agriculture. Some states also have restrictions relating to the inheritance of real estate by foreign persons. Often, it is possible to structure an investment to avoid the applicability of such laws.

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2. Which importance does the US land register have?

The ownership of real estate is generally governed by state and local law which varies from state-to-state. States maintain land registers through which the ownership of land is publicly recorded. Although in many states an ownership interest and real property may be conveyed by way of a private contract (e.g. a deed), in order to establish ownership rights with respect to third parties, filing with the land register is generally required.

## B. Income Tax

1. What are the corporate and the personal income tax rates? Are there special tax rates for real estate? Are there international participation exemptions? Does a tax-grouping exist? If yes, what are the requirements?

**Corporate**

At the federal level, corporate income tax is assessed at a flat 21% rate. In addition, many US states and local jurisdictions also impose income taxes on corporations (0-12%).

US corporations are generally permitted a 100% dividend-received deduction (participation exemption) on the foreign-source portion of dividends from 10%-owned foreign corporations.
An affiliated group of US corporations may elect to file a consolidated federal income tax return. An affiliated group is composed of a parent and its 80%-owned subsidiaries, which must generally be other US corporations (except for certain Canadian and Mexican entities). Members of a consolidated group may generally offset the profits of one member against the losses of another member. State income tax laws may variously allow, require, or forbid filing consolidated (combined) returns.

**Individual**

In general, federal income tax for individuals is assessed at graduated rates ranging from 15% to 37%, and state income tax at rates between 0% and 13%. Individuals (but not corporations) may be entitled to a preferential federal tax rate of up to 20% on long-term capital gains (an additional 3.8% Net Investment Income Tax may be assessed on US residents). Gain on the sale of real estate held for at least one year generally qualifies for this rate (assuming it is not treated as inventory). Unrecaptured Section 1250 gain (depreciation recapture on certain long-lived assets) is taxed at rates up to 25%. Depreciation recapture under Section 1245 may also apply and would be taxed at ordinary income rates.

### 2. What is the tax depreciation period for real estate in the US? Are there depreciation categories? Which depreciation method is used?

Generally, commercial real estate (non-residential real estate) is depreciated over 39 years and residential real estate is depreciated over 27.5 years. Depreciation for real estate is on a straight-line basis. Land is not subject to depreciation deductions, although certain natural resources (e.g., minerals) may give rise to a depletion deduction.

### 3. When is a foreign investor subject to limited tax liability in the US?

Rental income may be subject to gross-basis or net-basis taxation, depending on whether the rental activities constitute a "US trade or business", If the activities do not constitute a US trade or business, the gross rental income paid to a foreign person is generally subject to a 30% tax. An election can be made to apply net-basis taxation even in the absence of a US trade or business. Qualified foreign pension funds are now generally exempt from the tax on capital gain from the sale of US real estate unless such gain was connected to a US trade or business.



Gain on the sale of US real estate, including shares in a so-called US Real Property Holding Corporation ("USRPHC"), is generally taxable to a foreign investor under the Foreign Investment in Real Property Tax Act ("FIRPTA"). If FIRPTA applies on a disposition of a US real property interest ("USRPI"), the buyer/transferee is generally required to withhold 15% of the amount realized on the disposition.

### 4. Are asset deal and share deal possible in the US? What are the main consequences?

Yes, it is possible to sell the shares of a real estate holding company or the real estate directly. The direct sale of real estate is taxable to a foreign investor as noted above. The buyer takes a tax basis in the real estate equal to the purchase price and a new tax depreciation period and tax basis is established. If the transaction involves buyer and seller exchanging real property held for use in a trade or business or for investment ("like-kind exchange"), taxation on some or all of the gain may be deferred.

New rules treat gain or loss on sale of an interest in a US partnership by a foreign person as income effectively connected with a US trade or business which is taxable in the US. The buyer/transferee of the partnership interest is generally required to withhold 10% of the amount realized on the sale. These rules are applicable to transfers occurring on or after 27 November 2017.

On stock sales, the sale of a USRPHC is taxable to a foreign investor but does not result in a new tax depreciation period or a step-up in tax basis unless certain elections are made to treat the stock sale as a deemed sale of assets (IRC Section 338 election). If a partnership interest is acquired, a step-up may be obtained on the underlying assets of the partnership if an election under Section 754 is in effect.

