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Key Tax Issues at Year End for Real Estate Investors 2015/2016

An overview of year-end to-dos and important issues in real estate taxation in 34 tax systems worldwide.

Introduction

International tax regimes are diverse, complex and variant, and are usually full of fixed dates, terms and deadlines. These dates, terms and deadlines need to be observed carefully in order to avoid penalties and to receive certain tax reliefs or exemptions. At year end these obligations become even more difficult to understand and fulfil, particularly for real estate investors with investments in numerous countries.

This publication gives investors and fund managers an overview of year-end to-dos and important issues in real estate taxation in 34 tax systems worldwide.

Furthermore, it highlights what needs to be considered in international tax planning and the structuring of real estate investments.

Please note that the list of year-end to-dos is not exhaustive. Further matters may have to be relevant.

This publication is intended to help detect the need for a specific action or to demonstrate the various options. It has been prepared by PwC for general guidance, and does not constitute professional advice. You should not act upon information contained in this publication without obtaining specific professional advice.
No representation or warranty (express or implied) is given to the accuracy or completeness of the information contained in this publication.

We hope that you will find *Key Tax Issues at Year End for Real Estate Investors 2015/2016* a useful reference and source of information. We would be pleased to assist you with any further requests.

Berlin, December 2015

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List of abbreviations

ACE	Allowance for Corporate Equity
AFIP	Administración Federal de Ingresos Públicos
AIFM	Alternative Investment Fund Managers
approx.	Approximately
ALUR	Accès au Logement et un Urbanisme Rénové
CFC	Controlled foreign corporation
CIT	Corporate Income Tax
CITA	Corporate Income Tax Act
CITL	Corporate Income Tax Law
DDD	Deemed dividend distribution
DFL-2	Decreto con Fuerza de Ley N° 2
DTT	Double Tax Treaty
EBIT	Earnings before interest and tax
EBITDA	Earnings before interest, tax, depreciation and amortisation
ECJ	European Court of Justice
EEA	European Economic Area
EFTA	European Free Trade Association
e.g.	exempli gratia (for example)
ETF	Enhanced Tier Fund
etc.	et cetera (and so forth)
EU	European Union
EUR	Euro
FAIA	Computerised Tax Audit File from the Luxembourg VAT authorities
FCDB	Foreign currency denominated bond
FCP	Fonds commun de placement

FCS	Foreign controlling shareholder
FX	Foreign exchange
FY	Fiscal year
GAAP	Generally Accepted Accounting Principles
i.e.	id est (that is)
IFRS	International Financial Reporting Standards
incl.	Including
IP rights	Intellectual property rights
IRAP	Italian regional production tax
IRES	Italian Corporate Income Tax
IRS	Internal Revenue Service
I&R Directive	Interest and Royalties Directive
IT	Information technology
JPY	Japanese yen
KRW	South Korean won
LTL	Lithuanian litas
LVL	Latvian lats
MIT	Managed Investment Trusts
MREC	Mutual Real Estate Company
MULC	Mercado Unico y Libre de Cambio
NATO	North Atlantic Treaty Organization
NFFE	non-financial foreign entities
NID	Notional interest deduction
NOL	Net operating losses
PE	Permanent establishment
OECD	Organisation for Economic Co-operation and Development
RE	Real estate
REIT	Real Estate Investment Trust

RET	Real Estate Tax
RETF	Real Estate Trust Fund
RON	Romanian leu
RRR	Renovation, reconstruction or restoration
RUSF	Resource Utilization Support Fund
SAF-T	Standard Audit File for Tax Purposes
SCPI	Société Civile de Placement Immobilier
SCSp	Société en Commandite Special
SICAR	Société d'Investissement en Capital à Risque
SICAV	Société d'Investissement à Capital Variable
SIFT	Specified Investment Flow-Trough
SIIC	Sociétés d' Investissements immobiliers cotées
SME	Small middle enterprises
SPA	Sales purchase agreement
SPPICAV	Société de placement à prépondérance immobilière à capital variable
SRF	Singapore resident fund
TL	Turkish lira
TMK	Tokutei Mokuteki Kaisya
TOFA	Taxation of financial agreements
TP	Transfer pricing
TPCA	Tax Preferential Control Act
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom
USD	United States dollar
VAT	Value Added Tax
vs	versus
WHT	Withholding Tax

Europe

1 Austria

Tax group

In order to form a tax group between companies, a written application has to be signed by each of the group members prior to the end of the fiscal year of the respective group member for which the application should become effective.

Consequently, the taxable income of the group members is integrated into the parent's income. Profits and losses can be compensated between group members.

Make sure the written application has been filed before the end of the fiscal year.

Losses carried forward

Tax losses may be carried forward for an unlimited period of time and may be offset in the amount of 75% of the total amount of the annual taxable income. However, any transfer of shares may lead to a partial/total forfeiture of losses carried forward.

In order to avoid negative tax consequences regarding tax losses carried forward, any transfer of shares should be reviewed in detail.

Depreciation of buildings

Beginning with 2016, the annual depreciation rate for buildings will be fixed with 2.5% with regard to business income and with 1.5% if business buildings are let for residential purposes. The depreciation rate for buildings is fixed with 1.5% for private rental income. A higher depreciation rate can only be applied in case of providing a corresponding expert opinion. Land is qualified as a non-depreciable asset.

An expert opinion is necessary to make use of a higher annual depreciation rate for buildings.

Substance requirements

General substance requirements need to be met by foreign companies receiving Austrian income (e.g., loan interest or dividends paid by an Austrian corporation to a foreign shareholder) in order to be recognised by the Austrian fiscal authority. The disregarding of foreign companies may result in non-deductibility of expenses or a withholding tax burden.

It should be ensured that Austrian substance requirements are met.

Transfer pricing

Generally, all business transactions between affiliated companies must be carried out under consideration of the arm's length principle. In the case that a legal transaction is deemed not to correspond with the arm's length principle, or if the appropriate documentation cannot be provided, the transaction price would be adjusted for tax purposes. Additionally, the adjustment may trigger interest payments and fines.

The arm's length principle should be duly followed and documented in order to avoid negative tax consequences.

Thin capitalisation rules

Under Austrian law, interest payments on senior and shareholder loans are generally tax deductible. There are no explicit thin capitalisation rules. Generally, group financing has to comply with the general arm's length requirements. Payments made to related parties located in low-tax jurisdictions are no longer tax deductible. The restriction applies in case the respective interest income is not taxed or subject to a nominal or effective tax rate of less than 10%.

An Austrian group entity being financed by an affiliated entity must be able to document that the financing structure is in line with the arm's length principle. The affiliated financing entity must not be situated in low-tax jurisdictions.

Austrian private foundations

Disposals of real estate properties effected by an Austrian private foundation are generally subject to a tax rate of 25%, starting from April 1st 2012. The taxation of capital gains from the transfer of real estate is part of the preliminary CIT regime for private foundations.

In case of income deriving from disposals of real estate, these earnings are qualified as private income. Preliminary CIT will be credited against capital income tax withheld for allowances paid by the private foundation. In case of business income, the tax credit is not applicable and therefore, a final tax rate of 25% applies.

As of January 1st 2012, the contribution or purchase of real estate by donors to foundations will be subject to real estate transfer tax and no longer to the foundation entrance tax. The applicable tax rate amounts to 3.5%.

In case less than 50% (70% as of January 1st 2016) of the market value is paid for a real estate property, an additional tax rate of 2.5% (equivalent to the foundation entrance tax) applies.

Transfer of hidden reserves realised by Austrian private foundations

Hidden reserves deriving from the sale of substantial shareholdings by an Austrian private foundation may be transferred to a new investment (of more than 10%) in a domestic or foreign corporation in order to avoid taxation. Hereby, the transfer must be made within the year of the sale of the substantial shareholdings. Furthermore, the acquired shareholding must not belong to an entity where the private foundation, the trustor or the assignee participate with at least 20%.

In case there will be no new investment during the calendar year of the sale of the substantial shareholdings, a tax free amount can be formed. The tax free amount may then be transferred to a newly procured investment within 12 months from the sale of the substantial shareholdings. The one-year period, during which the transfer may take place, begins with the disclosure of the hidden reserves.

A comparable legislation with regard to the sale and acquisition of real estate property is existent for natural persons (see under 'Transfer of hidden reserves realised from capital gains on the sale of property').

Potential transfers of hidden reserves should be reviewed to avoid taxation.

Real estate transfer tax

Austrian real estate transfer tax (RETT) of 3.5% on the compensation is generally payable upon the transfer of Austrian real estate. Also the transfer of shares in a company owning Austrian real estate may trigger RETT in case 100% (starting 2016: 95% or more) of the shares in the asset-owning company will be transferred or finally held by the buyer. RETT is currently based on the triple of a special tax assessed value. For share transactions after December 31st 2015, RETT will amount to 0.5% of a so-called 'property value', whereby this 'property value' is comparable to the market value of the property.

From January 1st 2016, share transactions will be taxed based on a higher tax base. The union of 95% or more of the shares in one hand will trigger RETT.

Land registration fee

The fee for the registration of real estate/transactions in the land register has to be calculated on the basis of the market value of the real estate, also including gratuitous acquisitions. The tax rate amounts to 1.1%.

Real estate transactions within the family or due to reorganisations enjoy tax privileges. The registration fee is calculated based on three times of a special tax assessed value. The tax base is limited to 30% of the value of the real estate.

Capital gains on the sale of property

Capital gains deriving from the disposal of privately owned real estate properties and business properties of individuals which were acquired after March 31st 2002 will be taxed at 25% (starting 2016: 30%). The tax assessment base is the profit calculated by sales price less acquisition costs.

Real estate property acquired before March 31st 2002 will be taxed at
- 15% (starting 2016: 18%) of the sales price, if the real estate property was rededicated from green area to building area after December 31st 1987 and
- 3.5% (starting 2016: 4.2%) of the sales price without rededication.

Losses deriving from the sale of real estate property can be offset against profits from the disposal of real estate property and compensated with income from rent and leasing.

Regarding business income, the reduced taxation rates may only be applicable for land (not buildings). The disposal of real estate through a corporation will be subject to corporate income taxation of 25%.

From January 1st 2016, capital gains deriving from the sale of private real estate properties will move into a higher tax bracket.

Transfer of hidden reserves realised from capital gains on the sale of property

Capital gains realised from the sale of real estate property that was held for at least seven years (in certain circumstances 15 years) as business property by individuals (not corporate investors) are not taxed under the condition, that such gains are used to reduce the book value of fixed assets purchased or manufactured within the financial year of the sale.

As of 2012, the transfer of the hidden reserves is only available in cases where the replacement asset is used within a domestic permanent establishment.

The valuation basis of land may only be reduced by hidden reserves from the sale of land. The valuation basis of buildings may be reduced by hidden reserves from the sale of buildings or land. In case the hidden reserves are not transferred within the financial year of the sale, they can be used to form a tax-free reserve. If this tax-free reserve is not used within a 12-month period (or 24 months under certain circumstances), it is assigned to taxable income.

A potential transfer of hidden reserves should be reviewed to avoid taxation.

VAT and lease contracts

Generally, transactions related to real estate (rental or sale) are VAT-exempt in Austria. No input VAT may be deducted. However, rental for residential purposes and rental for accommodations, such as apartments and family houses, are taxable for VAT purposes at the rate of 10% with input VAT tax deduction. From the beginning of 2016, rental for accommodations will be taxable for VAT purposes at the rate of 13% with input VAT tax deduction.

With respect to the renting or leasing of office spaces, industrial premises, plants and other non-residential real estate, the lessor may opt for taxation at a rate of 20% VAT with input VAT deduction. For lease contracts concluded after August 31st 2012, it is only allowed to opt for taxation with the possibility to deduct input VAT in case the tenant himself is performing more than 95% VAT-able turnovers.

In order to avoid negative tax consequences (such as input VAT corrections), it should be analysed, whether the prospective tenants will render services which will enable input VAT deductions. It should also be considered whether the current tenants have changed from VAT-able turnovers to not VAT-able turnovers in 2015. The period for input VAT corrections covers the past 20 years.

Participation in a partnership

The acquisition or disposal of a participation in a partnership without active business is seen as acquisition or disposal of the proportionate assets (e.g. buildings).

The application of this rule was already administrative practice and is now regulated by law.

Minimum corporate income tax

Beginning with March 1st 2014, the minimum CIT was determined with EUR 1,750 for all private limited companies (GmbH).

This tax consequence is based on the Tax Amendment Act 2014, which raised the minimum share capital from EUR 10,000 to EUR 35,000.

Alternative Investment Fund Managers Act (AIFMA)

Due to the implementation of the AIFMD (Alternative Investment Fund Managers Directive) into Austrian law, certain investment structures may qualify as Real Estate Investment Funds from an Austrian tax perspective. If so, a special tax regime applies.

This structure needs to be analysed in detail.

2 Belgium

Advance tax payments

Unless a company pays its Belgian corporate income taxes by means of timely tax prepayments (four due dates: April 10th, July 10th, October 10th and December 20th [if accounting year equals calendar year]), a surcharge on the final corporate tax amount will be due (1.69% for assessment year 2015 and 1.125% for assessment year 2016).

If tax prepayments are made, a credit ('bonification') will be granted which can be deducted from the global surcharge. This credit depends on the period in which the prepayment was made.

The company should verify whether any tax prepayments should be performed in order to avoid a possible tax surcharge.

Provisions for risks and charges

Provisions for risks and charges are in principle to be considered as taxable. Provisions for risks and charges can however be tax-exempt under certain conditions. The most important conditions are summarised as follows:
- The provisions are recorded in order to cover a loss that is considered likely due to the course of events;
- The charges for which a provision is established must be deductible as business charges;
- The provision must be included in one or more separate accounts on the balance sheet.

Specific attention should be paid to provisions for major repairs. These provisions can only be tax-exempt to the extent that the following conditions are met:
- The repairs must be manifestly necessary at least every ten years;
- The repairs must be major;
- Any renewal is excluded.

By the year-end date, the company should book all necessary provisions for risks and charges relating to the assessment year.

Notional interest deduction (NID)

Debt to equity ratio

Belgian companies are allowed to claim a tax deduction for their cost of capital by deducting a notional (deemed) interest on equity and retained earnings. The equity is the amount reported in the Belgian GAAP balance sheet at the end of the preceding year.

The NID rate for tax year 2015 (accounting years ending between December 31st 2014 and December 30th 2015, both dates inclusive) is 2.63% (3.13% for SMEs). For tax year 2016, the NID rate is 1.63% (2.13% for SMEs). Since 2012, new excess NID can no longer be carried forward and the 'stock' of excess NID (stemming from previous years) that can be applied in a given year is limited.

Thin cap rule: 5/1 ratio

Under Belgian tax law, a 5/1 ratio should be considered. Interest expenses relating to (i) intercompany loans and/or (ii) loans granted by a company subject to low tax on interest revenue exceeding 5 times the sum of the taxed reserves at the beginning and the paid-up capital at the end of the assessment year (i.e. 5/1 debt to equity thin cap ratio) will be considered as non-deductible for tax purposes (i.e. to be added to the disallowed expenses).

The debt to equity ratio of a company has to be monitored and the need for a capital increase should be assessed to comply with the 5/1 thin cap rule.

Tax losses carried forward

Tax losses can be carried forward indefinitely as long as the company is not formally liquidated or dissolved. Under certain circumstances (e.g. change of the control not meeting legitimate or economic needs), the tax authorities are entitled to forfeit the carried-forward tax losses of the company.

As a general rule, the tax authorities are entitled to challenge the carried-forward tax losses for three years as of their utilisation by the company.

In the case of a change of control (including in case of an internal group restructuring), the application of this rule should be carefully analysed and the need of requesting a ruling on the availability of the losses should be assessed.

Deferred taxation

The deferred taxation regime allows (provided certain conditions are met) the taxation of a capital gain in proportion with the depreciation booked on the qualifying asset(s) (located in EEA member states) in which the realisation proceeds have been reinvested in due time (period of five years for buildings).

In the event that the commitment has been made to reinvest the total sale proceeds but no (full) reinvestment has taken place within the required period, the capital gain (which has not yet been taxed) will be added to the taxable income of the financial year in which the reinvestment period expires and a late payment interest (currently at a rate of 7% per year) will be due.

When selling real estate and applying the deferred taxation regime properly monitor the time frame for reinvestment and tax formalities.

Transfer pricing

Generally, all intercompany payments have to comply with the arm's length principle. Failure to do so (incl. failure to have appropriate underlying documentation) might result in the non-deductibility of (some part of) intragroup payments.

The arm's length principle should be duly followed and documented.

December VAT advance payments

Monthly VAT payers need to consider the December advance payment regulations. VAT payers have two options to comply: either pay the VAT due from the transactions occurring between December 1st and December 20th (inclusive); or pay the same amount of VAT due for the month of November.

In both cases, payment must be made before December 24th.

Monthly VAT payers that are generally in a VAT debit position (in November or December) should assess which option is best in their particular case.

Withholding tax

A uniform withholding tax (WHT) rate of 25% on interest, dividends and royalties is applicable. The Belgian government recently announced its intention to increase the rate from 25% to 27%, as from January 1st 2017.

Some WHT reductions/exemptions are still provided for under Belgian domestic tax law, such as for: Dividends from so-called residential Sociétés immobilières réglementées (SIR)/Gereglementeerde Vastgoedvennootschap (GVV) (WHT of 15% which would similarly be increased up to 27% as of January 1st 2017). Dividends from Belgian regulated investment companies to non-resident investors (WHT of 0%), interests paid to credit institutions located in the EEA or in a country with which Belgium has concluded a double taxation treaty (0%). Under conditions, a so-called Fokus Bank claim can be filed to reclaim withholding tax levied on interest paid to foreign (real estate) investment funds.

It should be carefully analysed whether any withholding tax exemptions might apply.

Capital gains on shares

Capital gains on shares are subject to a 0.412% tax, i.e. 0.4% to increase with 3% additional crisis surcharge in case the one year holding period is reached. The rules for the calculation of the capital gain will remain unchanged. Carried forward tax losses (and other tax assets) and capital losses on shares cannot be offset against this 0.412% taxation. This rule is only applicable to large companies (and not to SMEs). In case the one year holding period is not reached, the capital gain is taxed at the rate of 25.75%.

The company should monitor the impact of this tax, which leads to a minimum taxation.

Fairness tax

Large companies are subject to a fairness tax on their distributed dividends. The fairness tax is a separate assessment at a rate of 5.15% (5% increased with 3% crisis surtax) borne by the company distributing the dividends. Hence, it is not a withholding tax borne by the beneficiary of the dividend.

The tax is only applicable if – during the taxable period at hand – dividends have been distributed by the company, and part or all of the taxable profit has been offset against (current year) notional interest deduction and/or carried forward tax losses. Hence, the fairness tax is not applicable in case a company has distributed dividends in a certain year, without using notional interest deduction and/or carried forward tax losses in that year.

The fairness tax has recently been contested in front of the Constitutional Court. The Court referred the case to the ECJ for a preliminary ruling which is still pending.

Furthermore, the Ruling Commission confirmed in tax rulings that a Belgian branch of a German management company of open-ended Funds would not be subject to the Belgian fairness tax.

The impact of the dividend policy on the fairness tax should be properly monitored.

Anti-abuse regulation

Belgian tax law provides a general anti-abuse measure. Under this measure, a legal deed is not opposable towards the tax authorities if the tax authorities could demonstrate that there is tax abuse. For the purposes of the anti-abuse rule, 'tax abuse' is defined as a transaction in which the taxpayer places himself out of the scope of this provision of Belgian tax law or a transaction that gives rise to a tax advantage provided by a provision of Belgian tax law whereby getting this tax advantage would be in violation with the purposes of this provision of Belgian tax law and whereby getting the tax advantage is the essential goal of the transaction.

In case the tax authorities uphold that a legal deed can be considered as tax abuse, it is up to the taxpayer to prove that the choice for the legal deed or the whole of legal deeds is motivated by other reasons than tax avoidance (reversal of burden of proof). In case the taxpayer could not prove this, the transaction will be subject to taxation in line with the purposes of Belgian tax law, as if the tax abuse did not take place.

The impact of the anti-abuse measure on real estate transactions should be analysed on a case by case basis.

Payments to tax havens

Since recently, Belgian tax-residents have to declare their direct or indirect payments made to tax havens when these payments amount to at least EUR 100,000. This declaration is made through a specific form 275F to be annexed to the tax return. Note that Luxembourg and Cyprus also need to be declared.

In case of non-reporting, the expenses are in principle non-deductible (for Luxembourg and Cyprus, the non-reporting does however not automatically result in the non-deductibility of the payments but the tax payer has the extra burden of proof to defend the tax deductibility).

To avoid any negative tax consequences, this reporting obligation should be carefully monitored.

Recent changes in VAT

As per September 1st 2015 the supply of electricity will again be subject to the standard VAT rate of 21%.

As per July 1st 2015, the 'Skandia' doctrine applies. 'Skandia' affects cross-border branch – head office structures whereby the branch and/or the head office are part of a VAT group in their resp. jurisdiction. Transactions within such structures now are within the scope of VAT. This impacts VAT accounting and reporting and is of particular relevance to mixed and exempt tax payers with limited input VAT deduction such as many real estate companies.

As per January 1st 2015 company-directors' fees are subject to VAT at 21%.

In 2014, further administrative clarifications were given regarding, among other,

- the VAT place of supply rules applicable to different types of warehousing;
- the application of the reduced 6% and 12% VAT rates for student and social housing;
- the circumstances under which the reduced 6% VAT rate applicable to renovation or demolition and reconstruction of property into residential real estate will/can be challenged;

the tax point rules applicable to B2G or business-to-government supplies of goods and services.

As a preliminary remark, note that currently no draft legislation is available yet and our understanding of the REIF is based on announcements by the Belgian government only.

Upcoming changes in 2016

Recently, the government has announced to introduce a new Real Estate Investment Fund (REIF) regime, dedicated to institutional investors and, possibly, also to high-wealth individuals willing to invest in Belgian and foreign real estate. The REIF would not be public nor listed and would be subject to limited regulatory requirements.

We can infer from the press conference that the new REIF regime would have the following tax characteristics (broadly similar to the Belgian Regulated Real Estate Company [RREC]):

- Real estate companies wishing to benefit from the new REIF regime would have to support a so-called exit tax, whereby latent capital gains would be taxed (probably at the special rate of 16.995% currently applicable to the conversion of real estate companies into RREC). This entry tax would also apply in case a foreign fund (of which the regime is comparable) would be recognised as having a REIT status.
- In return, the REIF would benefit from the specific income tax regime applicable to Belgian investment companies (taxation limited to the abnormal or benevolent advantages received and non-deductible expenses, if any).
- The return on investment in the REIF (dividends, realised capital gains) would be subject to the normal corporate income tax regime at the level of corporate shareholders.
- The dividends distributed by the fund would in principle be subject to a withholding tax of 25% (Belgian government recently announced its intention to increase the rate from 25% to 27% as from January 1st 2017) which could for non-Belgian investors be reduced on the basis of a double tax treaty and/or domestic withholding tax exemptions and for Belgian corporate investors be credited against their Belgian corporate income tax. For non-Belgian investors, no withholding tax would be applicable on dividends distributed by the REIF stemming from foreign real estate.

3 Bulgaria

Transfer pricing

The Bulgarian CIT Act requires that transfer prices between related parties should be set in compliance with the arm's length principle.

The Bulgarian tax authorities adopted a set of internal transfer pricing guidelines, which indicated the approach they would follow with respect to transfer pricing matters.

Although the guidelines do not impose obligatory transfer pricing documentation, the preparation thereof may provide extra certainty in tax audits and might therefore be regarded as recommendable.