### 5. Are thin capital rules applicable? Are there other limitations of interest deduction applicable?

Beginning in 2018, deductible interest expense is limited to 30% of adjusted taxable income, which is similar to EBITDA (earnings before interest, taxes, depreciation, and amortization) for tax years beginning before 2022 and EBIT (earnings before interest and taxes) thereafter. Interest expense disallowed in a taxable year may be carried forward indefinitely to be deducted in a subsequent taxable year. Disallowed interest expense may not be carried back to a prior year, and taxable income in excess of that needed to fully deduct the interest expense in one year may not be carried over to subsequent years. These new interest limitation rules do not apply to certain electing real property or farm businesses which may not depreciate certain assets on an accelerated schedule. There are also exceptions for small businesses with less than USD 25 million in annual gross receipts, certain utilities, and taxpayers incurring floor plan financing interest on vehicle sales.

There are also proposed regulations that would add stricter requirements to certain related-party debt transactions. These would include documentation requirements as well as the recharacterization of certain transactions into equity (resulting in a loss of the interest expense deduction as well as potential dividend withholding).

6. Can acquisition costs/financing fees/interest be deducted?

Generally, acquisition costs must be capitalized and depreciated over the life of the real estate. Financing fees are generally capitalized and amortized over the duration of the loan. Arm's-length interest on acquisition indebtedness can generally be deducted subject to various limitations such as passive activity rules, basis limitation and, for a corporate entity, earnings stripping rules.

7. Are there possibilities to allow pooling of debt financed interest with income of target (debt push-down)?

Yes. Subject to the limitation on deductible interest discussed above, earnings stripping rules, debt versus equity principles, and other limitations relating to the deductibility of interest, an acquisition can generally be structured to leverage a target entity. Proposed regulations would treat as equity purported debt arising in certain push-down structures.

Under IRC Section 382, net operating losses become subject to an annual usage limitation upon certain ownership changes. The annual limitation is generally the value of the company immediately before the ownership change multiplied by a specific interest rate published monthly by the IRS. In certain cases, debt push downs can reduce the value of the company for purposes of this annual limitation calculation.

8. Is there a withholding tax on interest payments paid by local company to creditor?

Generally, interest paid to a non-US person is subject to a 30% withholding tax. There are several exemptions and also the possibility to reduce the withholding tax through application of a double tax treaty.
Interest paid by US persons to foreign related parties may be subject to a new 10% minimum tax (rising to 12.5% beginning in 2026) called the Base Erosion and Anti-Abuse Tax ("BEAT"). BEAT generally applies only to taxpayers with at least USD 500 million in annual gross receipts who make significant amounts of deductible payments to foreign related parties.

9. Is a loss carry forward or carry back granted and what are the restrictions?

For both individuals and corporations, ordinary net operating losses incurred in pre-2018 taxable years may be carried back 2 years and forward for 20 years. Net operating losses incurred in 2018 and beyond may be carried forward indefinitely but (1) generally may not be carried back and (2) may only be used to offset up to 80% of taxable income. Rules prevent individuals and closely-held corporations from using passive activity losses from offsetting income from non-passive activities in which the taxpayer materially participates.
For corporations, capital losses may be carried back 3 years and forward for 5 years and may not be used to offset ordinary income. Individuals may not carry back capital losses but may carry them forward indefinitely and use up to USD 3,000 per year to offset ordinary income.
Utilization of pre-acquisition loss carry forwards and other tax attributes may be limited after a significant change in ownership of a corporation. Treatment of net operating losses for state income tax purposes often differs from federal rules.

## C. Real Estate Taxes

1. Does the US levy a real estate transfer tax on sale of real estate or shareholdings?

Yes, as noted above, gain on the sale of real estate or shares in a USRPHC is generally subject to income tax. In addition, states and localities may impose a transfer tax based on the value or sale price of the real estate. Some states also impose the transfer tax on the sale of holding company shares for long-term leases of real estate (generally over thirty years). Rates are typically under 1%, although in some location the rate is over 1%.

States may also impose real estate transfer taxes on the transfer of title for real property. Generally it is a form of an ad valorem tax that is based on the value of the property deemed to be real estate upon the transfer of the property upon sale. A majority of states including the District of Columbia have provisions for this tax. State statutes specify whether the buyer or seller is responsible for paying the tax. There are also instances (also governed by state statute) that may exempt the transfer from taxation.