Material related-party transactions should be checked in view of the Bulgarian transfer pricing rules. Preparation of local transfer pricing documentation can provide more predictability during a future tax audit.

Thin capitalisation rules

Under the Bulgarian thin capitalisation rules, interest expenses may not be fully tax deductible if the average between the company's debt-to-equity ratio as at January 1st and December 31st exceeds 3:1. Even if this ratio is not met, the thin capitalisation restrictions would not apply if the company has sufficient profits. Restricted interest expenses may be reversed in the following five consecutive years, under certain conditions.

The interest on bank loans and finance leases (when the banks or lessors are non-related to the borrower/lessee) does not fall within the thin capitalisation restrictions, unless guaranteed by a related party.

It should be verified whether the thin capitalisation rules apply to the company and what the potential impact would be.

Withholding tax

As of January 1st 2015, income from interest and royalties paid by a local company to a foreign related EU company is not subject to Bulgarian withholding tax.

Under the domestic law, two entities are considered related parties if:
- The first entity has a minimum holding of 25% of the capital of the second entity for an uninterrupted period of at least two years; or
- The second entity has a minimum holding of 25% of the capital of the first entity for an uninterrupted period of at least two years; or
- A third EU – resident entity has a minimum holding of 25% in the capital of the first entity and in the capital of the second entity for an uninterrupted period of at least two years.

Before January 1st 2015 this rate was 5%.

It should be verified whether the requirements for application of the beneficial rate would be met.

Beneficial ownership

A special definition of beneficial owner for the purposes of obtaining withholding tax relief was introduced in the Bulgarian tax legislation as of 2011. Generally, a foreign entity is considered the beneficial owner of income if it has the right to freely dispose about the income and bears the full or a significant part of the risk related to the activity, and is not a conduit company.

The rules set out specific cases in which a foreign company may not qualify as a beneficial owner of Bulgarian source income and may be denied tax relief. For example, this could be the case for pure holding companies and companies which use subcontractors for provision of services to Bulgarian clients.

The current structures and application of tax treaty relief should be reviewed accordingly. Before setting the holding and financing structure, the requirements for beneficial ownership should be carefully considered in order to avoid adverse withholding tax implications.

Suppliers in offshore jurisdictions

There is a 10% Bulgarian withholding tax on income from services, rights, indemnities and penalties, which is accrued to certain persons in offshore jurisdiction.

It should be verified whether potential withholding tax liabilities would arise as a result of the implementation of the new tax rules.

Real estate tax

Real estate is subject to annual real estate tax at a rate between 0.01% and 0.45% depending on the municipality where the property is located. The tax base is the higher of the gross book value of the property as per the company's balance sheet and the tax value as determined by the municipality where the real estate is located. In the case of a change in the circumstances applicable to the real estate tax, the taxpayer should declare this change in the relevant municipality within two months.

The liability for the real estate tax should be carefully examined.

Garbage collection fee

Companies are obliged to pay garbage collection fees with respect to their real estate. Generally, a garbage collection fee is determined by each municipality and is collected for the real estate situated in the municipality. The fee is not a tax, but it is assessed in conjunction with the real estate tax.

After January 1st 2016, new rules for the calculation of the garbage collection fee will come into force. Under these rules the amount of the fee due should be determined in accordance with the actual volume of the garbage. When it is not possible to ascertain the amount of waste, the fee should be determined based on a value different than the taxable or the book value of the real estate.

As of the current moment it is not clear what will be the base for the calculation of the fee.

The possibility of achieving lower garbage collection fees should be checked with the municipality in which the property is located.

Value added ax

As of January 1st 2012, the VAT-able base for sale of new buildings and regulated land plots, generally, will be determined with respect to the actual contractual price. The condition which required that the VAT-able base cannot be lower than the cost of the properties or the taxable base upon acquisition will no longer apply.

As of January 1st 2012, the supply of the right to build will be VAT-exempt until the issuance of the construction permit. Under the rules applicable by the end of 2011 the supply of the right to build has been exempt from VAT until the time of completion of the rough construction.

Companies should consider the amended VAT rules in their real estate transactions.

4 Cyprus

Provisional tax return

Where an entity anticipates that it will generate taxable income in the relevant tax year, i.e. 2014, the company is obliged to prepare and submit its provisional income tax declaration form by July 31st and pay the respective tax in two equal instalments on July 31st and December 31st of the relevant year, i.e. 2014.

The company may submit a revised declaration at any time up to December 31st of the relevant tax year, i.e. 2014.

Final tax return for 2013

The entity has the obligation to submit its 2014 tax return by March 31st 2016. Any liability per its 2014 annual tax return after the deduction of the provisional tax paid as above should have been paid via self-assessment by August 1st 2015.

Deemed dividend distribution

A Cyprus tax resident company, controlled partly or wholly by Cyprus tax resident persons, must declare 70% of the profits of a particular year within the next two years as dividends to its shareholders, otherwise it will be subject to the deemed dividend distribution (DDD) provisions of special defence contribution at 17%, i.e. 70% of profits from 2014 must be declared as dividends by December 31st 2014.

However, it should also be noted that a Cyprus tax resident entity ultimately held beneficially by 100% non-Cyprus tax resident (or Cyprus tax residents' non-domicile of Cyprus) shareholders will not come under the scope of the DDD provisions.

Tax depreciation allowances

Tax depreciation allowance on the capital costs is available to the corporate investor at the rate of 3% for commercial buildings, and 4% for industrial buildings. On disposal of the property, a balancing allowance/charge is calculated and taxed accordingly, being the difference between original cost or sales proceeds, whichever is lowest, and the tax written down value.

In case of industrial and hotel buildings acquired during the tax years 2012, 2013, and 2014, accelerated tax depreciation at the rate of 7% per annum may be claimed.

Finally, land does not attract tax depreciation allowances.

Tax losses carried forward and surrender of losses in the same tax year

Tax losses may be carried forward for five years and set off against future taxable profits of the company.

Group relief (set-off of the tax loss of one company with the taxable profit of the same tax year of another) is also allowed only between Cyprus tax resident companies of a group. A group is defined as:
- One company holding directly or indirectly at least 75% of the shares of the other company,
- Or where at least 75% of the shares of the two companies are held by another company (directly or indirectly).

The surrendering company and the claimant company are both members of the same group for the entire year of assessment following their year of incorporation. However, a subsidiary incorporated by its parent company within a particular year, will be considered to be a member of the Group for the whole of that first year.

Immovable property tax

The registered owner of immovable property situated in Cyprus is liable to an annual immovable property tax calculated on the market value of the property as at January 1st 1980, at the varying rates as noted in the table below. The first EUR 12,500 of the property value as above is tax-free.

Property value EUR	Rate %
Up to EUR 40,000	0.6%
EUR 40,001–EUR 120,000	0.8%
EUR 120,001–EUR 170,000	0.9%
EUR 170,001–EUR 300,000	1.1%
EUR 300,001–EUR 500,000	1.3%
EUR 500,001–EUR 800,000	1.5%
EUR 800,001–EUR 3,000,000	1.7%
over EUR 3,000,000	1.9%

The immovable property tax is payable by September 30th on the January 1st 1980 value of the immovable property owned by a taxpayer on January 1st of the same year.

In the case where a taxpayer does not settle the immovable property tax by the due date (September 30th of the year the immovable property tax relates to), a 10% penalty is due on the principal amount of the immovable property tax.

Dividends and withholding tax

No withholding tax is imposed on dividend payments to investors, both individuals and companies, who are non-residents of Cyprus in accordance with the Cyprus domestic tax legislation, irrespective of the percentage and period of holding of the participating shares. No withholding tax will apply in case the recipient of the dividend is an individual non-domicile Cyprus tax resident – applicable as from July 16th 2015).

Special defence contribution on Cyprus arising rental income

As from July 1st 2011, companies, partnerships, the government or any local authorities that pay rents for immovable property are required to withhold the special defence contribution at source and is payable to the tax authorities by the end of the month following the month in which it was withheld. Special defence contribution is withheld by the tenant on the date of the payment of the rent to the landlord.

In all other cases, the special defence contribution on rental income is payable by the landlord in six monthly intervals on June 30th and December 31st. The special defence contribution is calculated as 3% on 75% of the gross rental income.

Capital gain tax

The disposal of (i) immovable property situated in Cyprus or (ii) shares of a company that own any immovable property situated in Cyprus (except listed companies) is subject to Cyprus capital gain tax.

There is an exemption available from future disposal of land or land with buildings purchased between July 16th 2015 and December 31st 2016.

5 Czech Republic

Real estate acquisition tax

As of 2014 an Act on Inheritance Tax, Gift Tax and Real Estate Transfer Tax was repealed and partly replaced by a Real Estate Acquisition Tax Act ('REATA'). In 2015, the Ministry of Finance prepared a new amendment to the REATA that was presented to the government and if it goes successfully through the whole legislation process, it should be in force from April 1st 2016 ('Government proposal').

The most important change included in the Government proposal is the alteration of provisions concerning the tax payer. Under the current REATA provisions, obligation to pay Real Estate Acquisition Tax ('REAT') may be shifted from the seller to the buyer by the agreement of the parties within the purchase (or exchange) contract. However, in accordance with the Government proposal, the tax payer would always be the purchaser. The institute of guarantee for the payment of tax would then be abolished as well.

Other main changes that the Government proposal would introduce are:
- Changes to conditions under which a first paid transfer of real estate may be exempt from REAT.
- While according to the current REATA acquisition of real estate as part of transformation of companies is generally not subject to REAT, this should not hold true in respect of squeeze-out mergers.

Companies should be aware of the above mentioned potential changes to the REATA that may be in force from April 1st 2016. Other changes may also come during the legislation process of this Government proposal.

Thin capitalisation rules

All related-party loans are subject to thin capitalisation rules. Any interest-free loans, or loans from which interest is capitalised in the acquisition costs of fixed assets, are excluded from the thin capitalisation rules.

Thin capitalisation rules are also applicable for any back-to-back financing arrangements in which the provision of a loan by a third party is conditioned by a corresponding loan by a related party to the third party lender.

The debt-to-equity ratio of 4:1 applies for thin capitalisation purposes. For thin capitalisation calculation purposes equity is calculated as the annual weighted average. The current year's profit is not included in equity for thin capitalisation calculations.

The company should review the debt to equity ratio and, in case that the full deductibility of interest will not be achieved, we recommend increasing equity as soon as possible during the end of 2015 period to mitigate any negative tax implications regarding the deductibility of interest.

Binding rulings for repairs

Repairs are tax-deductible costs in the year when they were incurred. On the other hand, technical improvements are depreciated over the specified depreciation period.

When a company has performed high value repair or investment into real estate property and the definition of the work done is not clear with respect to whether technical improvements or repairs were executed, the company may apply for a binding ruling from the tax authorities.

Reserve on repairs of fixed assets

Reserves for repairs of fixed assets are tax-deductible only if the corresponding cash amount is deposited in a special escrow bank account.

A company should ensure that the value of the reserve is deposited in the special bank account at latest by the deadline for filing of its corporate income tax return.

Tax losses carried forward

Tax losses can be carried forward for utilisation up to five years after they were incurred.

Where a company is not able to effectively utilise tax losses, it is generally possible to suspend tax depreciation of certain tangible fixed assets in order to increase the tax base of the company for the corporate income tax purposes and utilise the tax losses carried forward that would otherwise expire.

Hedge accounting

The use of hedge accounting is based on natural hedges which exist between euro-denominated (or other foreign currency) rental income and financing to defer recognition of any unrealised foreign exchange differences for Czech tax purposes until their actual realisation. Hedge accounting requires that a hedge accounting policy and model is implemented which complies with the requirement of the Czech GAAP.

The company should review the effectiveness of its hedge accounting model.

Control statement from January 1st 2016

As of January 1st 2016, the Czech VAT Act will introduce a new statement mandatory for all VAT payers which will be a new tool in the field of fighting tax evasions. In the control statement there will be stated detailed information that VAT payers already have to keep in their VAT records.

As the tax authorities accent the control statement in relation with fighting tax evasion, there are strict sanctions in case of late submission of the control statement/subsequent control statement or in case the VAT payer does not submit the control statement at all. The sanction amounts from CZK 1,000 up to CZK 500,000.

The company should adjust its internal systems in order to comply with the new tax authorities' requirements.

Changes in VAT-exemptions in respect of plots of land

By the end of 2015, transfer of plots of land is VAT-exempt in case:
- No buildings firmly affixed to the land on the plots of land are built,
- No utilities (water, gas, electricity etc.) on the plots of land are built, and
- There is no building permit according to which a building can be constructed on the plots of land.

However, according to the amendment of the VAT Act valid as of January 1st 2016, transfer of plots of land will be VAT-exempt in case:
- The plots of land do not compose a functional unit with a building firmly affixed to the land, and
- The plots of land are not considered to be a building plot.

The building plot is a plot of land on which:
- A building shall be built and
  - was a subject to construction works or administrative acts in order to build the building, or
  - there are construction works in the neighbourhood of the plot
- A building shall be built according to the building permit.

VAT-exemptions in respect of other immovable property

Transfers of other immoveable property, including plots of land other than those listed in the article 'Changes in VAT-exemptions in respect of plots of land', will be VAT-exempt after the expiry of five years from the final approval inspection or from the date when the first use of the structure commenced, whichever occurs earlier.

There is an option to tax the transfer of immovable property after the expiry of this period.

Further, there will be also an option to tax the transfer of non-building plots of land from January 1st 2016.

Freehold right

Following the introduction of the Civil Code as of January 1st 2014, the VAT Act introduced a new term – 'freehold right' which stands for the right to construct or own a building on a land plot owned by a third party.

The transfer of a freehold right is subject to VAT except for the transfer of the right to keep a building already constructed on a plot of land for which the aforementioned five-year period has expired. Such a transfer of a freehold right will be VAT-exempt unless an option to tax is applied.

Reverse-charge regime on transfer of immovable property

As of January 1st 2016 the reverse-charge regime will be required in case a VAT payer opts for taxation of transfer of immovable property and the customer is a VAT payer as well.

The company should properly verify the VAT regime. In case a standard regime is used instead of the reverse-charge regime, tax authorities should refuse the input VAT deduction of the recipient.

Liability of the recipient of the supply for VAT unpaid by the supplier

As a way of fighting tax evasion, the Czech VAT Act has introduced a concept of a so called 'unreliable VAT payer' as of January 1st 2013. As unreliable VAT payers are considered those payers that, according to the tax authorities, do not comply with their tax related obligations.

Among other cases, the recipient of the supply is liable for any VAT unpaid by the supplier where:
- The supplier is known to be an unreliable VAT payer, or
- The recipient makes a payment to a bank account other than one which is publicly disclosed. This applies only in cases where the consideration for the supply exceeds the amount of CZK 540,000.

The database of unreliable VAT payers is publicly accessible. Bank account numbers of VAT payers are publicly disclosed in the VAT payers register.

It is strongly recommended that Czech VAT payers review the status of their suppliers and bank accounts they are paying to on regular basis.

Mandatory e-filing

As of January 1st 2014, VAT returns and their annexes have to be filed electronically. Paper filing will not be allowed anymore. This rule does not apply to individuals whose turnover for the preceding 12 months did not exceed CZK 6,000,000.

As of January 1st 2016, there will be no exceptions, i.e. all VAT payers will be obliged to file VAT returns, statements and their annexes electronically.

6 Estonia

Reduction of corporate tax rate

Estonia is regarded as offering a relatively favourable income tax regime, as all undistributed corporate profits are tax-exempt. Estonia levies a corporate income tax only on profits that are distributed as dividends, share buy-backs, capital reductions, liquidation proceeds, or deemed profit distributions. Distributed profits are generally subject to 20% corporate tax (20/80 on the net amount of the profit distribution).

The corporate income tax rate should not change during 2016.

Sale of shares in a real estate company

Capital gains derived by non-residents from the sale of shares in Estonian companies would be subject to 20% income tax in Estonia only if the assets of the Estonian company at the time of disposal or at any time during the two-year period prior to disposal consisted directly or indirectly of more than 50% of the immovable property or buildings located in Estonia, and in which the non-resident held at least 10% participation at the time of the sale.

In case of the sale of shares of an Estonian real estate company, budget for potential 20% income tax to be paid on taxable gains.

Transfer pricing

The inter-company transactions must be in accordance with the Estonian transfer pricing regulation, which is generally based on the arm's-length principle that requires the prices charged between related parties to be equivalent to those that would have been charged between independent parties in the same or similar circumstances. Should the transfer prices applied in the inter-company transactions not follow the arm's-length principle, any hidden distribution of profits is subject to Estonian corporate tax (i.e. being subject to monthly 20/80 distribution tax). From 2011 the definition of 'related persons' has been broadened and includes also persons who have common economic interests or dominant influence over other persons.

The tax authorities' focus is on transfer pricing transactions; especially on intra-group financing arrangements. We recommend to review the transfer pricing documentation in the light of that.

Land tax

Land is subject to annual land tax which is calculated on the assessed value of land at rates between 0.1% and 2.5%, depending on the municipality. The land tax is generally paid in two instalments, by March 31st and October 1st. The rate of land tax applicable in Tallinn, the capital of Estonia, is 2.5%.

Budget for land tax payments.

Anticipated amendments

There are no fundamental changes currently expected to the Estonian tax system. Estonian Tax Procedure Act includes a general anti-avoidance rule, which entitles the Estonian tax authorities to ignore the legal form of a transaction and re-classify any transaction for tax purposes according to its economic substance if they believe that a transactions was undertaken with the purpose of tax avoidance. The Ministry of Finance has now published a draft law on amendments to Income Tax Act transposing the latest changes from EU Parent-Subsidiary Directive to the national law to impose the 'anti-hybrid rule' and the 'anti-abuse rule'.

The anti-abuse rule clause provides that income tax exemption cannot be applied to dividend and equity payments made on the account of the dividend received, if the tax authority recognises that the main purpose of the transaction was to obtain tax advantage.

The anti-hybrid rule clause provides that income tax exemption cannot be applied to dividend and equity payments made on the account of the dividend derived from a company which had a right to deduct this dividend from its taxable income (as interest), i.e. in case of hybrid loans.

The proposed amendments should become effective as from July 1st 2016.

There are no fundamental changes currently expected to the Estonian tax system.

7 Finland

Changes in real estate tax rates

A real estate, which is located in Finland, is subject to real estate tax. Minimum and maximum tax rates are set by tax legislation. The owner of the real estate at the beginning of the calendar year is liable for the real estate tax.

The Finnish government (elected in spring 2015) has stated in the government program that the minimum and maximum real estate tax rates shall be increased moderately. However, no government proposal has yet been issued in this respect.

The tax law changes with respect to real estate tax rates should be followed. It should be noted that the owner of the real estate at the beginning of the calendar year is liable for the real estate tax.

Limitations on the tax deductibility of intra-group loans

According to Finnish tax law related party interest expenses exceeding 25% of the taxable EBITDA are not deductible for corporate income tax purposes.

Interest deduction limitations are applicable in case the amount of net interest expenses (all interest expenses less all interest income) exceeds EUR 500,000.

The interest deduction limitations do not apply in the following cases: The interest is paid on loans granted by a third party e.g. a bank unless (i) the loan is a back-to-back arrangement, or (ii) a receivable of a group company serves as security for the loan.

The entity does not carry out active business for Finnish tax purposes but is taxed in accordance with the provisions of the Finnish Income Tax Act (such as MRECs and typically also other real estate companies).

The Finnish subsidiary's equity ratio is equal or higher than the corresponding ratio of the entire group of companies in the consolidated balance sheet.

In case the interest deduction limitation rules apply, the potential impact of the rules should be analysed.

Return of the funds of unrestricted free equity

According to the provisions of Finnish tax law, the return of the funds of unrestricted free equity ('the return of funds') is, as a starting point, taxed as dividend.

With respect to listed companies, the return of funds is in all cases taxed as dividend. With respect to non-listed companies, the return of funds can be taxed as capital gain, if the funds are returned exactly to the same shareholder who originally made the investment. The funds shall be returned within ten years after the capital investment has been made.

The rules are applicable to return of funds that is received on January 1st 2014 or thereafter. However, as regards funds, which were invested into non-listed company prior to 2014, the rules apply as of fiscal year 2016. Consequently, the previously applied principles (according to which the return of funds is subject to either dividend or capital gain taxation depending on the source of the funds to be returned) are applied until the end of fiscal year 2015 with respect to return of funds invested into a non-listed company prior to 2014.

The rules have significance in case funds are distributed from a non-listed company in circumstances where tax treatment of dividends is stricter than tax treatment of capital gain. The impact of the rules should be considered when planning profit or capital distributions.

Transfer pricing

Generally, all related-party payments and transactions have to comply with the arm's length principle. This should be duly documented. During the past few years, the Finnish tax authorities have increasingly paid attention to financing transactions (e.g. interest payments).

Ensure compliance with transfer pricing rules.

MRECS

Typically, Finnish real estate is owned via mutual real estate companies (MRECs). In order for the ownership structure to be tax efficient, payments between the MREC and its shareholder(s) need to be carefully planned and documented.

Change of VAT-able use of premises

In case the VAT-able use of premises has changed compared to the situation when the real estate investment was taken into use, VAT included in the real estate investment might be subject to adjustment.

It should be verified whether there have been changes to the VAT-able use of real estate and determined whether the VAT deductions should be adjusted. The effect can be positive or negative, depending on whether the VAT-able use has increased or decreased.

VAT refunds from the year 2012

The entity registered for VAT in Finland is entitled to apply the input VAT of purchases to its VAT-able business within three years after the end of the accounting period.

If the accounting period is a calendar year and there is non-deducted VAT in the purchases, it can be investigated whether it is possible to apply the refund before the end of the year.

Own use of real estate management services

According to the Finnish VAT Act, real estate management services are considered to be taken into own use when the real estate owner or holder is performing services in respect of the real estate by using own employees, if the real estate is used for non-deductible purposes. However, the holder or the owner of the real estate is not liable to pay tax, if he/she uses the real estate as a permanent home or if the wages and salary costs including social benefit costs relating to these services, during a calendar year, do not exceed the set threshold.

The threshold is EUR 50,000. It may be relevant to make sure that the threshold of costs is observed.

8 France

Application of social taxes to income from property and real estate capital gains earned by non-residents

In order to align the system of taxation with the one applying to French residents, non-resident individuals are subject to French social security contributions of 15.5% on income arising in respect of real estate, and on capital gains arising in respect of disposal of French real estate.

Nevertheless, in its case law dated February 26th 2015, the European Court of Justice ('ECJ') ruled that non-resident individuals who don't participate to the French social security system but participate to a similar social security system in their country of employment should not be subject to French social security contributions for income from real estate properties situated in France.

Limitations on the tax deductibility of financial charges

As a reminder, the Financial Act for FY2013 introduced a new capping rule on deductions of financial expenses for companies subject to corporate income tax in France. Companies with a net interest expense over EUR 3m are subject to a limitation on their full interest expense. The capping deductibility is set to 75% of the interest for financial years closed as from January 1st 2014.

Harmonisation of tax treatment on share buy-back

To comply with the recent position of the Constitutional Council, the taxation of share buy-back has been modified. In the past the profit deriving from a share buy-back was assimilated to (i) a dividend (in some instance benefitting from the participation exemption regime) and/or (ii) a capital gain. For share buy-backs realised as from January 1st 2015, the profit should now be qualified as capital gains.

Transfer duties on the acquisition of shares in real estate companies

The Amended Financial Bill for 2014 has amended the rules applicable to the transfer of shares in real estate companies. As a reminder, since January 1st 2012, the 5% transfer tax was assessed on the fair market value of the real estate company's overall assets and only debts connected to the acquisition of the property were considered deductible from that basis.

As from January 1st 2015, the 5% transfer tax is assessed on the disposal price (i.e. no limitation of deductible debt except in case of abusive situations).

Increase in SIIC distribution requirements

Under the past regime, to benefit from the tax exemption for profits derived from their exempted real estate sector, listed SIICs and SIIC subsidiaries had to distribute at least:

- 95% of the profits derived from the rental of the buildings or sublease of real estate properties financed through a financial lease.
- 60% of the capital gains resulting from the sale of buildings, of certain real estate rights, of rights attached to a real estate financial lease, of shares of companies liable for CIT having elected for the regime and of shares of partnerships held by SIICs or one of their subsidiaries having elected.
- 100% of dividends paid by a subsidiary having elected for a tax exempt regime (e.g. another SIIC subsidiary, SPPPICAV).

Application of participation exemption to dividends received from SIIC, SPPPICAV and their exempted subsidiaries and sourced from their tax exempt sector

As from financial years opened since January 1st 2015, dividends received by French companies subject to CIT from SIIC, SPPPICAV and/or their CIT exempt subsidiaries may benefit from the participation exemption regime even if the dividend were sourced on profits belonging to a CIT exempt sector (SIIC/SIIC subsidiaries)/was not subject to CIT (for SPPPICAV).

Capital gain taxation for business areas which intended to be transformed into residential area

As from January 1st 2012, capital gains related to the disposals of lands on which is carried out a business activity and which are intended to become a residential area further to the disposal are taxed at 19%.

This provision is extended until December 31st 2017 by the Financial Act for 2015.

Horizontal tax group consolidation

The 2nd Amended Financial Bill for 2014 amended tax group consolidation rules to comply with European requirements. As from financial years closed on December 31st 2014, two French sister companies held by a French, EU or EEA parent company can constitute a tax group.

France-Luxembourg double tax treaty

An amendment agreement was signed September 5th 2014 to modify the entitlement to tax capital gain generated by the sale of real estate companies' shares. Once the modification is ratified by both States (no date foreseen yet with certainty) France could be entitled to tax while taxation currently belonged to Luxembourg.

Tax representative removal

To comply with European requirements, the 2nd Amended Financial Bill for 2014 removed the requirement to appoint a tax representative notably when collecting capital gain tax deriving from the disposal by a non-resident of its interest in a French real estate or a French real estate company, to the extent the non-resident is located in an EU or an EEE country.

Self-delivery of a newly constructed property

French tax rules provide that a newly constructed property erected by an entity subject to VAT is a VAT-able operation, declared by the operator by way of self-delivery (so called 'LASM'). The law dated December 20th 2014 redefined the concept of self-deliveries of a newly constructed property when the operator allocates the said property to an activity entitling a full VAT recovery. No 5% penalty should thus be applied in case of non-declaration of the self-delivery.

List of states or territories defined as NCST

The list of Non Cooperative States and Territories ('NCST') has not been updated for FY2015 yet. As a reminder, for FY2014, the list of NCST includes: Botswana, Brunei, Guatemala, Marshall Islands, British Virgin Islands, Montserrat, Nauru, Niue.

Pre-emptive urban right requirement

The law dated March 26th 2014 (said 'ALUR') extended the pre-emptive urban right of local administration to the purchase of SCI shares (except family SCIs) when the majority of the SCI shares is sold.

Prior to any disposal of the majority of SCI shares, the owner of the shares should now file a DIA form (declaration to dispose).

Commercial leases

The law dated June 18th 2014 (said 'Loi Pinel') has deeply modified the provisions applicable to commercial leases notably by suppressing the tenant's entitlement to waive its right to break certain commercial lease after 3 years. The new law also provides a prohibition to recharge certain charges to the tenant and notably certain taxes. According to the law, the property tax could still be recharged but there are some uncertainties as for the tax that could effectively be recharged to the tenant (the law states that only tax 'connected to the use of the property' could be recharged to the tenants).

The above applies to any new lease concluded as from October 1st 2014.

Tax on offices in the Parisian area

The 2nd Amended Financial Bill for 2014 provides that the tax on offices in the Parisian area (so called 'TABIF') shall not be deductible from a company's corporate income tax basis (same rule for individuals). This rule applies to company closing their FY as from December 31st 2015.

Rent declaration	As from 2015, companies paying rents to a lessor should comply with a new filing obligation gathering various information on the lease agreement (name of the lessor, surface, amounts of rents, etc.). The submission deadline will be the same that CIT returns as the form would be an appendix to the CIT return but a specific filing is due on September 15th 2015 for the first year of implementation of the measure.
Tax on parking located in the Parisian area	The Financial Act for 2015 introduced a new tax on Parisian parking areas exceeding 500 square meter and which are subject to the TABIF. Depending on the city, the rate differs from EUR 1.22 to EUR 4.22 per square meter. This provision is applicable as from January 1st 2015.
Special additional tax on ownership of properties in the Parisian area	Entrepreneurs and companies which are subject to property tax and CFE (i.e. local property tax) on their properties located in the Parisian area are now subject to an additional special tax based on 50% of the rental value of the property. This provision is applicable from January 1st 2015.
Tax on commercial premises	The 2nd Amended Financial Bill for 2014 provides an increased rate of the tax on commercial premises ('taxes sur les surfaces commerciales') for establishments (i) already subject to the tax and (ii) having a commercial space exceeding 2,500 square meter. The rate (assessed by reference to the surface and the enterprise's turnover) is doubled as from 2015.
Tax on creation of offices in the Parisian area	The tax on creation of offices in the Parisian area is computed based on the surface of a property erected by an operator, once the property is delivered. In case of reconstruction works on a property that would increase of rentable surface, the tax would be due on the sole additional surface generated and not on the entire surface of the property. This tolerance was legalised in the 2nd Amended Financial Bill for 2014.
Transfer pricing documentation	A new filing obligation has been introduced in French tax law requiring large companies (with a turnover above EUR 400m), or their French subsidiaries, to provide within six months of the filing of the CIT tax return a 'simplified' transfer pricing documentation. For French branch of foreign entities, the French tax authorities have considered that the turnover should be regarded at the level of the head office.
Changes in Tax Law	The above mentioned development was made at September 11th 2015 and thus does not take into account possible modifications of French tax rules that would be introduced by the annual Amended Financial Bill for 2015 and the Financial Bill for 2016 of which first drafts should be provided over the next coming weeks.

9 Germany

Dividend and capital gains tax exemption

Dividend distributions between corporations are generally 95% tax exempt. However, the 95% tax exemption is only granted where the recipient of dividends holds at least 10% of the nominal capital of the distributing corporation at the beginning of the calendar year. Furthermore, the 95% tax exemption is limited to dividends that have not resulted in a corresponding deduction at the level of the distributing entity. This amendment particularly targets cross-border hybrid financial instruments in German outbound structures under which Germany classifies the financial instrument as equity but the foreign country treats the instrument as debt.

Capital gains received by corporations upon selling the shares in other corporations are 95% tax exempt. Currently, there is no minimum holding requirement. However, there are ongoing discussions to align the capital gain exemption rules with the dividend exemption rules, i.e. the 95% capital gains tax exemption would require a minimum holding of 10%.

Consider to restructure shareholding before distributing dividends (and sales of shares).

Interest capping rules

Where an entity is not able to limit its net interest to below the EUR 3m threshold, other escape clauses (non-group escape clause or group escape clause) might be applicable. According to the group escape clause, interest expenses paid in 2016 may be fully deductible only where the equity ratio of the German business equals or is higher than that of the group (2% tolerance) as at December 31st 2015.

It should be verified whether the equity of the tax paying entity equals that of its group. If it stays below the quota of the group by more than 2%, additional equity may be injected in order to ensure interest deductibility in 2016.

NOL planning

According to tax accounting rules, an impairment to a lower fair market value may be waived.

In a loss situation impairment may be waived to avoid an increase of net operating losses.

NOL planning for partnerships

Net operating losses of a partnership are allocated to a limited partner only up to the amount of its equity contribution.

Inject equity before year end in order to benefit from losses exceeding the current equity contribution.

Losses carried forward

Any direct or indirect transfer of shares/interests (or similar measures, e.g. in the course of restructurings) may lead to a partial/total forfeiture of losses and interest carried forward at the German entity's level. Exemptions may apply for tax privileged restructurings (restrictive requirements).

It is strongly recommended to explore structuring alternatives where you intend to reorganise your investment structure.

Trade tax status

Investments relying on no trade tax due to the non-existence of a German trade tax permanent establishment, or a preferential trade tax regime under the extended trade tax deduction, must fulfil strict requirements. The requirements of the extended trade tax deduction must be met for a complete fiscal year.

It should be verified whether the requirements are met from January 1st 2016 onwards (if the fiscal year equals the calendar year) in order to mitigate trade tax on income derived in 2016.

Tax prepayments

In the case of declining profits, an application can be made to reduce current income and trade tax prepayments.

Cashflow models and profit forecasts should be checked in order to improve liquidity by applying for tax prepayment reductions and/or refunds.

Substance requirements

General substance requirements need to be met by foreign corporations receiving German income in order to be recognised by the German fiscal authorities. This inter alia may ensure the deductibility of interest expenses borne in connection with German investments. Where (constructive) dividends are distributed by a German corporation to a foreign shareholder, the foreign shareholder has to fulfil strict substance requirements in order to benefit from a dividend withholding tax exemption/reduction.

It should be ensured that German substance requirements are met.

Transfer pricing

Generally, all related-party cross-border payments have to comply with the arm's length principle. Failure to present appropriate documentation to the tax administration might result in the non-acceptance of group charges and penalties for tax purposes.

The arm's length principle should be duly followed and documented.

PE Cross-border transactions

The German tax legislation adopts the 'Authorised OECD Approach'. Cross-border transactions between the head office and a permanent establishment ('PE') or between PEs are generally recognised for income tax purposes and must comply with arm's length principles.

Review cross-border transactions between head office and PEs.

Fiscal unity

The acceptance of an income tax fiscal unity is subject to strict observation of certain legal requirements. The profit transfer agreement needs to be registered with the commercial register before December 31st 2015 in order to become effective for the fiscal year 2015. If companies do not obey the requirements during the minimum term of five years, the fiscal unity will not be accepted from the beginning.

Special precautions need to be taken regarding fiscal unities for VAT and RETT purposes as there are different legal requirements.

Where a fiscal unity shall be established in future, the profit transfer agreement needs to be drafted properly and registered in time.

Land tax

For vacant buildings and buildings rented subject to low conditions land tax up to 50% is refunded upon application of the land lord.

Apply for land tax 2015 refund before April 1st 2016.

Real estate transfer tax rates

Federal states have the right to set the real estate transfer tax (RETT) rate themselves instead of applying the uniform federal RETT rate of 3.5%. In Bavaria and Saxony the rate of 3.5% applies. The other federal states have increased their RETT rate: Baden-Wuerttemberg (5%), Berlin (6%), Brandenburg (6,5%), Bremen (5%), Hamburg (4.5%), Hesse (6%), Lower Saxony (5%), Mecklenburg-Hither Pomerania (5%), North-Rhine Westphalia (6,5%), Rhineland-Palatinate (5%), Saarland (6,5%), Saxony-Anhalt (5%), Schleswig-Holstein (6,5%) and Thuringia (5%). Further increases are expected.

Monitor potential increase of RETT rates in federal states. Proper timing is necessary to avoid increased RETT rates. SPAs have to be concluded before possible further increase of RETT rates.

Real estate transfer tax on share deals

RETT is triggered when at least 95% of the shares in a property holding entity are acquired. The RETT rules for calculating the 95% threshold have been tightened. By calculating the 95% threshold all indirect holdings via multiple tier structures are considered.

Due to a decision of the German Supreme Court in June 2015 the German legislator has amended the rules for calculating the RETT base in case of share deals and reorganisations with retroactive effect as at January 1st 2009. In most cases the new rules lead to a higher RETT base aiming to reflect the fair market value of the real property.

Consider the rules when acquiring German real estate in the course of a share deal.

Planned tax changes

German tax law is subject to continuous changes. Currently, there are a number of tax amendment acts in the legislative process. Amongst others a reform of the German Investment Tax Act is awaited.

Constantly monitor German tax law changes.

10 Italy

Interest capping rule

For corporate income tax (IRES) purpose, interest expenses are deductible within the limit of interest revenues, and subsequently within the limit of 30% of the EBITDA. The interest expenses that exceed such limits can be carried forward and deducted in the following fiscal years without time limitations, however, only up to the amount of the interest revenues and at most 30% EBITDA of any following year, net of the interest expenses of the same year. Any 'excess' of 30% EBITDA (i.e. the amount exceeding the net interest expenses of that fiscal year) can be carried forward and used to increase the 30% EBITDA of the following fiscal years.

The tax treatment of interest expenses capitalised on assets (to the extent admitted) and of implicit commercial interest is not affected by this interest capping rule.

Moreover, this rule does not apply to interest expenses that have been generated from loans/debts guaranteed by mortgages on real estate up for lease. It is worth noting that the Tax Office (by way of restrictive interpretation of the law) have tended to limit the scope of this exclusion to companies performing only 'passive' management of real estate.

In this respect, pursuant to law amendment provided by Legislative Decree no. 147/2015, with effect from the tax period starting after October 7th 2015, the benefit of the exclusion of mortgage loans interest from EBITDA limitation is applicable only to companies which carry on 'actually' and 'prevalently' real estate activity. This is met if the following conditions are fulfilled:

- The greater part of the total assets are formed by the fair value of properties up for lease;
- At least 2/3 of the revenues derive from building rental agreements and leases of business which are made prevalently by buildings.

These rules do not apply to partnerships, which can fully deduct interest expenses.

Check if there are any interest expenses that can be excluded from the capping rule.

Check if there are any interest expenses from previous years that have been carried forward; if so, check if they can be deducted based on the procedure explained above.

Evaluate the possibility of a tax group so that the non-deductible interest from each company can be used to lower the consolidated income, provided that other consolidated entities have 'unused' 30% EBITDA in the same fiscal year.

Check if the new asset test and revenues test will be fulfilled to take benefit from full deduction of interest on mortgage loans concerning properties up for lease.

Tax losses carried forward

For corporate income tax (IRES) purpose, tax losses can be carried forward without any time limit, as follows:
- Tax losses incurred in the first three years of activity (provided that they derive from the launching of a new activity) can be used to entirely offset future taxable income;
- Tax losses incurred in subsequent years can be used to offset only 80% of the taxable income of any following year. The remaining 20% must be taxed according to the ordinary rules (current IRES rate: 27.5%), resulting in a kind of a 'minimum corporate tax'.

It is possible to combine the use of the two kinds of tax losses to reduce/offset the taxable income as much as possible. For this purpose the taxable income of a year may be firstly reduced by 80% using the ordinary tax losses and secondly entirely offset by using tax losses generated during the first three periods of activity, if any, and up to the amount available.

The loss carried forward may be limited in the case of transfer of shares representing the majority of voting rights in the company's general meetings, together with a change of the business activity from which such tax losses derived, in the year of transfer or in the two preceding or following years (exceptions exist).

These rules do not apply to tax losses pertaining to partnerships, which can be carried forward for five years, except for those produced in the first three fiscal years which remain 'evergreen' (however, some anti-abuse provisions have to be considered).

The regional tax on production (IRAP) system does not allow any tax losses carried forward.

Check if there are any tax losses that can be carried forward and define their regime of carry-forward.

Make sure that the combination of different kinds of tax losses – to maximise the offsetting of the future taxable income – is admitted.

'Passive' company legislation

The 'Passive' company rule postulates that if an 'expected minimum' amount of revenues (calculated as a percentage of the average value of the fixed assets over a three-year period) is not reached ('operative test') the company is deemed to be 'non-operative', with the consequence that taxation for both corporate income tax (IRES) and regional production tax (IRAP) will not follow the ordinary rules, but will be based on an 'expected minimum' taxable income (that cannot be offset by tax losses carried forward), calculated as a percentage of the value of the fixed assets owned. This rule applies also to partnerships.

Other implications for 'non-operative' companies include limitations to the tax losses carried forward and to VAT credit refunds/offsets.

In addition, the tax losses incurred in the years of 'non-operative' status are disregarded.

The law provides a list of circumstances in which the application of this legislation is automatically excluded. Out of these cases, if the 'non-operative' status is due to objective circumstances, the non-application of this regulation may be claimed by way of specific ruling.

Moreover, from the tax period current on December 31st 2012, a company may be considered 'non-operative', regardless if its actual proceeds are higher than its expected ones, also in case it is in a 'systematic tax loss' position. A company is in a 'systematic tax loss' position if it declares a tax loss for five consecutive tax periods (before year 2014 the observation period was three years) or, in a five-year period, it declares a tax loss for four years and in the other year its actual revenues do not reach the 'expected minimum' ones. In this case, the company is deemed to be 'non-operative' in the year following the five-year observation period.

Also in this case, if none of the 'automatic' cases of exclusion can be invoked, the non-application of the 'passive' company legislation may be claimed by way of specific ruling, describing and documenting objective circumstances and situations which caused the persisting loss position.

For companies which are deemed 'non-operative' the IRES rate has increased from 27.5% to 38%.

Check if the company satisfies the elements of the cases of exclusion from 'passive' company legislation provided by law.

Check if the actual revenues allow to comply with the 'operative test'.

If the 'operative test' is not passed, ask for the non-application of the 'passive' company regime by ruling, setting out the objective circumstances which prevented to reach the 'expected minimum' revenues.

Even if the test is passed, check if the company is in 'systematic tax loss' position. In this case, if any exclusion provided by the law is not applicable, consider to ask for the disapplication of the 'passive' company legislation by specific ruling.

Consider the implications on direct taxes liabilities, tax losses carry-forward/utilisation and on VAT refunds/offsets.

Losses on receivables

In general, losses on receivables are deductible if they can be proved with 'certain' and 'precise' elements and, in any case, when the debtor is subject to bankruptcy and stated similar proceedings. From tax period 2012, losses on receivables may be deducted also when the debtor has entered into an approved debt restructuring agreement (i.e., 'accordo di ristrutturazione dei debiti'). 'Certain' and 'precise' elements also exist when the credit right is expired or the credit is written-off from the financial statements in compliance with the correct application of the accounting principles. Moreover, losses on receivables may be fully deducted when the following two conditions are met: (i) their amounts do not exceed EUR 5,000 (for companies with revenues higher than EUR 100,000,000) or EUR 2,500 (all the others) and (ii) the credit has expired from at least six months.

Check if the losses on receivables refer to debtors which entered into an approved debt restructuring agreement.

Consider the amount of the credit and the date of its expiration.

Allowance for Corporate Equity

The Allowance for Corporate Equity (ACE, 'Aiuto alla Crescita Economica') is a tax relief (applicable from tax period 2011) to boost business capitalisation. It allows an additional yearly deduction for IRES purposes, corresponding to a 'notional' interest on net equity increases occurred in respect to the net equity existing at the end of year 2010 (net of the 2010 profit), computed with rate of 4.5% for FY2015 and 4.75% for FY2016, for the following years, the rate will be determined in the future (the rate was 3% in the FYs 2011-2013 and 4% in FY2014). In each tax period, the ACE basis is capped at the level of the net equity at the end of the same tax period.

Relevant net equity increases include:
- Shareholders' contributions in cash;
- Waiver of shareholders' receivables;
- Retained profits appropriated to capital reserves (except those allocated to 'unavailable' reserves).

Relevant equity decreases include:
- Attributions/distributions to shareholders in any form and for any purpose;
- Acquisition of interests in already controlled companies;
- Acquisition of going business concerns or activities from other companies of the same group.

To compute the deductible notional interest, in the year of their execution equity increases have to be adjusted pro-rata temporis for the following years. The full amount of these equity increases is taken into consideration in the computation. Conversely, equity decreases reduce the ACE base since the beginning of the financial year in which they take place.

ACE deductions cannot produce tax losses. The amount which eventually exceeds the taxable income of the year can be carried forward into the following years, without any time limitation, to increase the ACE deduction of such years. Alternatively, the unused ACE deduction can be converted into a tax credit to specifically offset IRAP liabilities.

The Italian tax authorities have implemented certain anti-avoidance provisions to prevent abuse of the ACE system. In particular, equity contributions deriving from (pursuant to look through analysis) subjects resident in 'black list' countries (i.e. tax haven) are not eligible to ACE deduction. As anti-abuse rule, the taxpayer can ask their disapplication by way of ruling, to the extent it can demonstrate that the abuse which the law is aimed to prevent does not arise in the concrete case.

Consider if there are eligible net increases in equity in the relevant period.

Building areas revaluation

Law no. 266/2005 granted the possibility to revaluate building areas shown in the financial statements as at December 31st 2004, by paying a substitute tax and with the obligation to build until December 31st 2010. Otherwise, the step up would have been ineffective for tax purposes and the substitute tax paid would have been a tax credit (to be used to offset other tax debits).

In this respect, Law Decree no. 216/2011 extended this 'monitoring' period to execute construction works for further five years (up to December 31st 2015).

In case of step up of building areas pursuant to Law no. 266/2005, check if the condition to confirm the tax step up is fulfilled by the new term.

Transfer pricing documentary requirements

The setup of a Transfer Pricing ('TP') documentation according to certain parameters allows avoidance of tax penalties in case of assessment on transfer pricing matters carried out by Italian tax authority (penalties range from 100% to 200% of the higher tax). The existence of such documentation has to be declared in the annual income tax return. It is worth to note that the Financial Bill 2014 has expressly extended the application of transfer pricing rules also to IRAP.

Map the intra-group transactions and evaluate the tax penalty profile of TP policies not fully compliant with the arm's length criteria, and act accordingly.

Local property tax (IMU) for builders

With effect from the balance payment of local property tax (IMU) for year 2013 onwards, builders are exempt from IMU with regard to buildings built and addressed to be sold (of any kind: residential or commercial/industrial), as long as they are not leased.

Consider the favourable impact of the provision for builders.

Revaluation of buildings

According to Financial Bill 2014, for the purpose of the fiscal year in course on December 31st 2013 (year 2013, for calendar-year tax payers), companies which did not apply IAS/IFRS could step-up real estate properties (other than stock inventory) held at the end of the same year and already shown in the financial statements of the previous one.

The step-up could be recognised for both corporate income tax (IRES) and regional tax on production (IRAP), with the payment of a substitute tax equal to 16% for depreciable assets and 12% for non-depreciable assets (e.g., buildable lands).

The higher value is recognised:
- For tax depreciation purpose, from the third year following the one of step-up (i.e., from year 2016);
- For capital gain/loss from disposal, from the fourth year following the option (i.e., from year 2017).

The revaluation surplus is allocated to capital or to a special reserve, taxable in case of utilisation, unless a further 10% substitute tax was paid.

The substitute tax had to be paid in three equal instalments in the course of year 2014, without any interest surcharges.

Detect sales of revaluated real estate properties before the tax recognition of their step-up.

Consider that from the third year following the step-up on (i.e., year 2016 for calendar-year taxpayers) the increased values are relevant for depreciation, but also for 'passive' company legislation.

Domestic Tax Group regime extended to 'sister' companies

Italy has introduced the so-called 'horizontal' tax consolidation: the Domestic Tax Group regime can now include also resident 'sister' companies, i.e., companies which are not controlled (even indirectly) by the domestic consolidating entity, provided that all the subjects falling in the Tax Group perimeter are subject to the common control of a EU based company.

The change has been enacted by Legislative Decree no. 147/2015 and is effective from the tax period in course on October 7th 2015.

In case of non-Italian EU group, if the foreign controlling company does not have a permanent establishment in Italy, it can designate the entity in the Tax Group perimeter which will act as consolidating entity.