2. Is real estate subject to any real estate tax? At which rate?

In every state, real estate tax is annually imposed on owners of property unless specifically exempted by law based on its fair market value times an assessment ratio that may vary by class within each state times a tax rate. The values are determined by local taxing authorities and the local levies are also determined on a local basis for the required revenue needed for municipalities' tax levies. Since values and tax rates are specific to each location, the variation of effective tax rates on full market value can vary significantly from about 0.5% up to about 3%, with an estimated median rate of about 1.5%.

## D. Value Added Tax

1. What are the VAT consequences of a sale of real estate?

The US does not impose VAT. States typically impose sales tax on a sale of tangible personal property, but not on real estate transactions. Instead, a real estate transfer tax is typically imposed *(see C.1.)*.

2. What are the VAT consequences of renting/leasing of real estate?

Some states impose sales tax on rental payments. This is more typically the case with commercial real estate. Rates vary dependent on the location of the property and jurisdiction.

## E. Other Taxes

1. Is there a capital tax for equity injected into a local company?

From a federal income tax perspective, contributions to the capital of a corporation owned at least 80% by the contributor are generally tax-free if the contribution is made solely in exchange for stock of the corporation.

The contribution of cash to a partnership in exchange for partnership interests is also tax-free. There may be additional consequences on contribution of property other than cash.
Contributions to corporate or partnership capital may have consequences from a state franchise tax perspective.



2. Is there a stamp duty on debt granted to a local company?

Generally, no. However, if a loan is secured by a mortgage on real estate, the mortgage document should be recorded with the land register and a recording fee is generally imposed. Recording fees are usually a flat fee and are set at the state or local level.

3. Does a special regime for Real Estate Investment Trusts exist? If yes, what are the requirements?

- ➔ An eligible entity meeting certain organizational and record-keeping requirements may elect to be taxed as a REIT on its annual federal income tax return. An eligible entity must:
  - » be managed by one or more trustees or directors (centralized management);
  - » organized as a corporation, trust, or association;
  - » have beneficial ownership evidenced by transferable shares or certificates;
  - » may not be an insurance company, a bank, or other financial institution;
  - » beginning with its second taxable year, a REIT must also be owned by 100 or more persons; and
  - » must not meet the requirements to be considered a personal holding company during the last half of its taxable year (i.e. more than 50% of the value of the REIT stock may not be owned by five or fewer individuals). To this end, a REIT must demand written statements from its shareholders disclosing the beneficial owners of its stock and maintain a list of share holders who do not comply.
- ➔ An entity must meet annual income and quarterly asset tests to be taxed as a REIT:
  - » Income – At least 75% of the entity's gross income must be from real estate sources (e.g. rents from real property, interest on obligations secured by mortgages on real property, gain from the sale or disposition of investment real property). In addition, at least 95% of gross income must be either from the aforementioned real estate sources or from other specified sources, including interest, dividends, and gains from sale of stock.
  - » Assets – At the close of each quarter, at least 75% (by value) of the entity's assets must be composed of real estate assets, cash and government securities, or certain personal property such as loans secured by real property. A REIT is also subject to limitations on its holdings of various types of securities and nonqualified publicly offered REIT debt instruments.

- Finally, a REIT must distribute as shareholder dividends an amount which is at least 90% of its ordinary REIT taxable income plus 90% of its after-tax net income from foreclosure property, less any excess non-cash income.
- Foreign shareholders in a REIT may be subject to US withholding tax on dividends and capital gain distributions from the REIT as well as on gain from disposition of the REIT shares.
- Dividend income received from a REIT is generally subject to a 30% withholding tax, which may be reduced under an applicable double tax treaty.
- Distributions attributable to the REIT's capital gains are treated as gains from the disposition of a USRPI *(see B.3. above)* and subject to withholding at the highest corporate tax rate, currently 21%.
- If a REIT is domestically controlled, gain on disposition of the REIT stock by a foreign shareholder is generally not taxable in the US. If the REIT is foreign controlled, the REIT is considered to be a USRPHC *(see B.3. above)*, and the gain on the disposition of the REIT stock is then subject to withholding under the FIRPTA regime.
  - A REIT is domestically controlled if, at all times during the the five-year period ending on the date of the disposition, less than 50% in value of the REIT's outstanding stock is held, directly or indirectly, by foreign persons.

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