New tax ruling for new relevant investments

Enterprises which intend to make investments in Italy for at least EUR 30m and with relevant positive effects on employment with regard to the activity object of the investments, will be entitled to submit a ruling to the Tax Office to address:

- The tax treatment of the investment plan and of any eventual
- extraordinary operations that may be performed to implement the investment;
- Eventual abuse of law and/or tax avoidance profiles of the intended investments;
- The request of disapplication of anti-avoidance provisions and/or of access to specific tax regimes. For this purpose, the intended investment and related plan have to be disclosed and detailed in the ruling.

The Tax Office replies within 120 days. This term can be extended in case of request of further information/documentation by further 90 days (starting from their submission). In absence of reply within the stated deadline, the tax treatments/conclusions proposed by the applicant are deemed as accepted and applicable (so-called 'silence-acceptance'). The Tax Office's reply (explicit or implicit) is binding till the terms and conditions of the new investment/business disclosed in the ruling remain unchanged.

This new ruling has been provided by Legislative Decree no. 147/2015 which is in force since October 7th 2015. Within the following 70 days, the Ministry of Economy and the Head of the Tax Office, respectively, have to issue the operative provisions to actually enact this ruling proceeding.

Legal definition of 'abuse of law' principle

The concept of 'abuse of law' has been a general principle stated by tax courts and applied by the Tax Authorities in the last years to challenge operations or tax conducts aimed exclusively to obtain tax benefits, which could not be challenged under the general anti-avoidance legislation.

This principle is now incorporated in the tax legal framework: Legislative Decree no. 128/2015 has introduced the new definition of tax avoidance and 'abuse of law', stating also the procedure which the Tax Office has to follow to challenge abusive operations.

In particular, qualify as 'abuse of law' one or more operations without economic substance which, although formally complying with the tax laws, produce undue tax benefits; such operations are not valid vis-à-vis the Tax Administration which can disregard the tax advantages obtained, assessing taxes according to the avoided tax rules and principles.

Operations without economic substance are acts, facts and contracts, even related, without any economic substance and not able to produce any significant effects other than tax advantages; Undue tax advantages mean benefits, even future, which do not comply with the tax laws' purposes or the tax system's principles.

Conversely, operations grounded on substantial and not marginal non-tax rationales (even with organisational or managerial character) do not qualify as abusive operations.

By way of prior tax ruling, taxpayers are allowed to know if the intended operations qualify as abusive transactions.

The new provisions state the principle that taxpayers can freely choose among alternative tax regimes provided by the law and operations with different tax leakage. In addition, it is also stated that tax abusive operations do not configure tax crimes; as a result, their challenge is not relevant for the purpose of the tax criminal law.

These new provisions are effective from October 1st 2015, also with reference to operations performed in the past, unless the relevant tax assessment notice/claim has been already served within such date.

Limitation to the extension of the statute of limitations in case of tax crime

Pursuant to Legislative Decree no. 128/2015, in case of violations relevant for tax criminal law the statute of limitations will be doubled only if the tax crime notice is served to the Public Prosecutor within the ordinary statute of limitations (i.e., December 31st of the fourth year following the year of filing tax return filing).

This provision is applicable from September 2nd 2015.

However, the law keeps valid the effects of the tax assessment notices/claims served within this date and of the tax audit reports delivered to taxpayers, or however brought to its knowledge, within the same date provided that the relevant tax assessment notices/claims will be served by December 31st 2015.

11 Latvia

Taxation of dividends

Dividends received from companies, excluding tax havens, are not included in taxable income of a Latvian company, and dividends paid to non-resident companies, excluding tax havens, do not attract withholding tax ('WHT').

Dividends paid to tax havens are subject to 15% WHT. If dividends are paid out more than once a year, such extra payments to tax heavens are taxed with 30% WHT.

Dividends paid to private individuals either Latvian residents or non-residents are subject to 10% personal income tax.

Dividends to/from companies are free of tax, except, if paid/received from tax havens.

Sale of real estate and rental income

The change of real estate ownership attracts stamp duty payable at 2% of the acquisition price, capped at EUR 42,686.15 per commercial property (no caps for dwelling houses). The stamp duty is payable by the purchaser.

In addition, the sale of property and sale of company shares, if at least 50% of the assets in this company at the beginning of the year of disposal or in the previous year are formed by real estate, is subject to 2% withholding tax (WHT). WHT is payable in case real estate or shares of company are sold by Latvian non-resident companies to a Latvian resident, either legal or private person.

Non-residents from the EU or tax treaty country can choose whether to pay 2% WHT from the sales proceeds or 15% tax from the profit. The same principle applies to rental income and income from consulting services.

In case of the sale of real estate or rental income EU/tax treaty residents may choose between 2% WHT payment calculated on total income or 15% tax on profit.

Sale of shares and securities

Income arising on the disposal of any shares other than those in companies established in tax havens is not taxable, and losses not deductible for CIT purposes. The same approach is applied to any publically traded EU/EEA securities. Losses from the sale of shares and securities cannot be carried forward.

Profits arising on the disposal of any other securities are taxable and losses deductible in the year of disposal.

Capital gains on sale of shares and listed EU/EEA securities are non-taxable.

New Act on construction

There was a need for a new legal framework for the construction process in order to harmonise national legislation with the EU legislation and to make the entire construction process simpler and more transparent starting from the conception to the commissioning of buildings.

The new Act on Construction came into force on October 1st 2014 providing for more transparent and simpler construction process.

Losses carried forward

Companies are able to carry forward tax losses accrued since 2008 for an unlimited period of time. Losses accrued before 2007 may be carried forward eight years. Change of control may lead to a forfeiture of losses at the Latvian company's level.

2015 is the last year when tax losses accrued in 2007 can be utilised.

Deductibility of interest payments

There is a restriction for the amount of interest that may be deducted for CIT purposes.

One of the criteria for deductibility of the interest payments is the amount of the company's equity at the beginning of the tax year, i.e. low or negative equity at the beginning of the tax year will restrict deductibility of interest payments for the year.

If relevant, consider options for improving equity before year end in order to improve deductibility of interest next year.

Taxation of royalties and interests paid by Latvian company

Interest and royalty payments to any non-resident company, except tax havens, do not attract WHT as from January 1st 2014.

Royalties and interests are fully WHT-exempt if paid after January 1st 2014 (except tax havens).

Residence certificates

Management fees paid to non-residents are subject to a 10% WHT. However, WHT may be eliminated under provisions of the respective tax treaty. In order to apply for a more favourable tax regime, the non-resident has to provide the payer with a residence certificate.

Given the fact that settlements are often made at year end, the Latvian payer should obtain this certificate from the income recipient to ensure the deductibility for CIT purposes.

Declining method depreciation for fixed assets

The declining balance depreciation of 10% for real estate should be used for tax purposes.

Consider acquiring assets before year-end in order to benefit from the declining balance depreciation.

Exchange of shares

Where a share exchange takes place (one kind of shares being exchanged for another kind without receiving any other type of consideration), payment of personal income tax is postponed to a future date when the person will sell the shares acquired through exchange.

Accordingly, when an individual contributes his shares to another company in exchange for shares in that other company, no disposal of shares is considered to take place within the meaning of the PIT Act, and a 15% tax is not payable on the potential gain. Tax on the capital gain becomes due when the individual sells the shares acquired through exchange.

Where a share exchange takes place (one kind of shares being exchanged for another kind), payment of PIT is postponed and is due when the individual sells the shares acquired through exchange.

Provision for bad debts

Increases in provisions for bad debts that are included in a company's expenses are non-deductible for CIT purposes.

Opportunities to recover bad debts should be considered to decide how much provision for bad debts is necessary.

Write-offs for bad debts

Bad debts must comply with certain criteria in order to be deductible if written off.

Consider whether the particular debt complies with these criteria.

Transfer pricing

Generally, all related-party cross-border payments have to comply with the arm's length principle. Failure to present appropriate documentation to the tax administration might result in the non-acceptance of group charges and penalties for tax purposes.

The Latvian Taxes and Duties Act lay down requirements for Transfer pricing ('TP') documentation that Latvian tax payers must prepare to prove that their related party transactions are arm's length. According to the amendments, full TP documentation will be mandatory for companies with sales in excess of EUR 1.430m, and related-party transactions amounting to EUR 14,300 or more. The amendments also state that within one month after receiving a request from the Latvian tax authorities a taxpayer must submit full TP documentation.

Although generally tax audit could be commenced for open tax years limited to three years since the tax payment was due, amendments to provisions of Latvian Taxes and Duties Act states that transfer pricing related issues can be audited for past five years.

Under Latvian CIT Act there is the possibility to use corresponding adjustment if the counterpart has made a TP adjustment and appropriate proof can be provided.

The arm's length principle should be duly followed and documented.

Real estate tax

Companies have to pay annual real estate tax (RET). Generally the RET is in between 0.2–3% of cadastral value. The exact rate is determined by each municipality.

Significant exemption from real estate tax is no longer available, namely, the newly constructed or reconstructed buildings used for economic activity were exempt from real estate tax for one year from the date of the next month after their commissioning.

On February 10th 2015 Cabinet of Ministers' rule on 'Regulation on the criteria and procedures for the buildings or parts (group of premises) and the engineering used for environmental purposes, are not subject to real estate tax' came into force providing criteria on which the building or parts thereof (group of premises) and the engineering used for environmental protection purposes shall be exempt from real estate tax.

The National Cadastre of Real Estate Act has been amended with effect from January 1st 2015 to update the cadastral value base every two years rather than annually as before. This means that the cadastral values will change once every two years if the property market or factors affecting the value of an area have changed.

Real estate tax has been amended to exclude the previous exemptions for newly constructed or reconstructed buildings used for economic activity and increase the tax rate for unfinished building and to include new exemption for buildings used for environmental protection.

VAT legislation regarding sale of real estate in Latvia

According to the VAT Act sale of unused real estate and development land attract the standard VAT rate.

Under the VAT Act development land is defined as a piece of land that is covered by a permit issued under construction law for building development, engineering communications or access roads.

Unused real estate within the frame of the VAT Act means:
- Newly constructed buildings or structures (including any fitted stationary equipment) that are not used after completion;
- Newly constructed buildings or structures (including any fitted stationary equipment) that are used and sold for the first time within a year after completion;
- Buildings or structures that are not used after completion of renovation, reconstruction or restoration (RRR) work;
- Buildings or structures that are used after completion of RRR work and sold for the first time within a year after completion;
- Incomplete construction items; and
- Buildings or structures undergoing RRR before completion.

There might be claw-back provisions, if real estate previously acquired with VAT has been further sold as used within the meaning of VAT. It means that the seller is liable to repay a proportion of Input tax previously recovered.

The option to tax allows a registered taxable person having the opportunity of charging VAT on supplies of taxable real estate transactions. This option is available only where property is registered with Latvian tax authorities and sold to a registered taxable person.

Make sure that VAT for the sale of unused real estate has been applied correctly.

Income from partnership

The Personal Income Tax (PIT) Act lists the types of an individual's income that attract PIT. So far partners in a partnership have been able to avoid paying PIT on their income that is exempt from Corporate Income Tax (CIT).

According to the amendments the allocation of a partnership's taxable income to an individual partner should be increased by the corresponding part of the partnership's income from
- Selling shares in companies that are not resident in a tax haven,
- Dividends the partnership receives from companies that are not resident in a tax haven, and
- Selling EU/EEA publicly traded securities that are not central or local government securities (including interest payments received on bonds).

According to the amendments a partnership's tax return for the tax period should detail the allocation of taxable income to each individual partner.

Allocation of a partnership's taxable income to an individual partner should be increased by the corresponding part of the partnership's income from selling shares, dividends received, and selling EU/EEA publicly traded securities.

VAT grouping

The VAT grouping facility helps related companies reduce their administrative burden and improve cash flows, as their mutual transactions no longer attract VAT and a single VAT return can be filed covering all group companies. This especially benefits group companies with both taxable and exempt supplies and companies that have extensive sales outside Latvia.

Consider the option of creating a VAT group.

Reverse-charge VAT on construction services

Reverse-charge VAT is applied to construction contracts signed after December 31st 2011.

Make sure that reverse-charge VAT has been applied correctly.

12 Lithuania

Investment in real estate and land

There are no restrictions for foreigners to acquire the immovable property in Lithuania (except for land). Land (except for agricultural and forestry) can be acquired only by companies or individuals who are established or residing in the EU, in countries that have signed the European Treaty with the EU member states or in countries that are the members of OECD, NATO or EEA. According to the Treaty of Accession of Lithuania to the EU, the restriction in respect of acquisition of agricultural and forestry land was initially valid until April 30th 2011. The term was subsequently extended until April 30th 2014 under the agreement between the Lithuanian Government and the European Commission. Now foreign residents and companies are allowed to buy up to 500 hectares of farmland (or more if the buyer is a stockbreeder), provided that the buyer has at least 3 years of farming experience or has completed studies leading to agriculture-related profession.

Generally, there are no stamp duties on transactions. However, real estate related transactions are subject to a notary's approval. The notary fee that a legal entity is charged in case of a sale and purchase of real estate amounts to 0.45% of the real estate price but not lower than EUR 29 and not higher than EUR 5,800. Besides, changes in real estate ownership rights must be registered with the Real Estate Register. The amount of the fee charged for the registration of a title to immovable property depends on the type and value of the property.

Permanent establishment

Investigation of the activities of foreign companies in Lithuania is currently a 'hot topic' for the Lithuanian tax authorities. The main focus is on foreign companies performing activities in Lithuania without registering as local taxpayers. If an enterprise is recognised as a permanent establishment, the tax authorities may calculate tax amounts payable in Lithuania, late payment interests and fines.

Explore structuring alternatives before making your investments or before restructuring your investments.

Corporate income tax rate

Standard corporate income tax (CIT) rate is 15%. Small entities (i.e. entities with fewer than ten employees and less than EUR 300,000 gross annual revenues) can benefit from a reduced corporate income tax rate of 5% with certain exceptions.

Generally, the taxable period for corporate income tax is the calendar year. The tax return has to be filed and corporate income tax due has to be paid before June 1st of the next taxable period. Subject to permission from the State Tax Authorities, a taxable period other than the calendar year may also be used by companies. In that case, the payment and declaring terms should be changed accordingly.

Withholding tax on the sale of real estate

Income from the sale of real estate situated in Lithuania and derived by a foreign entity is subject to a withholding tax (WHT) of 15%. WHT on income sourced in Lithuania must be withheld and paid to the state budget by both Lithuanian entities and permanent establishments in Lithuania.

Withholding tax on interest

Interest paid from Lithuanian companies to foreign companies established in the EEA and in countries with which Lithuania has a double tax treaty are not subject to WHT in Lithuania and no holding requirements are applied. In other cases 10% WHT is applied.

Notary fees on disposal of shares

If 25% or more of private limited company's shares are being sold or the price of shares exceeds EUR 14,500, except for the cases when shares are deposited in a licensed brokerage firm, SPA is subject to notary's approval. Notary fees amount to 0.4%-0.5% of share price, but are not less than EUR 14.48 and not more than EUR 5,792.40.

Transfer pricing

All related-party payments have to comply with the arm's length principle. Legal entities of which the turnover exceeds EUR 2,896,200 should have transfer pricing documentation for the transactions with related parties. Failure to present appropriate documentation to the tax administration may result in the non-acceptance for tax purposes of group charges.

Ensure compliance with transfer pricing rules.

Thin capitalisation rule

Interest on the debt in excess of the debt-to-equity ratio of 4:1 is non-deductible for corporate income tax purposes if the company cannot substantiate that interest is at the fair market value. This is applicable in respect of the debt capital provided and/or debt capital guaranteed by a related party.

Ensure compliance with thin capitalisation rule. If 4:1 ratio is exceeded, consider repayment of debts or increase of equity.

Losses carried forward

Operating tax losses can be carried forward for an unlimited period of time. Losses incurred from the disposal of securities can be carried forward for a period of five years and can only be offset against income of the same nature. Only up to 70% of current year's taxable profits can be offset against tax losses carried forward. The carry back of tax losses is not allowed under Lithuanian law.

Group taxation

Generally, tax grouping is not allowed in Lithuania, thus each company is taxed separately. However, current year operating tax losses incurred after January 1st 2010 can be transferred to another legal entity of the group if certain conditions are met.

Consider possibilities to take over tax losses from the other Lithuanian companies of a group.

Depreciation of fixed assets

The depreciation of fixed assets is calculated separately for each asset using the straight-line method, double declining balance depreciation method or production method. Generally, buildings may be depreciated over periods from eight to 20 years (new buildings over eight years), machinery and plant over five years.

VAT

The standard VAT rate is 21%. The reduced VAT rates are 5% and 9%. The sale of new buildings is subject to VAT at the standard rate while the sale of buildings used for more than 24 months is VAT-exempt. A sale or any other transfer of land is exempt (except for land transferred together with a new building that has been used for less than 2 years and land for construction). Rent of real estate is also VAT-exempt (with some exceptions).

However, taxable persons are entitled to opt for taxation of sale of buildings older than 24 months and buildings rental services with VAT if such buildings are sold/rented to VAT payers.

VAT relief for bad debt

Starting from January 1st 2012, a Lithuanian VAT payer can adjust output VAT payable to the Lithuanian budget due to bad debts if certain conditions are met.

Land tax

As of January 1st 2013, tax rate ranges from 0.01% to 4% depending on local municipalities.

The taxable period for land tax is the calendar year. Returns are sent by the State Tax Authorities to tax payers by November 1st of the current year and the tax due has to be paid by November 15th of the current year.

As of January 1st 2013, the tax base depends on the average market value established according to the mass valuation. The mass valuation is performed not rarer than every five years. There will be a possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20%.

Budget for land tax payments.

Land lease tax

Users of state-owned land are subject to land lease tax. The minimum tax rate is 0.1% and the maximum rate is 4% of the value of the land. The actual rate is established by the municipalities.

The taxable period for land lease tax is a calendar year. Tax due has to be paid by November 15th of the current calendar year.

Budget for land lease tax payments.

Real estate tax

RET is levied on the value of immovable property owned by legal entities. RET rate ranges from 0.3% to 3% depending on the local municipality.

The taxable period is a calendar year. RET returns must be filed and tax due must be paid before February 1st of the next year. Advance real estate tax payments are made by legal entities three times per year. Each payment consists of a quarter of the annual amount.

Immovable property owned by individuals and used for commercial purposes is also subject to real estate tax. The same RET rate as for legal entities is applied.

As of January 1st 2015, such personal property as residential real estate, garages, farms, etc. are not subject to real estate tax provided that their aggregated value does not exceed EUR 220,000. The part of the value exceeding EUR 220,000 is subject to tax of 0.5%. RET return should be submitted to the Tax Authorities and the tax due should be paid until December 15th of the current tax period.

RET is applied both for local and foreign tax residents holding real estate in Lithuania.

13 Luxembourg

Corporate tax rate

The aggregate income tax rate for 2015 is 29.22% for the entity registered in the Luxembourg City:
- Standard corporate income tax rate is 21% for the taxable income exceeding EUR 15,000; otherwise it is 20% (there is also a minimum amount of tax due, see below);
- Municipal business tax is also levied at rate generally varying from 6% to 12% depending on where the company is located (the municipal business tax rate is 6.75% if the company has its registered office in the Luxembourg city);

Luxembourg undertaking is also contributing to the employment fund 1.47% of its taxable income (i.e. 7% rate assessed on the 21% income tax).

Minimum corporate income tax

Luxembourg tax resident entities are liable to a minimum tax. For 2015, minimum tax amounts to EUR 3,210 where the sum of financial assets, transferable securities and cash at banks exceeds 90% of the total balance sheet and the sum of the total balance sheet exceeds EUR 350,000. It is expressively foreseen that receivables due by affiliated companies are to be included in the list of assets to be considered when assessing the above 90% threshold. The minimum tax for all other corporations is ranging from EUR 500 to EUR 20,000 (increased by solidarity surtax), depending on the company's total balance sheet:

Total Balance sheet[1]	Minimum tax[2]
Up to EUR 350,000	EUR 535
EUR 350,001–EUR 2,000,000	EUR 1,605
EUR 2,000,001–EUR 10,000,000	EUR 5,350
EUR 10,000,001–EUR 15,000,000	EUR 10,700
EUR 15,000,001–EUR 20,000,000	EUR 16,060
over EUR 20,000,001	EUR 21,400

[1] Total Balance Sheet of the company as at the end of its fiscal year
[2] Including solidarity surtax

The net value of assets whose taxation rights are exclusively allocated to the other contracting state of a double tax treaty entered into by Luxembourg is not taken into account when determining the total gross assets of the company. This means notably that companies whose principal asset is a real estate property located in a double tax treaty country should not be subject to the EUR 21,400 minimum tax (assuming the value of the property exceeds EUR 20m) but to a lower amount, as the value of their other assets should be quite nominal.

For tax consolidated entities, the head of tax unity is to bear the aggregate amount of minimum tax that would have been borne by each company member of the tax unity were they not consolidated. In other words, the overall minimum tax due will not be impacted by a potential application of the tax unity regime.

Minimum tax paid is considered as an advance tax payment of any present or future corporate income tax that will be due by the corporation. This minimum corporate income tax will not be reimbursed to the taxpayer.

Losses carried forward

Tax losses incurred in a given tax year may be carried forward indefinitely by the company that has suffered them.

Tax losses cannot be carried back in Luxembourg.

Net wealth tax

Luxembourg levies annual net wealth tax of 0.5% on the net assets of Luxembourg companies.

An exemption of qualifying assets is available under the participation exemption regime.

The charge can be eliminated or reduced if a specific reserve, equal to five times of the tax is created before the end of the subsequent year and maintained for the following five years.

Withholding tax

There is no withholding tax on interest.

Generally dividends are subject to 15% withholding tax unless participation exemption regime or more favourable tax treaty rates are available.

Liquidation proceeds (deriving from a complete or partial liquidation) paid by a Luxembourg company are not subject to withholding taxes in Luxembourg.

Transfer Pricing

Since 2011, when Circulars of January 28th and April 8th were issued, the Luxembourg transfer pricing practice has significantly strengthened its positions and requires more and more focus from corporations that are engaged in intra-group on-lending activities financed by borrowings. The Luxembourg tax authorities, when confirming the transfer pricing documentation, are drawing their attention to whether substance and minimum equity at risk requirements are actually satisfied, thus requiring companies engaged in intra-group financing activities to demonstrate sound and appropriate levels of economic and operational substance and beneficial ownership in Luxembourg.

Luxembourg transfer pricing practice is in good conformity with OECD transfer pricing norms, this also being a benefit for the counterparties to the financing arrangements. Under the new transfer pricing rules that were introduced with effect from January 2015, Luxembourg Income Tax Law is now aligned with the OECD Tax Model Convention and as a result of this new transfer pricing legislation, the Luxembourg tax payer is obliged to report either up or down-ward adjustments in the tax returns where transfer prices do not reflect the arm's length principle, The new provision applies to transactions between related parties both located in Luxembourg as well as where one party is tax resident in a foreign jurisdiction.

Although this new transfer pricing guidance might represent a time-consuming development involving additional costs, the changes will mean, in the long term, that Luxembourg companies that move to the new approach will be in good conformity with OECD transfer pricing norms, this also being a benefit for their counterparties to the financing arrangements.

Furthermore, these Luxembourg companies will be well placed to demonstrate sound and appropriate levels of economic and operational substance and beneficial ownership. Both of these are attributes that are of growing importance in a global fiscal environment that increasingly focuses on tax treatments that are congruent with the underlying business economics.

Substance in Luxembourg

Over the past few years, we have noticed an emerging trend in various jurisdictions where portfolio companies are located, that tax administrations tend to challenge the actual substance of foreign holding companies.

We stress that Luxembourg offers a wide range of possibilities and advantages to build up international holding structures in Luxembourg.

14 Malta

The Individual Investor Programme

A citizenship programme has been introduced which allows for the granting of citizenship to individuals and their families who contribute to the economic and social development of Malta. Subject to a stringent vetting and due diligence process, including thorough background checks, the applicants and their dependants are granted citizenship in exchange for a contribution.

There are a number of conditions that need to be satisfied by an applicant, including the acquisition by the applicant of immovable property in Malta having a minimum value of EUR 350,000 or alternatively renting immovable property for a minimum annual rental value of EUR 16,000.

Property transfers tax

A number of changes were made to the tax regime applicable to transfers of immovable property.

The default rate applicable to transfers of immovable property situated in Malta has been reduced from 12% to 8% of the transfer value. New rates have been introduced to cater for different scenarios, mainly depending on when the property was purchased and the nature of the property.

When the property being transferred was acquired before January 1st 2004, the applicable rate of tax is 10% of the transfer value.

Furthermore, a 5% tax rate has been introduced and applies to property which is transferred within 5 years from the date of acquisition.

Transfers of restored property are now taxable at the rate of 7% of the transfer value.

The changes have almost omitted completely the possibility of opting out of the final tax system and having the transfer taxed on the gain being derived from the transfer.

Residence programme and Global residence programme (Replacing the High Net Worth Individual Rules)

Malta has rules in force under which individuals who are not Maltese nationals and not long term/permanent residents are subject to tax at a flat rate of 15% on income arising outside Malta (excluding foreign-source capital gains which are not taxed) that is remitted to Malta, subject to a minimum annual tax liability of EUR 15,000 for both EU and non-EU applicants.

There are a number of conditions that need to be satisfied by an applicant, including the acquisition by the applicant of immovable property in Malta having a minimum value of EUR 275,000 or alternatively renting immovable property for a minimum annual rental value of EUR 9,600 etc.

United Nations pensions programme

A new programme has been introduced for individuals who are not Maltese nationals and not long term/permanent residents of Malta and are in receipt of a UN pension. In these rules, a beneficiary's UN pension income received in Malta following the granting of the special tax status, shall be exempt from income tax. All income arising outside Malta (excluding foreign-source capital gains which are not taxed) that is remitted to Malta is taxed at 15%, subject to a minimum annual tax liability of EUR 10,000.

One of the conditions that need to be satisfied by an applicant in order to benefit from this programme is the acquisition of immovable property in Malta having a minimum value of EUR 275,000 or alternatively renting immovable property for a minimum annual rental value of EUR 9,600 etc.

15 Netherlands

Functional currency

Based on functional currency rules, a company may opt to file its tax return in a currency other than the euro. A choice for the use of a functional currency is in principle set for a period of ten years.

If the company's fiscal year concurs with the calendar year, the request for application of this provision from 2016 onwards needs to be filed on December 31st 2015 ultimately.

No retroactive effect of separation from a fiscal unity

As opposed to the request for formation of a fiscal unity, the separation of a fiscal unity does not have retroactive effect.

If it is desired that one or more companies are separated from a fiscal unity per January 1st 2016, the request for separation needs to be filed on December 31st 2015 ultimately.

Reinvestment reserve

In case a fiscal reinvestment reserve has been formed using profits made in the disposition of a business asset, the imposed three-year period for reinvestment needs to be taken into account. For example, the three-year period may end per December 31st 2015 if you have formed a reinvestment reserve with respect to the disposition of a business asset in 2012 (and the fiscal year is equal to the calendar year).

If reinvestment does not take place within the three-year period, the amount of the reinvestment reserve is released and subject to taxation. Furthermore, in case there is no intention for reinvestment, the reinvestment reserve is released and subject to taxation irrespective of the three-year period. The existence of such an intention is verified at December 31st, but must be present throughout the entire year. The burden of proof for existence of the intention is with the tax payer and therefore it is recommended to officially document the reinvestment intention continuously.

Interest deduction related to acquisition

Interest paid on a loan for acquiring another company may not be fully deductible, as various regulations apply that restrict interest deductions.

If it is considered to make an acquisition or if an acquisition is already in progress, please note that the right timing of the structuring and financing may enable to avoid interest falling under the deduction restrictions unnecessarily.

Possibility of loss compensation

As a general rule, losses can be carried forward for nine years, after which they can no longer be offset.

Does a company have tax losses and will the entitlement to loss compensation expire soon, a company may be able to avoid losing the possibility of offsetting losses by taking measures in good time, for example by the realization of hidden reserves.

Financing participations

If If a company holds participations and is financed by group loans or third party debt, an interest deduction restriction might apply. Expansion investments may possibly constitute for an exception.

It may be advisable to consider whether the interest deduction restriction applies and whether the impact can be reduced, for example by adjusting the structure.

Negative declaration after purchase or sale of immovable property

In the event that a VAT taxable transfer is elected in respect of transfer of immovable property, the buyer has to declare in writing that he will be using the immovable property for purposes for which he is entitled to deduct VAT for at least 90%. If the buyer does not use the property for such activities in the period covering both the financial year of transfer and the subsequent financial year, he must notify the seller in writing within four weeks before this reference period ends (sending a copy to the tax inspector). Such declaration may result in the original seller of the immovable property having to pay back VAT-deducted at an earlier stage (such has VAT on civil-law notary's expenses and the costs of advice, and any 'adjustment VAT').

We therefore advise sellers to include clauses in their purchase agreements regarding the liability for this VAT loss.

VAT taxable lease or let of immovable property

During the first year of the lease, the tenant must submit a declaration to the lessor and the Tax Authorities that the '90% requirement' is satisfied. If the tenant at the end of the year no longer meets the '90% requirement', he must submit a declaration to the lessor and the Tax Authorities within four weeks of the end of the financial year that he no longer uses the leased property for at least 90% for activities for which he is entitled to deduct VAT.

In case of VAT taxable lease or let and abovementioned is the case, then this 'negative' declaration must be provided in January 2016.

Dutch Tax Package 2016

The Dutch government published the 2016 Tax Package on September 15th 2015. This publication summarizes the most important tax measures for the real estate market. The relevant measures concern Dutch real estate transfer tax, corporate income tax and value added tax. As the legislative process still runs, the plans may still change. Most proposals are set to take effect on January 1st 2016. If not, the effective date is mentioned separately.

Real Estate

Levy base for ground lease no longer reduced

The levy base for ground lease transactions has changed. With a ground lease transaction, real estate is sold while at the same time an easement or ground lease or building rights is/are established. The buyer then becomes bare owner and at the same time ground lessor of the property in question.

For the levy of transfer tax, the levy basis will no longer be decreased with the capitalized value of the ground lease payments or charges. With this change the ground lease transaction is equated with the regular sale-and-lease-back-transactions: the sale of real estate with a parallel rent agreement, where the seller becomes full owner and also lessor. In that case the levy base is not reduced.

The change also applies to sub ground lease rights and sub building rights. Further, the change also applies in cases where an internal reorganisation has led to the establishment of a ground lease and less than three years have passed since the reorganisation.

Codification extension deduction of costs relating to listed EU-buildings

The deduction of costs relating to listed buildings situated in the Netherlands, is also available to owners of listed buildings in another EU Member State or another EEA Member State. The listed building has to be a part of the Dutch cultural heritage. The State Secretary had approved of this earlier. The deduction will be codified per January 1st 2016. The regulation has retroactive effect as from December 18th 2014. Under certain conditions such a listed building can also be classified under the Estates Act 1928.

Corporate income tax

Participation exemption and participation credit system adjusted in line with changes to the Parent-Subsidiary Directive

The participation exemption and participation credit system will no longer be available for benefits or payments derived from a participation anywhere in the world if those benefits or payments are deductible for profits tax purposes at the level of the participation. This means that the Netherlands has now implemented the changes to the European Parent-Subsidiary Directive and applies it not only to EU subsidiaries but also to non-EU countries. Moreover, to the extent that the benefits and payments referred to above are deducted from the acquisition price of the participation, these benefits and payments also qualify as taxable income. Before the corporate income tax can be filed, it must be established whether the foreign participation is eligible for the deduction referred above.

Substantial shareholding regime amended

The Substantial shareholding regime is changed to implement the general anti-abuse rule of the Parent-Subsidiary Directive. An entity outside the Netherlands that holds a substantial shareholding, in general at least 5% of the interest, in a Dutch resident company will be subject to corporate income tax if the company is held with tax avoidance as one of the main purposes and it is not put into place for valid commercial reasons which reflect economic reality. Such valid reasons may exist if the entity conducts business activities and the substantial shareholding is attributable to that business, if the entity is the ultimate holding company or if the entity is an intermediate holding company that acts as a link between the ultimate holding company and the business, and the entity meets the substance requirements.

Extension obligation Cooperative to dividend withholding tax

A cooperative resident in the Netherlands will be obliged to withhold dividend withholding tax on dividends distributed to its members if tax avoidance is one of the main purposes of the arrangements and the arrangement is not put into place for valid commercial reasons which reflect economic reality. Such valid commercial reasons for example may exist if the cooperative has a meaningful economic relevance. The place of residence of the cooperative members is irrelevant.

New obligations for transfer pricing documentation

Taxpayers must submit the following documents to the tax authorities or have these documents in their files:

Country by country report

Multinational groups with a Dutch resident parent company and with a consolidated turnover of at least EUR 750m are obliged to submit a country by country report with the tax inspector annually. This report contains an overview per country of several prescribed indicators, such as turnover, profit, paid taxes and employees. In exceptional cases Dutch group companies of multinational groups where the ultimate parent company is not a Dutch resident company, must also submit the country by country report.

Master file

The master file contains an overview of the business of the multinational group, including a description of the nature of the business activities, the general transfer pricing policy and the worldwide allocation of income and economic activities.

Local file

The local file contains information relevant for the transfer pricing analysis in relation to intercompany transactions, where the Dutch taxpayers are involved. The obligation to prepare a master file and a local file applies to companies with a turnover of EUR 50m or higher. Not meeting the proposed documentation obligations may lead to administrative or punitive sanctions and/or reversal of the burden of proof.

The new rules apply to book years beginning on or after January 1st 2016.

Step-up dividend withholding tax in case of cross-border mergers and demergers

A step-up will be introduced in respect of cross-border mergers and demergers. The step-up should prevent that profit reserves of foreign merging or demerging companies will be brought under a Dutch dividend withholding tax claim.

In principle only the contributed capital on shares that existed before the merger or demerger are acknowledged for dividend withholding tax purposes. However, for cross-border mergers and demergers a step-up will now become applicable, in order to avoid that a Dutch dividend withholding tax claim is created in respect of profit reserves of a foreign nature.

The new step-up rules will, amongst others, apply to the following situations: a foreign company merges into a Dutch company or a foreign company demerges into a Dutch company. According to the new step-up rules the amount of the contributed capital that is to be acknowledged amounts to the fair market value of the shares of the merging or demerging company. An exception to this step-up rule applies in so far the merging or demerging foreign company holds shares of a Dutch subsidiary. Furthermore, there is a general anti-abuse rule by which no step-up will be granted, if the merger or demerger is predominantly aimed at tax evasion or delay.

Other

Seller sooner liable when cleaning out private limited company (BV)

Under certain conditions, a selling shareholder is liable for corporate tax on hidden and tax reserves of the company. This concerns a shareholder who holds an interest of at least a third in a company of which the assets consist of investments for 30% or more. Practice shows that this liability measure does not function properly. The seller can comply fairly easily with the requirements formulated by the Dutch Supreme Court to contest liability successfully (possibility of exculpation). This possibility is now limited and does not apply to the liability for corporation tax that is payable on a reinvestment reserve or a hidden reserve related to assets that are sold within six months after a share transfer. This regulation has retroactive effect and is effective from 15:15 hours on September 15th 2015.

Functional currency

Based on functional currency rules, a company may opt to file its tax return in a currency other than the euro. A choice for the use of a functional currency is in principle set for a period of ten years.

If the company's fiscal year concurs with the calendar year, the request for application of this provision from 2016 onwards needs to be filed on December 31st 2015 ultimately.

No retroactive effect of separation from a fiscal unity

As opposed to the request for formation of a fiscal unity, the separation of a fiscal unity does not have retroactive effect.

If it is desired that one or more companies are separated from a fiscal unity per January 1st 2016, the request for separation needs to be filed on December 31st 2015 ultimately.

16 Poland

Change of tax year

If the taxpayer currently has tax year in line with the calendar year and would like to adopt a different tax year, the required procedures comprise change of the articles of association of the company and notification of the tax authorities until January 30th 2016. It should be noted that there is practice, according to which the change of the company's tax year is legally effective, provided that the change of the article of association was registered in the commercial register prior to the end of its last year prior to the change.

If you are planning to change the tax year, you should ensure that changes to the article of association are made and registered and the notification to the tax authorities is filed in time to meet the deadline.

Simplified corporate income tax advance payments

Taxpayers may opt for the 'simplified method' of making advance corporate income tax ('CIT') payments. As such, the taxpayer pays monthly advances equivalent to 1/12 of the tax liability resulting from the annual CIT reconciliation filed in the previous year rather than advances based on actual income for the given tax year. This simplifies the monthly CIT reconciliation process, and may optimise cash flows during the year.

If the simplified monthly CIT reconciliation method is chosen, the taxpayer is obliged to notify the local tax office by 20th day of the second month of its tax year.

Method of recognising foreign exchange differences

Polish tax law recognises foreign exchange differences differently than accounting regulations. However, some taxpayers are entitled to choose the accounting regulations as the basis for tax under certain conditions.

Taxpayers should assess which method of recognising foreign exchange differences is more suitable. If the 'accounting' method is to be chosen, the tax authorities must be notified by the end of the first month of the tax year.

Losses carried forward

Tax losses may be carried forward for five consecutive tax years. However, no more than 50% of the tax loss from any previous tax year may be utilised in any single subsequent year.

It is important to check whether any unutilised tax losses will expire at year end. If so, the timing of the transactions expected to generate taxable income should be considered.

Certificates of tax residence

According to the amendments introduced to CIT Law as of January 1st 2015, in case of certificates of tax residency which do not specify the time period for which they are issued, they are generally treated as valid for 12 months from the date of issue. Valid certificates of tax residence are required in order to apply withholding tax reliefs under double tax treaties and European Union directives.

If you benefit from reduced withholding tax rates/withholding tax exemption on foreign dividend/interest/royalties/service fee payments, an annual review of the collected certificates of tax residence of the recipients of such payments should be performed.

Principle of the doubts to be resolved in favour of the taxpayer

The amendments to Tax Ordinance Act – entering into force as of January 1st 2016 – introduced the principle of the doubts to be resolved in favor of the taxpayer (in dubio pro tributario).

The introduction of the above principle may increase protection of taxpayers' rights in respect of the interpretation of the law by limiting the negative effects of tax regulations being inaccurately drafted by the legislator.

The principle of the doubts to be resolved in favour of the taxpayer should be used by all taxpayers in the course of interpretation of the tax law provisions during current activities as well as in the course of the tax proceedings or the tax audit by tax authorities.

Transfer pricing

Transactions concluded with related parties – both cross-border and domestic – should comply with the arm's length principle. Taxpayers are obliged to report and prepare statutory transfer pricing documentation related to transactions exceeding certain thresholds on an annual basis. Failure to comply with this requirement may result in the assessment of additional income subject to taxation at the rate of 50%.

Based on the announced draft amendments to CIT Law, it is expected that the currently binding transfer pricing rules will be subject to substantial amendments (including an introduction of certain new requirements regarding the transfer pricing documentation). It is planned that most of these amendments should enter into force as of January 1st 2017. However, an obligation to prepare the country by country Reporting (i.e. an information on taxable income, tax paid and places of business) is likely to be introduced already as of January 1st 2016. This requirement will be – however – applicable only to the biggest Polish capital groups (with consolidated revenues exceeding EUR 750m).

New transfer pricing obligations should generally apply after the end of 2016. However, now is the right time to review all related party transactions and examine their arm's length character. This will allow you to make necessary adjustments in case of any discrepancies.

Anti-abuse clause related to application of participation exemption on dividend distributions

Based on the draft amendments to CIT Law, the participation exemption on dividends and other profit distributions will not apply to the legal transaction (or series of legal transactions) which are put into place for the main purpose (or one of the main purposes) of obtaining a tax advantage and which are not genuine.

As explained in the proposed CIT provisions, a not genuine legal transaction is a transaction which is not conducted for valid commercial reasons. It is also stated that the anti-abuse clause may also refer only to a particular stage of the legal transaction or its part, which, when examined separately, is not genuine, without detriment to other genuine stages or parts.

It is recommended to review the operations of your investment structures and profit distribution mechanisms in order to verify whether they may be potentially affected by the new regulations and – if so – to mitigate potential risks.

Multi-party tax rulings

In line with the current market practice, transfer tax implications of the sale of real properties (in the course of asset deal transactions) are typically secured – both from the perspective of the purchaser and of the vendor – via individual tax ruling. Under the currently binding rules, applications for such ruling should be filed separately for both parties to the transaction, which triggers additional administrative burdens and a practical risk that the position of tax authorities presented in the rulings issued for the purchaser and for the vendor with respect to the same transaction will not be uniform.

Under the amendments to the Tax Ordinance Act, expected to enter into force as of January 1st 2016, it will be possible to apply for multi-party rulings (i.e. tax rulings securing the tax implications simultaneously for all parties to the transaction).

If you consider to enter into a real estate transaction and – in line with the market practice – secure its implications via individual tax ruling, in order to streamline such process applying for a multi-party tax ruling should be considered.

17 Portugal

Losses carried forward

Any direct transfer of more than 50% of the share capital or of the majority of voting rights may lead to a total forfeiture of tax losses carried forward at the Portuguese entity's level. Exemptions apply in the case of intra-group corporate restructurings. Otherwise, waiver of such forfeiture may be available (restrictive requirements).

Within 30 days following the transfer of shares, transfer of the majority of voting rights, it may be necessary to file a request with the Portuguese Ministry of Finance.

It is recommended to explore structuring alternatives where you intend to reorganise your investment structure.

Tax prepayments

In the case of declining profits, the taxpayer can opt for suspending the third prepayment. However, if the final tax due is 20% higher than the tax prepayments that should have been made, late assessment interest arises.

Cashflow models and profit forecasts should be checked in order to improve liquidity by reducing the tax prepayment amounts.

Transfer pricing

All related-party transactions have to comply with the arm's length principle. Failure to present appropriate documentation to the tax authorities may result in the challenging of such transactions and penalties for tax purposes.

The arm's length principle should be duly followed and documented.

Interest capping rules

For 2015, Net Financial Expenses (NFE)'s deduction is capped at the higher of a fixed cap of EUR 1,000,000 or a variable cap of 50% (reduced to 40% for 2016 and 30% and 2017) of the fiscal EBITDA. This rule covers indebtedness with both related parties and independent parties, as well as between resident and non-resident entities.

In case of fiscal unities, the parent company can elect for this rule to be applicable on a group basis.

Cross-border financing

As a general rule, interest due to non-resident entities is subject to withholding tax (WHT) in Portugal. Reduced WHT rates may be available when the beneficiary can apply a double tax treaty and WHT full exemption may be available under the Interest and Royalty Directive (I&R Directive) provisions, provided that all the requirements foreseen in the directive are met.

Financing, as a general rule, is also subject to stamp tax, although some stamp tax-exemptions are available.

Some alternatives may be structured to mitigate the WHT and/or the stamp tax issues on cross-border financing.

Careful analysis of the tax impact of the various financing alternatives should be sought beforehand.

Real estate tax

Real estate municipal tax (IMI) (and other charges related to real estate ownership) are due by the real estate owner as per December 31st of each year (and paid on the following year). The IMI rates range between 0.3% and 0.5%.

IMI rate for real estate held by corporations resident in blacklisted jurisdictions is 7.5%.

Residential property and plot of land for the construction of residential property with a Tax Registration Value (TRV) of, at least, EUR 1,000,000 is subject to an additional taxation at stamp tax level, levied a flat rate of 1% on the TRV. The stamp tax rate is 7.5% for property, regardless of their use, owned by companies' resident in blacklisted jurisdiction. This additional taxation will accrue to IMI due by companies domiciled in blacklisted jurisdiction which is currently of 7.5%, leading to a final tax of 15% of the TRV.

In case a direct investment is completed before the end of 2015, it should be taken into consideration that the owner of the real estate is responsible for the payment of the amount for the entire year (and not only from the period after the real estate is acquired) on December 31st 2015. The IMI impact will increase in case the owner of the real estate (corporation) of the real estate is resident in blacklisted jurisdiction.

VAT claw-back rules

In the case of recovery of input VAT related to real estate construction or acquisition of real estate, and where a subsequent VAT-exempt transaction is entered into (e.g. a VAT-exempt lease agreement), VAT claw-back rules are triggered, and thus a VAT payment back to the Revenue is required. Other situations may also trigger the VAT claw-back rules. If so, they all should be included in the December VAT periodical return (filed and paid by February of next year).

Before year end, it should be verified whether the VAT claw-back rules will be triggered and, if so, the correspondent VAT adjustment should be paid back to the Revenue in February of the following year.

Expected changes in tax law for 2016

There is little certainty of the changes to be introduced for 2016 due to the fact that there will be general elections in the beginning of October 2015.

18 Romania

Interest capping rules

Romanian interest capping rules restrict the deductibility of interest expenses on loans taken from entities other than banks and financial institutions, as follows:

Limitation of interest – interest deductibility is limited to the interest rate level of currently 6%, in case of loans denominated in foreign currency. As of January 1st 2016, the interest rate level is lowered to 4%. The threshold applicable to loans denominated in local currency equals the National Bank of Romania's official reference rate (e.g. 1.75% starting with May 2015). Any amounts above these thresholds will be non-deductible and cannot be carried forward. This rule applies irrespective of the maturity of the loans.

Thin capitalisation rule – if the borrower's debt-to-equity ratio is more than 3:1 or negative, the entire interest expenses and net foreign exchange losses in relation to long-term loans (i.e. maturity of over one year, including loans without interest) will be non-deductible; however, the expenses may be carried forward indefinitely and deducted once the debt-to-equity ratio meets the above criteria.

Companies should review their debt positions to determine whether adjustments are necessary to maximise interest deductions for 2015 or going forward.

Holding legislation

Starting January 1st 2014 favourable fiscal measures for the setting up of holding companies have been introduced. Dividend revenues, capital gains and income derived from the liquidation of another entity are non-taxable provided that the beneficiary holds a minimum of 10% of the share capital of its subsidiary for a continuous period of at least one year. Non-resident entities must be resident in an EU or treaty country to benefit of this regime.

Dividends received by Romanian legal entities from other Romanian legal entities are non-taxable. Starting with January 1st 2017, the dividend withholding tax rate will become 5% from the current 16% rate.

Withholding tax exemption

Romania implemented the provisions of the EU Interest and Royalties Directive in the local tax legislation. In this respect, the WHT on interest and royalty payments arising in an EU/EFTA member state is exempt, provided a direct minimum 25% stake in the Romanian income payer's share capital is held for an uninterrupted minimum two-year period at the moment of the payments. These provisions apply to payments made between directly affiliated companies or companies with common shareholder.

The tax is applied to the gross interest revenue. As of June 1st 2015, non-residents from EU/AELS member states may opt for the net interest revenue regime, i.e. they can reduce their withholding tax liabilities by claiming expenses against the interest income. They would thus be able to claim back part of the withholding tax. To do so, non-residents may need to appoint a tax agent as the procedure is not very clear yet.

Companies should review whether the EU Interest and Royalties Directive requirements are met, in order to optimise the WHT payments.

Losses carried forward

Fiscal losses accumulated starting with financial year 2009 can be carried forward for seven consecutive years (previous years losses can only be carried forward for five years). Also, losses can be carried forward in case of company reorganisations (spin offs, mergers). Therefore, tax loss refresh opportunities may arise.

Companies should review their tax loss position to determine if any carried forward losses expire and consider methods to refresh if appropriate.

Tax credits

Foreign tax credits may only be claimed for taxes paid in countries with which Romania has concluded double tax treaties and a tax credit cannot be carried forward (in case no available profits).

If foreign taxes in a non-treaty jurisdiction or overall loss making occurs, the position should be reviewed to find ways to maximise available credits.

Tax prepayments

Taxpayers may choose to declare and pay in advance, on a quarterly basis, their annual corporate income tax. Once the option is made, it becomes mandatory for at least two consecutive fiscal years.

Opportunity and benefits of switching to an advance payment system should be considered.

Accounting and fiscal period

As of 2014, companies can opt for a fiscal year different from the calendar year. The first amended fiscal year also includes the previous period of the calendar (i.e. January 1st – the day preceding the first day of the amended fiscal year), representing a single fiscal year. Taxpayers have to communicate to the territorial fiscal authorities the change in the fiscal year at least 30 calendar days before the start of the amended fiscal year.

The companies are able to opt for the fiscal year to be aligned with the financial year.

Tax incentives

The profit invested in new technological equipment, manufactured and/or acquired and commissioned during the period July 1st 2014–December 31st 2016 is deferred from profit tax. In order to benefit from this incentive, the taxpayer should use the technological equipment for business purposes for more than half of its useful life, but for no longer than five years. The technological equipment for which this tax incentive applies cannot be depreciated by using the accelerated depreciation method.

Reserves set up upon benefiting from this incentive become taxable at the moment of their utilisation and in the event of restructuring operations, if they are not re-built at the beneficiary level.

Another tax incentive refers to additional 50% depreciation for research and development expenses that qualify as such based on specific conditions. Updated implementation norms have been published.

Companies should review whether any of the above incentives may be available and utilised effectively.

Depreciation methods for movable fixed assets

Accelerated balance depreciation or declining balance depreciation is available for certain categories of assets such as equipment and machinery. Buildings can only be depreciated using the straight-line method.

Companies should review their real estate and related incorporated fixed assets to determine whether any assets can be separated and depreciated separately from the buildings for quicker recovery.

Revaluation of real estate property

Companies are required to treat part of the revaluation reserve as a taxable item together with each depreciation expense (quarterly) or with the asset expense (if the asset is sold or written off). Thus, in substance, revaluations are not recognised for tax purposes. The revaluation is also important for the minimisation of property taxes (if no revaluation is made within three years, property taxes may have increased substantially).

To the extent that real estate has been revalued for accounting purposes, the company should review to confirm that correct adjustments were made for tax purposes.

Transfer pricing rules

The Romanian transfer pricing rules are aligned with OECD principles. Transfer pricing rules require that transactions between domestic and cross-border related parties (defined as having a minimum 25% direct or indirect shareholding) be carried out at market value, otherwise adjustments may be performed.

Failure to present appropriate documentation to the tax office may result in the non-acceptance for tax purposes of group charges and penalties.

Companies should review their transfer pricing policies and ensure that appropriate documentation, including a local transfer pricing file, if necessary, is available for all related-party transaction.

Property taxes

The general building tax rate ranges currently between 0.25% and 1.5%. However, the rate may increase to between 10% and 20% for buildings not revalued during the last three years and to between 30% and 40% for buildings not revalued during the last five years.

The tax rate for buildings with touristic destination which do not operate during the calendar year is a minimum of 5% of the inventory value of the building.

As of January 1st 2016 the building tax calculation method differs according to the building destination and the tax rates are changed, as follows:
- Tax due for residential buildings ranges between 0.08% and 0.2% (applicable to the taxable value as per the specific table provided by the law for individuals and the value resulted from the evaluation report for legal entities);
- Tax due for non-residential buildings ranges between 0.2% and 1.3%;
- Tax due for buildings used for agricultural purposes is of 0.4%.

As of January 1st 2016 if no revaluation was performed during the last 3 years, the increased tax rate for building tax due by legal entities is of 5%. A new valuation standard for buildings for tax purposes will be introduced as of January 1st 2016.

Companies should check the status of their property taxes and consider revaluations if appropriate.

Applicable as of January 1st 2014 is a tax on constructions included in the first group of the Catalogue for classification and normal useful life of fixed assets, other than those which are subject to building tax (such as pipes, utilities, other constructions).

As of 2015, the tax on constructions is calculated by applying a 1% rate to the value of the constructions recorded in the taxpayer books as at December 31st of the previous year. Starting with January 1st 2017, the provision regarding construction tax will be repealed. Fit-outs are not considered for the purpose of construction tax calculation.

Transfer of business

As of January 1st 2016 the amendments applicable to domestic mergers, total or partial spin-offs, transfer of assets and exchange of shares will be harmonised with those applicable to similar cross-border transactions. These amendments exclude the neutrality of the contribution in kind to a company's equity, except for cases where a transfer of a going concern takes place.

Also, transfers carried out during a partial spin-off will be neutral for corporate income tax purposes only if a transfer of a going concern takes place and the transferor maintains at least one line of activity.

Social security contributions

The Fiscal Code has been amended in the past years and provisions have been introduced regarding the tax treatment of income derived from trust agreements in which the involved parties are Romanian income taxpayers.

If structures based on trusts involving Romanian income taxpayers are in place, it is advisable to review them from Romanian tax perspective implications.

Provisions have been introduced detailing conditions under which independent working relationships (such as IP rights, civil conventions and commercial contracts) can be reclassified into dependent relationships (i.e. employer – employee). Thus, it is expected that tax authorities will closely scrutinise contractual arrangements in order to identify dependent relationships. In the case of such a reclassification, employer and employee social security contributions are due.

Companies employing independent consultants should review these arrangements to determine what impact or additional risks the change in the relevant regulations creates.

Net rental income

At an individual level, starting with January 1st 2016, the deductible expenses percentage applicable when determining the net rental income, as well as the net income from the lease of agricultural assets shall be increased to 40%. Currently, the deductible expenses percentage is of 25%.

VAT rates

In Romania, the standard VAT rate is of 24%. Starting with January 1st 2016 the standard VAT rate will be reduced from 24% to 20% and to 19% as of January 1st 2017. However, for certain operations expressly provided by the Romanian VAT legislation, the reduced rate of 5%, respectively 9% is applicable.

The reduced VAT rate of 5% applies to dwellings delivered as part of social policy, including old people's homes, retirement homes, orphanages and rehabilitation centres for children with disabilities. The category also includes dwellings and parts thereof supplied as housing with a maximum useful surface of 120 square meters, excluding outbuildings. The reduced rate applies if the value of the dwelling acquired by any single person or family is less than RON 380,000 exclusive of VAT. The threshold has been raised to RON 450,000 as of January 1st 2016. The reduced VAT rate will also apply to the supply of the land beneath the dwelling on the condition that it does not exceed 250 square meters, including the footprint of the dwelling.

Any unmarried person can purchase a house under the social policy, provided that she/he did not acquire in the past another house with 5% VAT. Also, any family can purchase a house under the social policy, provided that the husband or the wife, separately or together, did not acquire a building in the past with 5% VAT.

Companies should review whether the 5% VAT rate can be applied to sale of dwellings.

VAT-exemptions

VAT-exemptions are applicable for rental of buildings, sale of buildings and underneath. The exemption does not apply in case of new buildings, parts of new buildings or building land. However, such operations can be taxed, provided that a notification for taxation is submitted with the Romanian tax authorities.

Building land means any developed or un-developed land, on which a construction can be made.

The delivery of a new building or a part thereof means the delivery performed until December 31st of the year following the one of the first occupation or use. The term 'new building' also refers to any improved building of improved part of building, if the improvement cost, exclusive of VAT, amounts to a minimum of 50% of the market value.

Opportunities and benefits of applying VAT-exemption should be considered for sale or rent of real estate.

VAT deduction righ

The VAT deduction right is also granted for acquisitions of goods from inactive or temporarily inactive taxpayers in debt enforcement proceedings, where the supply is considered taxable. No VAT deduction right is allowed for purchases of goods/services from companies who are deregistered for VAT purposes.

As of January 2016, taxable persons performing acquisitions meant for investments to be used for operations both with and without deduction right will be able to deduct fully the input VAT incurred during the investment process, after which the deducted VAT will be adjusted accordingly.

VAT registration

In order to perform a VAT registration in Romania, the Romanian tax authorities analyse if all conditions are met before approving the registration and moreover they can organise inspections at the registered office in order to check the actual existence of the company's premises.

Before obtaining the VAT registration, companies should ensure minimum resources in terms of people and premises.

VAT for taxable supplies

A decision was issued in April 2011 by the Romanian Central Fiscal Commission in order to clarify how the VAT for taxable supplies of building and land is determined. Therefore, if the parties have agreed that the VAT is not included in the value of the supply or have not agreed anything in this respect, the VAT rate will be applied on top of the value of the supply and if the parties have agreed to include the VAT in the value of the supply, the gross-up method should be applied.

In the context of the above, on November 7th 2013, the European Court of Justice ruled in the joint cases C-249/12 and C-250/12 that when the price for a supply of goods was established with no reference to VAT, and the supplier should account for the related VAT, it should be considered that VAT is already included in the agreed price, in case the supplier is not able to recover the VAT from the beneficiary of the supply.

In order to avoid the risk of additional VAT in case of reclassification of VAT treatment for real estate transactions, companies could include specific clauses in the contracts in respect of how VAT should be charged, if the case.

VAT Cash Accounting Scheme

The companies with a taxable turnover of less than EUR 500,000 or by newly set-up companies can choose to apply this scheme. The taxable persons who choose the cash accounting VAT scheme must apply this system at least until the end of the calendar year in which it opted to apply the system, except when during the same year the turnover exceeds the threshold of RON 2.250.000. If such threshold is exceed during the year, the VAT cash accounting scheme will be applied until the end of the fiscal period (month/quarter) following that in which the limit was exceed.

The VAT deduction right for the acquisitions performed from companies applying VAT cash accounting scheme is deferred until the invoices issued by its suppliers are paid.

Companies should review whether they have suppliers which apply the VAT cash accounting scheme in order to determine their VAT deduction right at a certain moment in time.

VAT transfer of business

The transfer of all assets or parts thereof performed through mergers, spin-offs, contribution in kind or sale of assets does not represent a supply of goods subject to VAT if the beneficiary is a taxable person. The operation is seen as a transfer of assets if the transferred assets form from a technical point of view an independent structure capable of carrying out economic activities. Also, the transfer of assets is considered to take place in case the immovable properties in which the transferred assets are found are not alienated, but reallocated to other business lines of the beneficiary. For the transaction to be seen as a transfer of assets, the beneficiary must continue the economic activity or part thereof which was transferred to him and not to immediately liquidate it or sell the assets which were transferred to him. In this respect, the beneficiary must send to the transferor an own responsibility statement attesting that this condition is met.

As of January 1st 2016 the amendments applicable to domestic mergers, total or partial spin-offs, transfer of assets and exchange of shares will be harmonised with those applicable to similar cross-border transactions. These amendments exclude the neutrality of the contribution in kind to a company's equity, except for cases where a transfer of a going concern takes place.

Also, transfers carried out during a partial spin-off will be neutral for corporate income tax purposes only if a transfer of a going concern takes place and the transferor maintains at least one line of activity.

Moreover, starting with January 1st 2016, for VAT purposes, sales of assets/liabilities, contributions in kind to the share capital of a company, mergers and spin-offs will be outside the VAT scope, provided that the company taking over the assets/liabilities is established in Romania. Additional criteria for VAT neutrality will remain in place for transfers effected through sale or contribution in kind.

Companies should review if the above conditions are met in order for the transfer of business to qualify as a transfer of going concern for which no VAT is due.

VAT related to the demolition of a building

A company purchasing a plot of land along with the building on it, has, for the demolition of such building, the right to deduct the input VAT related to its acquisition, provided that the plot of land will continue to be used for taxable operations. As such no VAT adjustment liabilities will arise if the company demonstrates that the plot of land will be used for taxable operations such as the construction of another building to be used for taxable operations.

Opportunities and benefits may arise for demolitions performed before March 14th 2013 for which VAT was paid, as per the requirements of the former VAT legislation in Romania.

Reverse-charge mechanism

Starting with January 1st 2016, the reverse-charge mechanism will apply to the supply of buildings, part of buildings and plots of land for which VAT is due in accordance with the law or in case the supplier opted to tax the transaction.

Make sure that reverse-charge mechanism has been applied correctly.

19 Russian Federation

'Beneficial ownership' concept

The concept of beneficial ownership has been introduced in the Russian Tax Code starting from January 1st 2015.

The ability to apply lower tax rates under a DTT depends on whether an entity receiving income is the beneficial owner of such income (i.e. whether it has the right to determine its future economic use). To answer this question, the entity's functions, powers, assumed risks and fact of transfer of income (fully or in part) to third entities are considered.

Nonetheless, lawmakers did not come up with a concise test of beneficial ownership, which means that Russian tax agents will not be entirely comfortable applying reduced tax rates on income paid abroad. When making any payments, they will have to consider the risk of additional tax and penalties to be paid at their own expense (please note that it is possible to charge tax to a tax agent as per the stance of the Supreme Arbitrazh Court [SAC] provided in the SAC Plenum Resolution No. 57 of July 30th 2013).

The law mentions a tax agent's right to request a confirmation that a foreign organisation is a beneficial owner of income. The Russian Ministry of Finance in Letter No. 03-08-05/36499 of July 24th 2014 provided examples of documents confirming that the recipient of income is its beneficial owner.

These developments are aimed at preventing treaty shopping practices.

Indirect sale of immovable property

Starting from January 1st 2015 capital gains on sale of shares of Russian and foreign companies whose assets are represented directly or indirectly by immovable property by more than 50% is subject to Russian tax. However, the law does not provide a specific mechanism for paying this tax in Russia. For example, in a situation when one foreign company sells shares of a second foreign company, which indirectly owns immovable property in Russia (a threshold of 50% of assets applies), to a third foreign company, the Russian tax on income received from sale must be paid, but the procedure of payment and enforcement is not quite clear. The tax authorities become aware of indirect owners of Russian immovable property.

Application of thin capitalisation rules to loans from foreign sister companies

Under current tax law (Russian Tax Code art. 269 cl. 2–4), loans from foreign sister companies are formally out of scope of the Russian thin capitalisation rules. However, the Russian tax authorities increasingly try to look at the substance of the arrangements and there is court practice supporting such approach. This, in turn, hinders companies' abilities to structure their intra-group debt financing through foreign finance companies.

At the moment lawmakers have reverted to a discussion of thin capitalisation. Under the draft law loans issued by foreign sister companies will be subject of control. Even in absence of such law, courts effectively apply such provisions in practice.

Property tax

Starting from 2014 some objects of property are taxed based on cadastral value of property in accordance with Art.378.2 of Russian Tax Code. The system of payment of property tax based on cadastral value of property instead of the annual book value has been already introduced in several regions of the Russian Federation. As a result of the state cadastral assessment of property, the cadastral value of the property objects may significantly exceed the annual book value of such object, which might lead to significant increase of the property tax paid by the companies.

Starting from January 1st 2015 local authorities are able to charge individual property tax based on the cadastral value of real property.

Notification obligations

In case of direct immovable property ownership by a foreign company it shall disclose the whole ownership chain. Non-disclosure of this information will lead to the fine in the amount of 100% of the relevant property tax.

20 Slovakia

Depreciation of fixed tangible assets

There are six tax depreciation groups for assets (purchase price more than EUR 1,700), with depreciation periods between 4 and 40 years. Most buildings of a permanent nature fall into the fifth or sixth group, and are depreciated over 20 or 40 years respectively using a straight-line method of tax depreciation. Tax depreciation charges of fixed tangible assets can also be deferred to the future resulting in an increase of tax base in the current year. It is not possible to depreciate land. It can be expensed through profit and loss accounts up to the sales price in a year of sale.

Review the company's fixed assets register to ensure correct depreciation. The taxpayer can decide to interrupt (defer) tax depreciation of tangible assets for one or several tax periods. The depreciation period is then prolonged by the number of taxable periods in which the asset was not depreciated.

Tax losses carried forward

Tax losses incurred in the current tax year can be carried forward and utilised evenly over four consecutive years. Each year's tax loss is considered separately and can be utilised over its own four-year utilisation period starting with the tax period immediately following that in which the taxpayer reported the tax loss.

Optimize the tax base by maximum utilisation of the tax losses from previous years.

Tax advances

The entity is obliged to pay corporate income tax advances based on the previous year's tax liability, should that liability exceed EUR 2,500. In the case of declining profits, current tax advances may be reduced on application. To reduce the tax advances, approval of the tax authorities is necessary.

Cashflow models and profit forecasts should be reviewed in order to improve liquidity by applying for tax advance reductions.

Transfer pricing

Generally, all related-party payments (foreign as well as domestic) have to follow the arm's length principle. Failure to present appropriate documentation to the tax authorities might result in the non-acceptance of group charges and penalties for tax purposes.

For the purpose of transfer pricing, taxpayers must keep transfer pricing documentation in a specified scope. In accordance with the latest guidance on the scope of the documentation issued by the Slovak Ministry of Finance, taxpayers are divided into three categories:

- Taxpayers who must keep shortened documentation (individuals; and micro-entities).
- Taxpayers who must keep full scope documentation (entities that are obliged to prepare their financial statements under IFRS, entities that perform transactions with related parties – taxpayers of a non-treaty country; and entities that apply for tax administrator's approval of the applied valuation or – apply for a tax base adjustment
- All other taxpayers must keep basic documentation.

Review the level of management fees and other group charges (e.g. royalties) to see if they can be decreased within benchmarks for transfer pricing purposes.

In addition, from 2015 the interest on loans provided by related parties are tax deductible at no more than 25% of EBIDTA (the total of the result of operations before tax, including depreciation charges, and the interest expense).

The arm's length principle should be followed and the appropriate documentation should be in place for tax assessment. Changing a business model by transferring some functions to a company and thus increasing its profits may provide an opportunity to utilise tax losses carried forward. Proper transfer pricing review and planning is crucial.

Withholding tax

There is no withholding tax on dividends paid by Slovak entities out of profits arising in 2004 and subsequent years. The distribution of profits arising in earlier periods can be subject to a withholding tax of 19%, which is reduced under most double tax treaties or the EU Parent-Subsidiary Directive. Payments in respect of the royalties and interest are subject to the Slovak withholding tax of 19% (35% tax rate is applies if paid to a resident of a country not specified in the list published by the Slovak Ministry of Finance, i.e. a country with which Slovakia has not entered into a double tax treaty or agreement on the exchange of information relating to taxes). Under most double tax treaties, the withholding tax on royalties is reduced, often to 5% or 10%, and most double tax treaties also reduce the withholding tax on interest to nil. However, under the EU Interest and Royalties Directive there is no Slovak withholding tax on royalties paid by a Slovak company to a related company seated in another EU member state that is the beneficial owner of the royalties, provided certain conditions are met.

Withholding tax is deducted when payment is made to the recipient. To claim the corresponding costs, the foreign recipient being the resident of EEA country, should file a Slovak corporate income tax return where the profit rather than income from interest/royalties is reported. This profit is taxed at the corporate income tax rate of 22%, and the withholding tax withheld from the gross income is treated as advance.

Payments in respect of royalties or interest need to be in accordance with the relevant double tax treaty to avoid the withholding tax of 19% (or 35%) or the lower tax rate of 5% or 10% respectively. The tax burden can be optimised via allocation of corresponding costs to the interest/royalty income.

Financial year

Usually the tax year is equal to the calendar year. However, the entity can change the tax year from the calendar year to the financial year, which is a 12-month period. Such change must be announced to the respective tax authorities 15 days before the start of the new financial year.

Generally, a corporate income tax return needs to be filed within three months following the end of the taxable period together with the Financial Statements (income statement, balance sheet and notes). The deadline for submission of the financial statements to the general meeting for approval is six months after the end of the financial year. Once they are approved there is a 30-day period for filing them with the Slovak Collection of Deeds.

Consider the statutory and group reporting to choose the most appropriate tax year. Consider also trends in sales and profits and the possibility to utilise tax losses against these profits.

Extension of filing deadline

There is an automatic extension of the deadline (by 3 months) for filing a tax return upon advance notification to the tax office (i.e. a filing deadline of June 30th instead of March 31st after the end of the tax period). In case of foreign source income declared in the tax return the filling deadline might be extended by six months, i.e. September 30th.

Consider the deadline for filing a tax return which will be automatically extended by the Slovak Tax Office. Tax is payable by the same deadline.

Foreign currencies

Generally, a company can opt to exclude foreign exchange (FX) differences that arise during the year-end revaluation of assets and liabilities in foreign (non-EUR) currencies from its tax base. These 'unrealised' FX differences shall be included in the tax base in a year when the underlying asset or liability is settled (e.g. payment of USD interest). The option to exclude unrealized FX differences applies to both FX gains and losses.

A company can exclude 'unrealised' FX differences from its tax base and defer tax deduction.

Office before the end of the calendar/financial year.

Business combinations

In 2010, two alternatives were introduced for the tax treatment of the following transactions: In-kind contributions to a company's share capital, mergers and demergers.

Under the first alternative, the recipient of an in-kind contribution, or the legal successor in a merger or demerger, records the assets and liabilities at their fair values for tax purposes. Any related revaluation differences arising on revaluation of the transferred assets and liabilities to their fair values will be taxable or tax-deductible for the contributor (in-kind contribution) and the legal successor/dissolved entity (merger or demerger).

The second alternative requires the recipient of an in-kind contribution, or its legal successor, to continue to use the original tax book values of the assets and liabilities of the contributor, or the company wound up without liquidation through the merger or demerger. In this case, any revaluation difference arising at the time of the in-kind contribution, merger or demerger is not taxable or tax-deductible.

Companies should consider the impact of the step-up for tax purposes using fair values, or using original tax book values.

VAT

Transactions within real estate are either subject to VAT of 20%, or are VAT-exempt. Renting of real estate is generally exempt from VAT, but the charging of an exempt rental fee limits the lessor's ability to deduct the related input VAT. Thus, in certain circumstances, the lessor can opt to charge 20% VAT on the lease provided to taxable person.

The transfer of real estate is VAT-exempt, except for transfers made within five years after the official completion of construction, or within five years from the day when the building was put into use for the first time. The transferor can opt to charge 20% VAT on transfer (sales) of real estate. Also, transfers realised as a result of a finance lease contract are generally subject to 20% VAT. Transfers of land are VAT-exempt, except for construction land.

Taxable person becomes taxpayer on the date of supplying the building, part of a building or building plot or receives a payment before supply itself, while date depends on which situation occurs first. Transaction must exceed threshold of EUR 49,790, excluding delivery of the building, part of a building or building plot, which is exempt from tax.

The period for adjustment of the input VAT deduction on immovable property, in the case of change of its intended use, constitutes 20 years. The period for archiving invoices received in relation to such immovable property has also constitutes 20 years.

The company registered for Slovak VAT purposes can decide to charge VAT on the lease and sales of real estate.

From January 1st 2016 local reverse-charge will be introduced for the following supplies between two Slovak VAT payers:

- Supply of construction works;
- Supply of building or parts of buildings under the framework of construction or other similar agreements;
- Supply of goods along with assembly and installation, if assembly and installation can be considered as construction works.

From 2016 construction companies will no longer be accountable for Slovak VAT on most of their supplies. This obligation will be transferred to their customers.

VAT group

It is possible to create a VAT group in Slovakia that enables those persons connected economically, organisationally and financially, with their seat, place of business or fixed establishment in Slovakia to register for Slovak VAT as a single VAT payer. As a result, the transactions within the VAT group are not subjected to VAT.

The company should consider an option of creating the VAT group in Slovakia.

Slovak Accounting Rules

From 2011 on the new accounting methods apply for situations relating to the acquisition or construction of real estate. In the case of made-to-order construction of real estate for sale and the constructions held for sale, as well as other costs for repairs, technical improvements and other related costs necessary for the construction to be available for sale, are booked as inventory on a separate account.

Impairment and description of the construction need to be evidenced in the notes to the financial statements.

The new rules should be taken into consideration in the financial statement for 2011 onwards.

Real estate tax

Real estate tax is divided into three groups; land tax, building tax and apartment tax. The basic tax rate for land is 0.25% of the tax base, EUR 0.033 for each square meter of ground space occupied by the finished building, and EUR 0.033 per square meter of floor area of the apartment. The tax rate is normally changed, within certain limits, by the municipality issuing a generally binding regulation, but may be increased/decreased by the ruling.

The taxable period for land, buildings, and apartments is the calendar year. The tax liability arises on January 1st following the year in which the taxpayer obtained an interest in the property subject to tax. The taxpayer must file a tax return by January 31st of the taxable period in which the tax liability arises, by the status as at January 1st of this period. In general, the tax liability is payable within 15 days after the tax assessment became valid.

Budget for additional payments in relation to the real estate tax (local tax).

21 Spain

New Corporate Income Tax

A new CIT Act came into force for tax periods starting 2015. The standard tax rate has been reduced from 30% to 28% in 2015, and to 25% in 2016 onwards. Other rules such as the disallowance of real estate impairments, the new definition of mere holding entities, the new domestic-participation exemption regime, the restrictions on the utilisation of carry-forward tax losses, etc. may be relevant for real estate investors.

Taxpayers shall pay special attention to the new rules as well as to the interpretation made by the Tax Authorities by means of binding tax rulings.

It is recommended to analyse the impact that the new rules may have as well as the guidelines provided by the Tax Authorities.

New domestic withholding tax rates

Together with the new standard CIT rates, the domestic withholding taxes have been reduced, in particular withholding tax rates for dividends and interest stand at 19.5% in late 2015, 19% in 2016 onwards. They will be due unless an exemption or reduced rates are applicable to the case at hand.

Tax losses carried forward

Tax losses may be carried forward with no time limitation.

However a general restriction will be introduced for 2016 onwards: In 2016 the taxable profits for the period may be reduced by brought forward tax losses up to the higher of 70% of the taxable base of the period or EUR 1m, except for the period in which the company is wound up. The 70% threshold will be reduced to 60% in 2017 onwards.

Reversion of the 30% tax adjustment

For tax periods 2013 and 2014, the tax allowance of the amortisation of real estate (construction and installations) is limited up to 70% of the applicable amortisation of each period.

Notwithstanding the above the disallowed 30% will be treated as tax deductible from January 1st 2015 on a straight-line basis through either a 10 year period or the remaining life of the asset, at the option of the taxpayer. Due to the reduction of tax rates, the difference will be recovered by means of a tax credit.

It should be ensured that this tax adjustment is recovered.

Transfer pricing

Related party transactions must be arm's length. Generally taxpayers are obliged to prepare transfer pricing documentation for transactions exceeding certain thresholds. Failure to comply with the documentation obligations may result in penalties being imposed.

Prepare a transfer pricing study covering the relevant transactions carried out with related parties in the period in accordance with the applicable regulations.

Residence certificates

Withholding tax exemptions and reduced treaty rates must be supported with the relevant residence certificates validly issued by the corresponding Tax Authorities in a timely manner. This is especially relevant for interest and management fees.

Request and collect the corresponding residence certificates.

Real estate investment trust

A special Corporate Income Tax regime, namely a 0% tax rate, is granted for Spanish REITs ('SOCIMI') subject to a number of requirements. Should they not be respected, the tax regime may be lost together with a 3 year ban to be imposed.

Review the compliance of the REIT requirements, in particular the asset and income tests.

22 Sweden

Stamp duty

When acquiring Swedish real property directly, stamp duty (transfer tax) has to be paid by the purchaser based on the higher of the consideration and the tax assessment value of the property. The stamp duty on commercial real property is 4.25% of the basis.

Limitation of deductions on capital loss

Deduction of capital losses on real property is limited to capital gains from real property. Companies with capital losses due to the sale of real property can hence not deduct the loss against income from other sources. The loss may however be transferred within a consolidated group. Capital losses on real property may be carried forward indefinitely if not utilised.

If capital losses are to be deducted, ensure that capital gains on real property exist in the same fiscal year.

Group taxation

To benefit from Swedish group consolidation for tax purposes, the companies giving and receiving the group contribution must have been parts of the group (i.e. exceeding 90% ownership requirement) for the entire fiscal year. Notwithstanding this, newly started businesses and off-the-shelf companies can exchange group contribution with other Swedish group companies from the day they commence conducting business.

Ensure that any acquisition is completed before the end of the current fiscal year to benefit from the group contribution rules the following fiscal year.

Losses carried forward

Mergers and acquisitions which imply a change of control (at times even if the indirect ownership does not change) over a company can limit the possibility to utilise tax losses in the following years. Exemptions may apply in case the companies were parts of the same group before as well as after the acquisition or reorganisation.

Verify if any limitations are applicable in the specific case.

Tax allocation reserve

Companies can delay tax payments for up to six years on 25% of the annual profit by means of a tax allocation reserve. This can benefit liquidity and balance out occasional annual losses since the latent tax debts can be used against future losses for the upcoming six years. Companies using this reserve are taxed annually on a hypothetical income/interest. The income/interest is calculated by multiplying the reserve by 72% of the interest rate on governmental loans. The rate on governmental loans is normally between 2% and 5%, but has been below 1% during 2015.

Cashflow models and profit forecasts should be checked to assess the situation.

Transfer pricing

Cross-border transactions between related parties have to be carried out in accordance with the arm's length principle, which means that prices should be set as if the transactions are carried out between two independent parties. If this principle is not complied with, or if one fails to present appropriate documentation to the Swedish tax authority, the taxable income can be reassessed to the taxpayer's disadvantage. Other penalties may also be incurred.

Duly follow the arm's length principle, monitor applied prices on intragroup charges and transactions and ensure documentation of cross-border activities.

Changed corporate income tax rate

The tax rate for corporations is 22%. The new reduced tax rate applies on fiscal years starting January 1st 2013 or later.

Limitation of interest deduction

Sweden has certain rules limiting interest deductions between affiliated entities. The rules were first imposed 2009, but have been amended as of January 1st 2013.

Interest payments on loans between affiliated parties are not deductible, whatever the purpose of the loan arrangement, unless certain conditions are met.

A minimum 10% tax test (measured as if the interest had been the sole income) at the true creditor level, i.e. the person entitled to the interest, will still allow interest deduction, however not if the achievement of considerable tax benefits for the group was the main reason behind the debt structuring.

Commercial reasons for the loan is still also an alternative test for allowing an interest deduction, but only if the creditor is a resident within the EEA or in a tax treaty jurisdiction with which Sweden has a full tax treaty.

If the debt refers to an acquisition of shares from a company included in the affiliated group or in a company which after the acquisition is included in the affiliated group, both the share transfer and the debt need to be based on commercial reasons.

Deductibility of interest on loans between affiliated parties should be evaluated. Since the wording in the proposed legislation is somewhat complex, it is at this stage a bit difficult to foresee how the Tax Agency would act in these situations. Thus, it cannot be excluded that tax deductions for interest payments on any group internal loan may be refused by the Tax Agency.

New date for filing yearly VAT return

The date for filing the yearly VAT return is changed and is coordinated with the filing of the income tax return. This only concerns companies with a VAT-able turnover of less than SEK 1,000,000. The general reporting period rules apply if any intra community acquisitions have been made during the reporting period.

Simplification of rules regarding letting of premises

As from January 1st 2014, it is not possible to apply for voluntary VAT registration for letting of premises. Instead let areas that are invoiced including VAT are covered by voluntary VAT registration. All other requirements remains the same i.e. the premises must be used for VAT-able purposes and the letting must be for a continuous period of time longer than approximately 12 months (however, recent case law indicates that this period could be considerably shorter). Furthermore, voluntary VAT liability during the construction phase is still obtained by applying to the Tax Agency.

Also, it is possible to reclaim VAT on construction costs that occurred before the project was registered for voluntary VAT liability during the constructing phase. The right to deduct VAT will occur once the tenants move in.

Letting of space for equipment on a mast or antenna to a mobile phone operator will be subject to mandatory VAT.

Interest deductions

Major and significant upcoming changes

In 2013 the so called Corporate Tax Committee was commissioned to, among others, make the tax provisions more equal when financing with equity and loaned capital. A draft proposal which consists of one main and one alternative proposal for new interest deduction limitation rules was presented in June 2014. The main proposal of the Committee entails a so-called financing deduction in comparison to the alternative proposal that is based on a so-called EBIT-model (Earnings Before Interest and Tax). Both proposals entail that financial expenses may be fully deductible against corresponding revenues.

Both proposals were however heavily criticised and are, together with the comments received, to date in the hands of the Ministry of Finance for evaluation. The Minister of Finance recently made a statement where she expressed that neither of the proposals should be implemented without thorough analysis. The aim is however still to present a revised proposal but there is currently no information as to when such a proposal will be presented.

A proposal could enter into force on January 1st 2017 at earliest.

New commissioned group to review tax rules for the real estate sector

On June 11th 2015, the Government decided to assign a commissioned group to review whether the tax rules specifically favour certain businesses or certain companies within the same line of business. The special group will also assess the national economic impact of tax neutral transfer of properties and review certain issues within the real estate and stamp duty area.

The commissioned group will, inter alia:

- Identify and analyse the overall tax position of companies in the real estate business (both tax rules and tax burden);
- In particular, identify and analyse the prevalence of tax neutral transfer of properties as a tool for tax planning, as well as from a national economic perspective analyse the effects of the ability or lack of ability to tax neutral transfers of properties;
- Propose changes of the current legislation to prevent tax neutral transfers of properties as a tax planning tool; and
- Analyse whether acquisitions through land amalgamation/re-allotment of properties is misused to avoid stamp duty and, if appropriate, propose constitutional amendments.

It is at this stage uncertain whether also share deals where the transferred company has held the property for a longer period may become affected by potential suggested amendments to the law.

The commissioned group should issue the report on March 31st 2017.

23 Switzerland

Sale of real estate company and treaty abuse

In a recent judgement, the Zurich administrative court denied treaty benefits to a Luxembourg holding company upon the sale of a Swiss real estate company.

Based on Swiss domestic law, the sale of the majority of a real estate company is generally treated as the sale of its underlying Swiss real estate asset ('wirtschaftliche Handänderung') and is therefore subject to real estate capital gains tax and real estate transfer tax in selected cantons. In case of an international constellation, certain double tax treaties, including Luxembourg, allocate the right of taxation of the gain of the share deal holding Swiss real estate to the other state. In this case Switzerland does not have the right of taxation for real estate gains.

However, the treaty benefits can be denied on the grounds of treaty abuse. Even if the double tax treaty includes no written tax abuse provisions, the Swiss federal court recognise an inherent, unwritten tax abuse reservation for all double tax treaties.

On the grounds that

- The only purpose of the Luxembourg holding was to benefit from the advantageous provision in the applicable double tax treaty regarding the allocation resulting in a double non-taxation of the real estate gain; and
- Since there was no substance in Luxembourg; and
- The beneficial owners were non-eligible persons the structure as such was considered to be abusive in the opinion of the court and therefore treaty benefits were denied.

As a result, careful planning is required.

Corporate Tax Reform III

On June 5th 2015, the Swiss Federal Council released the eagerly awaited dispatch on related draft bill of the Swiss Corporate Tax Reform III for further parliamentary discussion. The key measures include amongst others the abolition of current preferential tax regimes (e.g. holding company status), comprehensive rules on the step up of hidden reserves upon changes of the tax status and relocation to Switzerland, the abolition of issuance stamp duty and the introduction of a cantonal patent box.

With regards to the real estate business in Switzerland it is expected that these measures will only have a limited effect. The abolition of the issuance stamp duty (currently 1%) is however a welcome effect.

As an accompanying measure to the abolition of the preferential tax regimes some cantons have already announced to reduce their corporate income tax rates. While real estate companies generally did not particularly benefit from these tax regimes the reduction of the cantonal tax rates will result in a reduction of the current tax charge on real estate income. With regards to capital gains taxation, a reduction of the tax rate would reduce the deferred taxes on such gain provided the gain is subject to income tax instead of real estate gains tax (depends on the canton where the real estate is located).

24 Turkey

Corporate tax

Resident companies in Turkey are subject to corporation tax on their worldwide income at a rate of 20%. Corporate income tax law (CITL) states exemptions which can be beneficially utilised by corporations (upon meeting certain conditions), such as dividend income received from resident or non-resident companies, earnings of corporations derived from their foreign establishments of representatives or 75% of capital gains derived from the sale of property or participation shares which are held by corporations for more than two years.

When filing the corporate tax return, it should be ensured that the taxpayers can benefit from the aforementioned tax-exemptions, and that CITL requirements are fulfilled.

Transfer pricing

If a taxpayer enters into transactions regarding the sale or purchase of goods and services with related parties, the parties should follow the arm's length principle. Transfer pricing regulations stipulate documentation requirements for taxpayers, who should complete the transfer pricing form every year and submit it as an appendix with the corporate tax returns. Taxpayers are also required to prepare an annual transfer pricing report including supporting documents for their domestic and international related-party transactions.

It should be ensured that Turkish transfer pricing documentation requirements are met.

Thin capitalisation rule

If the ratio of the borrowings from related parties exceeds three times the shareholders' equity of the borrower company, the exceeding portion of the borrowing will be considered as thin capital. Interest and other payments relating to thin capital and the related foreign exchange losses are non-deductible expenses while calculating the corporate tax base.

A thin capitalisation analysis should be made by the taxpayer during the preparation of the corporate tax return if companies receive shareholder loans.

Controlled foreign corporation

Corporations that are established abroad and are at least 50% controlled directly or indirectly by tax resident companies are considered controlled foreign corporations (CFC) when certain requirements are met, for example being subject to an effective income tax rate lower than 10% in its home country, having a gross revenue more than TRY 100,000 in the related period and having passive income (at least 25% of gross revenue). CFC profits would be included in the corporate income tax base of the controlling resident corporation irrespective of whether it is distributed or not.

CFC profits should be included in the tax base of the Turkish resident company if the foreign corporations meet the conditions of being a CFC.

Depreciation

Depreciation may be applied by using either the straight-line or declining-balance method at the discretion of the taxpayer. However, please note that once the taxpayer has started to apply the straight-line method, it is not possible to change the method in the following years, although the opposite is possible. While the applicable rate for the declining-balance method is twice the rate (determined by the Ministry of Finance) of the straight-line method, the maximum applicable rate for the declining-balance method is 50%.

Interest and foreign exchange costs regarding the financing of fixed assets should be added to the cost of fixed assets until the end of the year in which assets are taken into account. The depreciation method should be selected for the fixed assets which are purchased in the related year.

Foreign currency revaluation

Assets and liabilities denominated in foreign currency are revalued at year end based on the exchange rates announced by the Ministry of Finance.

Foreign currency asset and liability accounts in foreign currency should be evaluated in each quarter.

Prepaid Income

If corporations receive income in advance from future fiscal years, such as advanced rental income, these amounts should be followed in the balance sheet accounts and should be taken into consideration as income in the fiscal year with which the income is related.

During the calculation of the corporate tax base, it should be determined whether the income of corporations includes advanced income or not.

Doubtful receivables

Receivables which are relevant to the acquisition of commercial income and at the litigation stage or administrative action can be written as doubtful receivables in the year that the litigation process started. Provisions may be accounted for the doubtful receivable at the disposable value on the day of valuation.

It should be determined whether doubtful receivable provision amounts meet the conditions to be considered as a deductible expense during the calculation of the corporate tax base.

VAT rate for the residential units

Although according to the former legislation, VAT rate for the residential units with a net area of less than 150 square meters, was set as 1%, by the new Council of Ministers Decision which was promulgated on the Official Gazette No. 28515 dated January 1st 2013, the VAT rate to be applied on the delivery of houses with a net area smaller than 150 square meters has been amended.

The determination of the VAT rate to be applied (1% or 18%) on the deliveries of houses starting from the year 2013 will vary based on several different factors such as;

- building license obtaining date,
- construction class of the building,
- square meters of the house,
- whether it is built on a Metropolitan Municipality area or not,
- whether it is built on an area which is qualified as reserve construction or risky or on a location where risky building exist based on Law No. 6306 on the Transformation of Areas Under Disaster Risk,
- Property tax value per square meter of the land.

Taxpayers should pay closer attention as deciding the correct VAT rate to be calculated, as all the above mentioned criteria should be considered at the same time.

RUSF rates

According to the amendments dated December 24th 2012 which will be effective as of January 1st 2013; the RUSF rate to be applied on foreign loans obtained by Turkish resident individuals or legal entities (except for banks or financial institutions) in terms of foreign currency or gold (except for fiduciary transactions) was restructured based on the average maturities as follows;
- 3% on the principal if the average maturity period of the foreign currency credit does not exceed one year.
- 1% on the principal if the average maturity period of the foreign currency credit which is between one and two years.
- 0.5% on the principal if the average maturity period of the foreign currency credit which is between two and three years.
- 0% on the principal if the average maturity period of the foreign currency credit over three years.
- 3% on the interest amount if the foreign loan denominated in Turkish Liras regardless of average maturity period.

By this amendment 0% RUSF rate for the loans obtained as of January 1st 2013 whose average maturity period exceeds one year is gradually increased. Therefore, companies should evaluate their financing situation according to the new RUSF rates.

Deductibility of finance expenses

Law No. 6322, which has entered into force on June 15th 2012, amends the general principles of the deductibility of the finance expenses for Turkish taxpayers. The arrangement shall be effective as of January 1st 2013. According to the related Law, a portion – yet to be determined by the Council of Ministers – of interest and similar expenses incurred on foreign resources will not qualify deduction for corporate tax purposes. According to the arrangement;
- Credit institutions, financial institutions, financial leasing, factoring and financing companies shall not be subject to finance cost restrictions,
- Cost restrictions shall apply exclusively to the portion of liabilities that exceed a company's shareholder's equity,
- Restrictions shall not exceed 10% and the rate may be amended per industry by the Council of Ministers,
- Restrictions shall not apply to interest rates and similar payments added to investment costs.

Please note that there was not any update development with respect to this interest expense deductibility principle of the New Law in 2013. However, companies should still evaluate their financing situation in accordance with the related interest expense deductibility principles.

Deemed interest deduction on cash injection as capital

The Law No 6637 which has been published in the Official Gazette dated April 7th 2015, introduced a new concept of tax incentives where Turkish resident companies are allowed a deemed-interest deduction over cash injection as capital from the corporate tax base of the relevant year. The provisions became effective on July 1st 2015.

According to the arrangement; Turkish resident companies (except for those that operate in banking, finance and insurance sectors and public enterprises) would be able to benefit from a deemed interest deduction that is equal to 50% of the interest calculated on the cash capital increase in the registered capital of the existing corporations or cash capital contributions of the newly incorporated corporations based on the average interest rate by the Central Bank of Turkey for TL denominated commercial loans, from their Corporate tax base of the relevant year.

The Council of Ministers has been authorised to decrease the rate to 0% or increase to 100%.By the new Council of Minister Decree No: 2015/7910 dated June 30th 2015, cash capital increase rate has been re-determined between 0%–100% for various situations.

The amount to be considered for the deemed interest calculation will be limited only when the cash capital actually paid to the bank account of company by shareholders.

Additionally, the deemed interest deduction rate will vary different cases such as;

- The companies that are publicly traded in BIST at the last day of the year in which the 50% interest deduction is benefited, the rate would be increased by,
  - 25 points, if the publicly traded rate of nominal/value or the amount of the registered shares of the company is 50% or less (totally 75%),
  - 50 points, if more than 50% of the nominal/registered shares of the company are traded in BIST (totally 100%).

- In the case the capital increase made in cash has been used for investments with Investment Incentive Certificate on manufacturing or industrial plants, purchase of machines or equipment required for such plants or lands or states for building of such plants, the 50% rate has been increased by 25 points.

- The Decree reduces the rate to 0% for the capital increases made for the following cases:
  - Companies with 25% or more of their income composed of passive income; such as interest, dividend, rental income, royalties, capital gains on sale of shares,
  - Companies with 50% or more of its assets are composed of long-term securities, subsidiary companies and participations,
  - Invest capital or provide a loan to other companies which are limited only with the corresponding capital increase made in cash amount,
  - For the capital companies investing in lands and plots which are limited only with the corresponding investment amount,
  - Limited only to the amount corresponding to the decreased capital amount, if capital has been decreased in the period between March 9th 2015 and July 1st 2015.

As mentioned above, certain companies operating in real estate industry especially the ones earning rental income and making land investments may not utilise the above mentioned interest deductions.

Based on the decree, the provisions became effective on July 1st 2015. A secondary legislation is expected to be published as guidance in relation the clarification of the implementation of the above mentioned provisions.

Significant coming changes

The Government has submitted the Draft Income Tax Law to the Parliament. The current Income Tax Law and Corporate Tax Law are being merged into one single code in the Draft Income Tax Law and have been submitted to the Parliament by the Council of Ministers. The draft law especially brings some important changes regarding the taxation of capital gains of individuals and corporations from immovable and equities.

Under the Draft Income Tax Law, the current exemption with respect to the real estate disposal after two years holding period for corporations at a rate of 75% will be amended and the exemption rate shall gradually increase (40%–75%) depending on the holding period of assets (two years to five years). Additionally, the current 100% exemption for the individuals, who held immovable for five years, will be amended. The Draft Law does not allow the 100% exemption and exemption rates gradually increase (40%–75%) as the holding period increases instead of the current one single threshold. Additionally, construction works which will be regarded as commercial activity will be redefined by the Draft Income Tax Law.

Although the Law has still been stand as a draft, it would be accepted in coming years with additional changes on it.

25 United Kingdom

Due to the system of taxation in the UK that applies to non-resident landlords, there is not a specific focus on the year end as a key time to consider tax issues.

Typically, investors who acquire UK property invest through non-UK resident companies and are required to submit a UK income tax return for a fiscal year which runs from April 6th to April 5th. It is therefore common that the accounting year does not correlate with the fiscal year.

For these reasons there is generally no requirement to undertake specific actions at year end to secure certain tax treatments. However, it is important that the following issues are considered in relation to existing investments in UK real estate on at least an annual basis.

Arm's length nature of financing

Shareholder financing which is used for a UK property investment business should be provided on arm's length terms to comply with the UK transfer pricing rules.

Support for the level of shareholder financing and the terms on which this financing is provided should be retained. It should be considered what support is available for the shareholder financing for each UK property investment.

Capital allowances

Capital allowances provide tax relief for capital expenditure in the UK.

Each UK property investment should be reviewed to ensure the maximum entitlement to capital allowances is being claimed.

Accounting changes

A non-resident company is required to calculate the profits of its UK property rental business in accordance with UK GAAP if it does not prepare accounts under UK GAAP or IFRS. UK GAAP is changing and investors should consider the implications for their UK tax liability.

The key areas of change relate to the treatment of lease incentives and the treatment of derivatives.

Residential property

The taxation of residential property in the UK has recently changed significantly. Non-resident owners of residential property in the UK are now potentially subject to an annual tax in relation to their ownership (Annual Tax on Enveloped Dwellings or ATED) as well as being potentially subject to tax on disposal of the property (Non-Resident Capital Gains Tax or NRCGT). Even if no tax is due, there may be additional UK tax filing obligations and the filing deadlines can be as short as 30 days after a transaction.

Middle East

1 Saudi Arabia

Corporate tax & Zakat

Under the source of income definition, income is considered to be accrued in the Kingdom of Saudi Arabia ('KSA') if it is derived from immovable property located in KSA, including gains from the disposal of a share in such immovable properties and from the disposal of shares, stocks or partnership in a company the property of which consists mainly, directly or indirectly of shares in immovable properties in KSA.

No depreciation is allowed for land. A 5% depreciation is applicable on Buildings

Saudi Arabian companies are subject to 20% corporate tax on profits attributable to non-GCC[1] shareholders.

Zakat at 2.5% is applicable on GCC part of shareholding.[2]

Companies engaged in real estate development generally classify land as current assets (e.g. inventory) or non-current assets in their financial statements depending on their intended use by the reporting entity. The Saudi Arabian Zakat regulations do not permit current assets or investments held for trading to be deducted from a company's Zakat base. Whether an asset is recognised and disclosed as current or non-current in the financial statements of a Saudi Arabian company is determined by the provisions of the relevant accounting standards.

Properties owned and used by the Saudi Arabian company for its own use as long-term investments are likely to be reported as non-current assets in the local entity's financial statements. These long-term assets may be deducted in calculating the Zakat base of the company. Conversely, any properties or land held by a Saudi Arabian company as inventory or trading stock intended for resale in the course of business, may not be deducted for Zakat purposes.

Management's intentions with respect to the long term holding of certain properties and investments should be appropriately documented in the board minutes of the company. If management's investment objectives in relation to certain assets or investments change over time, resulting in different classifications for financial reporting purposes, the Zakat treatment is likely to follow.

In addition to the above, all fixed assets deducted for Zakat purposes (including land) must be registered in the name of the Zakat payer.

Companies subject to Zakat are required to file its Zakat return and settle its Zakat on an annual basis.

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[1] Gulf Cooperation Council (GCC), political and economic alliance of six Middle Eastern countries — Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman.

[2] Zakat is calculated at 2.5% on the higher of the following two bases: Net adjusted income, or Net worth.

If a company has both KSA/GCC and non-KSA/GCC shareholders, part of profits corresponding to a share of non-KSA/GCC persons is subject to income tax; the part corresponding to the share of KSA/GCC shareholders is subject to Zakat.

Recent update

On March 23rd 2015 the government of Saudi Arabia announced measures to encourage the development of 'unexploited' lands. These measures will take the form of a fee imposed on the landholder. The details for the calculation of the fee, the application date and the land it applies to are yet to be published. At this stage, there has been no indication on size of 'fees' and method of calculation: whether it will be a percentage based fee or a fixed fee based on value of land is yet to be decided. Furthermore, the definition of 'urban boundaries of cities and provinces' for this purpose may need to be clarified.

Currently land treated as part of fixed asset is deducted from the Zakat base. This deductibility differentiates land from many other investment instruments (e.g. deposits, debt securities, certain equity securities, etc.). Although undeveloped land does generate any income, it generates benefit in the form of this deduction. Investors whose main focus is on appreciation of land value get extra benefit from their investment in and this Saudi tax/Zakat environment. The fee may reduce the benefit and encourage land owners either to dispose of the asset or move into 'developed' category both outcomes in the view of government should result in greater supply of property to the market.

Landholders should assess the possibility and extent to which they may have 'unexploited' lands, and as the details of the fee become available be ready to assess and apply the impact.

Asia Pacific

1 Australia

Thin capitalisation rule

The Australian thin capitalisation rules can restrict the deductibility of interest expense in an income year. The thin capitalisation rules generally apply to Australian inbound and outbound investments. Broadly, for income years commencing on or after July 1st 2014, the acceptable level of debt is 60% of the net assets (i.e. 1.5:1 debt-to-equity ratio) of an entity that is subject to Australia's thin capitalisation rules. Only where this condition is satisfied, interest expenses may be fully deductible.

Given the reduction in the safe harbour threshold, it is critical that the thin capitalisation rules are considered in some detail in order to determine whether there are any adverse tax consequences under those rules. Taxpayers should also ensure that the interest rate on related-party loans satisfies transfer pricing requirements (where relevant).

Transfer pricing reform

Australia recently enacted new transfer pricing rules. The new rules (which apply from July 1st 2013) have been introduced to modernise Australia's transfer pricing rules and bring them into line with more recent OECD transfer pricing guidelines.

The new rules apply when an entity receives a 'transfer pricing benefit'. An entity receives a transfer pricing benefit when the actual conditions relating to its cross-border dealings differ from the arm's length conditions, and had the arm's length conditions operated the entity's taxable income or withholding tax payable would have been greater, or losses or tax offset would be less.

Key features of the new rules include:
- Rules continue to be based on the arm's length principle.
- Rules apply to cross-border transactions only (not to domestic transactions).
- No requirement for parties to be related (only for cross-border dealings to be inconsistent with arm's length dealings).
- Introduction of self-assessment for transfer positions (in line with self-assessment regime for corporate tax).
- Introduction of a seven year limit for the Australian Taxation Office (ATO) to make transfer pricing adjustments.
- Formal incorporation of OECD Guidance.
- Specific reconstruction provisions which allow actual transactions to be disregarded, and hypothetical arm's length transactions to be substituted.
- Specific provisions dealing with the interaction between the transfer pricing and thin capitalisation rules.
- Requirement to have contemporaneous transfer pricing documentation to be able to establish a reasonably arguable position for potential penalty mitigation.

Country by country (CbC) reporting

In August 2015, the Australian Government released draft legislation to implement new OECD standards on transfer pricing documentation (Master File and Local File) and CbC reporting. The new measures apply to entities with annual global group revenue of A$1 billion or more from January 1st 2016. Australian subsidiaries and branches of multinational enterprises headquartered outside of Australia with annual global group revenue above the A$1 billion threshold will be required to report detailed information to the ATO regarding key aspects of their business structures.

Tax losses

Any change in direct or indirect interests in an entity (e.g. in the course of restructurings) may lead to a partial/total forfeiture of tax losses at the Australian entity level. Broadly, a trust must maintain a more than 50% continuity of ownership in order to recoup prior year losses. Certain listed trusts can also rely on the same business test.

The tax loss rules must be considered prior to the recoupment of prior year and current year losses. Also, the tax loss rules must be considered in light of transactions that result in significant changes to ownership.

Distributions

Trusts must carefully manage their distributions from year to year in accordance with the trust deed and the tax legislation. If not managed properly it could cause the trustee to be taxed at 47% (to the extent non-resident investors hold units in the trust).

It is strongly recommended that the trust deed is considered in detail and the process of the distribution must be managed properly in order to avoid the trustee being taxed at 47%.

Public trading trust

Generally, Australian real estate is held by trusts in order to access certain tax advantages, e.g. flow-through tax treatment. However, a trust is taxed in a similar manner to a company if it is classified as a public trading trust for a year of income. A public trading trust is a trust that is a public unit trust (i.e. a listed or widely held trust) and a trading trust. A trading trust is a trust that carries on a trading business at any time during an income year. In the context of land, a trading business is any activity other than investing in land primarily for the purpose of deriving rent.

The activities of a public trust should be monitored on an ongoing basis in order to ensure that the activities do not constitute a trading business. This is a focus area for the Australian Taxation Office.

Taxation of Financial Arrangements (TOFA)

The objectives of the TOFA rules are to identify what gains and losses from financial arrangements (e.g. loans, certain financing, hedging and investment transactions) are subject to tax and to determine when those gains and losses should be brought to account for tax purposes (having regard to a transaction's economic substance).

It is critical that an analysis is performed to determine how TOFA may apply to certain financial arrangements of affected entities.

Non-resident capital gains tax (CGT)

The disposal of an asset by a non-resident of Australia is subject to CGT only where the asset is 'taxable Australian property', which includes taxable Australian real property (TARP) and an indirect Australian real property interest. TARP is defined to include real property situated in Australia (i.e. land and buildings in Australia) that is owned directly by the non-resident. Broadly, an indirect Australian real property interest, on the other hand, arises where a non-resident taxpayer has an ownership interest of at least 10% in an entity and more than 50% of the market value of the entity's total assets is attributable to Australian real property.

New withholding tax on capital gains

The Australian Government has confirmed that from July 1st 2016, a 10% non-final withholding tax will apply to the disposal of taxable Australian property by non-residents (including real property assets and interests in 'land rich' entities in certain cases). The purchaser will be required to withhold tax from the gross proceeds and remit this to the ATO. Exposure Draft (ED) legislation was released for comment on July 8th 2015. The ED contains some carve outs where withholding will not be required, e.g. for on-market transactions involving listed securities.

Be aware of 10% withholding tax to be withheld from the purchase price by acquirer of real property interests from July 1st 2016 (where a carve out does not apply).

Stamp duty

The Australian states impose stamp duty on a range of transactions, including the acquisition of real property (up to 5.75%), share transfers (0.6%) and mortgages (up to 0.4% of the amount of the loan although not charged in most of the states). The rates vary slightly between states. There are 'land rich' and 'landholder' rules that apply to the transfers of shares in companies or interests in trusts, where the underlying entity is predominantly invested in real estate, or where the value of real estate assets exceed a threshold (the actual tests vary by state).

Any contemplated transfer of a direct or indirect interest in real property should be analysed from a stamp duty perspective.

Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS)

The United States of America ('US') has introduced rules (known as FATCA) which are intended to prevent US persons avoiding tax. Australia introduced legislation on June 30th 2014 which implements FATCA requirements in Australia. Broadly, the rules may require certain Australian entities to report details of certain US persons to the Australian Taxation Officer (ATO).

In addition, the Australian Government released on June 19th 2014 a discussion paper in relation to the implementation of the CRS for the automatic exchange of information between the ATO and tax authorities in foreign jurisdictions regarding foreign accounts in Australian financial institutions. The Government is yet to make final decisions on its implementation.

You should monitor the progress of CRS to see what additional reporting impact it may have on your Australian structures.

Current tax concessions

Managed investment trust

Trusts that meet the requirements of a managed investment trust (MIT) are eligible for a concessional 15% final withholding tax rate (10% for MITs that are invested in certain energy efficient buildings) on taxable distributions to residents of exchange of information (EOI) countries or 30% for residents of non-EOI countries.

The list of EOI countries is growing. Investors should monitor this.

MITs must meet certain disclosure requirements each year for distributions to investors with an Australian address or non-residents with a permanent establishment in Australia.

MITs must make sure that they are aware of their compliance obligations and provide appropriate statements to investors containing the required information by the due date.

Reform of the taxation of trusts

A new regime governing the tax treatment of certain MITs will be introduced. On April 9th 2015, the Government released a public ED of the new Attribution MIT (AMIT) tax regime. The regime is expected to apply from July 1st 2016, with an optional early start date of July 1st 2015. The objective of the new regime is to modernise the taxation of trusts and remove uncertainty by codifying longstanding industry practices.

A number of other initiatives have been announced but have yet to be introduced which may affect Australian real estate investment trusts. These include the design of a new collective investment vehicle regime. These proposals are designed to attract overseas investors into Australian funds.

Trusts should consider the impact of the proposed changes as the rules develop.

General tax reform

In March 2015, the Government released a tax discussion paper titled 'Re:think'. The tax discussion paper marks the start of a review of the current tax system and the issues confronting it. Ideas covered in the discussion paper will then form a part of an options (green) paper to be released in late 2015 for comment. The Government then will set out its reform proposals in a white paper in 2016.

The tax reform process should be monitored to confirm what impact any reforms may have on your real estate investment in Australia.

2 India

Corporate tax

The profits of an Indian Company are generally subject to a corporate tax rate of 34.61%[3]. The profits of an Indian Company are generally subject to a corporate tax rate of 34.61%[3].

The manner of taxation for an Indian company engaged in real estate sector depends on the nature of the activity carried out by the Company.

Build to sell model

Indian companies engaged in development and construction of residential projects, typically, follow 'Build to sell' model.

Income from sale of property is characterised as business income and taxable at applicable rates, on a net income basis. Development and borrowing cost incurred to develop the property is considered as part of inventory and allowed as deduction in a phased manner in line with accounting policy followed by the Company. Generally, Indian companies are required to follow percentage completion method for recognising income and accruing expenses.

Build to lease model

Indian companies engaged in development of office space e.g. Special Economic Zone development follow 'Build to lease' model. Certain Indian companies also follow hybrid models e.g. retail assets, where it could be combination of fixed lease and revenue share of the tenants.

The taxability under 'Build to lease' model would largely depend on the facts of each case. In case, where the primary objective of the Indian Company is to lease property together with provision of other related facilities/amenities, it should be characterised as business income and would be taxed in a manner similar to 'Build to Sell' model. However, in this case, borrowing cost incurred to develop the property is capitalised and depreciation allowance can be claimed by the Indian company on the same.

In case, the Indian company earns rental income from plain vanilla leasing and where leasing is not the main object of the Indian Company, such rental income is characterised as 'Income from House Property'. There is a specific tax computation mechanism prescribed to determine the taxable income of such companies. The tax law provides for standard deduction of thirty percent of gross rental income in addition to interest expense and property taxes on actuals.

Characterisation of income earned by an Indian Company engaged in earning rental income from leasing activity has been a matter of debate and subject to litigation.

[3] Base rate (30%) + surcharge (12%) + education cess (3%) on applicable tax and surcharge.

Sale of properties

Sale of properties held as capital assets (i.e. not developed or held with purpose of selling), is taxable as capital gains. Where the property is held for more than 36 months the same is characterised as long-term. In other cases, it is considered as short-term in nature. Long-term capital gains are generally taxable at 23.07%[4] and short-term capital gains are taxable at 34.61%[3].

Anti-abuse provision

Sale of properties without consideration or nominal consideration may be subject to taxation at a deemed value (usually determined based on the values imputed for stamp duty purposes).

Corporate restructuring

Transfer of properties which may occur by way of corporate restructuring (such as amalgamations, demergers etc.) could be tax neutral subject to conditions.

Tax incentives

Investment linked tax incentives are available for certain asset classes (such as certain affordable housing projects, slum redevelopment projects, hotels meeting certain criteria etc.).

Profit linked tax incentives are provided to Indian Companies engaged in development of a Special Economic Zone.

Minimum Alternative Tax (MAT)

Where the tax liability of an Indian company (computed in the manner prescribed) is less than 18.5% of the adjusted book profits of the Company, tax at 21.34%[5] is payable by the Indian Company.

MAT credit is available to be carried forward for 10 years.

Real Estate Investment Trusts (REIT)

The REIT is a listed platform which is required to hold rent generating properties in India or invest in Special purpose vehicles that hold rent generating properties in India. The Indian government has expressed its intention to permit foreign investment in Indian REITs and is expected to lay down a policy for foreign investments in Indian REITs soon.

The REIT has been accorded a partial tax pass through status, whereby certain specified income of the REIT is taxable in the hands of the unitholders of the REIT. A concessional tax rate of 5.41%[6] is provided for interest income earned and distributed by the REIT to non-residents.

Sale of units of the REIT is subject to a preferential tax regime i.e. long-term capital gains are exempt and short-term capital gains is taxable at 16.223%[7] subject to conditions.

Tax on repatriation to Investor

Repatriation of income on investments by non-resident investors in an Indian company is typically in the form of capital gains, interest and dividend.

Ordinarily, long-term capital gains are taxable at 10.82%[8]–21.63%[9] whereas short-term capital gains are taxable at 43.26%[10].

Dividend is exempt from tax in the hands of the recipient. However, Indian company distributing dividend is subject to dividend distribution tax at 20.396%[11].

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[3] Base rate (30%) + surcharge (12%) + education cess (3%) on applicable tax and surcharge.
[4] Base rate (20%) + surcharge (12%) + education cess (3%) on applicable tax and surcharge.
[5] Base rate (18.5%) + surcharge (12%) + education cess (3%) on applicable tax and surcharge.
[6] Base rate (5%) + surcharge (5%) + education cess (3%) on applicable tax and surcharge.
[7] Base rate (15%) + surcharge (5%) + education cess (3%) on applicable tax and surcharge.
[8] Base rate (10%) + surcharge (5%) + education cess (3%) on applicable tax and surcharge.
[9] Base rate (20%) + surcharge (5%) + education cess (3%) on applicable tax and surcharge.
[10] Base rate (40%) + surcharge (5%) + education cess (3%) on applicable tax and surcharge.
[11] This rate is inclusive of surcharge (12%) and eduction cess (3%) on applicable tax and surcharge.

Interest income is usually taxable at 43.26% 8 (direct investment route) and 21.63%[12] (portfolio investment route).

Transfer pricing

The Indian transfer pricing code provides that the price of any international and specified domestic transaction between associated enterprises is to be computed with regard to the arm's length principle. However, the transfer pricing legislation is not applicable when the computation of the arm's length price has the effect of reducing income chargeable to tax or increasing losses in India. This is aligned with the legislative intent to protect the Indian tax base.

Losses carried forward

Losses in India are typically carried forward for 8 years subject to conditions. There are no time limits for carrying forward the unabsorbed depreciation. Where there is a change in ownership or control of closely held companies beyond 49%, the carry forward losses (except unabsorbed depreciation) could lapse.

However, to be eligible to carry forward losses, it is important to file annual income-tax returns on or before due dates.

Indirect taxes and stamp duty

Value Added Tax and Service tax may be applicable to Indian companies engaged in real estate business. Generally, service tax is levied at 14% on the gross value. However, given that construction is a composite activity of supply of goods and service, service tax is payable on abated value such that the effective rate is 4.2%.

Further, service tax is applicable on leasing of commercial properties whereas leasing of residential properties currently are exempt from the levy of service tax.

The rate of VAT differs from state to state. The revenue neutral VAT rate ranges between 12.5% and 15%. VAT is applicable on sale of movable goods including certain deemed sales e.g. sale of under-construction property.

Stamp duty is generally applicable on document of sale of immovable property. The rate of stamp duty varies from state to state. Typically, the stamp duty ranges between 5% and 15%. Corporate restructurings also attract stamp duty.

[12] Base rate (20%) + surcharge (5%) + education cess (3%) on applicable tax and surcharge.

3 Japan

Corporation tax

Reduction of corporate tax rates and local corporate tax

The national corporation tax rates were reduced from 25.5% to 23.9% for tax years beginning on or after April 1st 2015. As the inhabitants corporate tax is calculated as a percentage of a corporation's national tax liability, the reduction in tax rate also results in lower local taxes, as well.

In addition, however, a local corporate tax, which is a national tax, was introduced. The tax rate is 4.4% of the corporation's national tax liability. The tax is imposed for tax years beginning on or after October 1st 2014.

Limitation on the net operating loss deduction and extension of the applicable period

Once local taxes are taken into account, the corporate tax rate is approximately 35.36%, depending on location, paid-in capital and other factors. For foreign investors without Permanent Establishment in Japan, effective tax rate is approximately 24.9%.

The limitation for the net operating losses deduction will be changed. The changes will be implemented in two steps. For the first two years, the current 80% limitation will be reduced to 65% for fiscal years beginning on or after April 1st 2015. Thereafter, the limitation will be reduced to 50% for fiscal years beginning on or after April 1st 2017. The limitation carryover period will be extended from currently 9 years to 10 years for losses incurred on or after years beginning on or after April 1st 2017.

Earnings Stripping Rules

The 2012 Tax Reform introduced earning stripping rules to restrict the deduction of interest which may arise from the excessive interest to related parties. The earning stripping rules are effective for tax years beginning on or after April 1st 2013.

In the Earnings Stripping rules, if net interest to related parties exceeds 50% of adjusted income, the excess would be treated as non-deductible. Net Interest to related parties is generally calculated as interest expenses to offshore related parties less corresponding interest income.

Consumption tax

Amendment to the 95% rule

The previous rule which allowed full input credit for taxpayers where the taxable sales ratio is at least 95%, is only applicable to a corporation whose annual taxable sales for the period is JPY 500m or less (if a taxable year is shorter than 12 months, the taxable sales will need to be annualised) for taxable periods beginning on or after April 1st 2012. For other corporations, an input credit is allowed based on either the percentage of taxable revenue method or the itemised method.

Even if a corporation owns only non-residential real estate, the itemised method needs to be considered if taxable revenue of the corporation exceeds JPY 500m.

'base period' rule

Application of tax-exemption for consumption tax is principally judged by taxable sales in the 'base period' (base period for corporation is a fiscal period two years prior to the current fiscal period). According to the rule, a corporation whose taxable sales during the base period are over JPY 10m becomes a consumption taxpayer.

In addition to the existing 'base period' rule, the following restriction will be effective for fiscal periods beginning on or after January 1st 2013.
- A corporation whose taxable sales for a Specified Period are over JPY10m becomes a consumption taxpayer; or
- A corporation whose salary payments for a Specified Period are over JPY 10m becomes a consumption taxpayer.

The term 'Specified Period' basically means the first six months of the preceding fiscal period.

To determine whether a corporation qualifies for consumption tax-exempt status, the taxable sales during both of 'base period' and 'Specified Period' should be considered.

Consumption tax rate

The 'Tax Hike Bill' related to social security reforms – including amendments to the Consumption Tax Law – was approved on August 10th 2012 and is effective on April 1st 2014. Under the amendments, the consumption tax rate was increased from 5% to 8% on April 1st 2014 and 10% from periods starting April 1st 2017.

Tax exemption for newly established corporations

Under the previous consumption tax law, a newly established corporation with initial paid-in capital of less than JPY10m could apply for tax-exemption in its initial two years.

Under the amendments in the 'Tax Hike Bill', the tax-exemption is not available to a newly established corporation on or after April 1st 2014, if:
- More than 50% is owned by a corporation or an individual ('Parent Shareholder') at the beginning of the fiscal period; and
- Taxable sales for either its Parent Shareholder or special related parties of its Parent Shareholder during the corresponding period to the base period of a newly established corporation exceeds JPY500m.

When a new corporation is established on or after April 1st 2014, the taxable sales of its shareholders or related parties should be considered.

Income tax

Restoration surtax

The Restoration income surtax is imposed on income tax amounts (including withholding taxes) at the rate of 2.1% during the period from January 1st 2013 through December 31st 2037.

Real estate acquisition tax and registration tax

Acquisition tax rate

A transfer tax is imposed upon the acquisition of real property. TMKs and J-REITs enjoy special reduced rates. These special reduced rates have been changed for 2015.

An updated table, showing the new acquisition tax rates and registration tax, follows (rounded to the second decimal places):

Applicable acquisition tax rates

Timing of acquisition			31 March 2017	31 March 2018	1 April 2018
Land	Ordinary corporation				
	TMK/J-REIT[1]		0.60%	1.50%	4.00%
Building	Residential	Ordinary corporation	3.00%	3.00%	4.00%
		TMK/J-REIT[1]	1.20%	3.00%	4.00%
	Non-residential	Ordinary corporation	4.00%	4.00%	4.00%
		TMK/J-REIT[1]	1.60%	4.00%	4.00%

[1] A taxpayer must meet certain qualifying requirements to enjoy this rate.

Applicable acquisition tax rates

Timing of acquisition			31 March 2017	31 March 2018	1 April 2018
Land	Transfer of ownership by sale	Ordinary corporation	1.50%	2.00%	2.00%
		TMK/J-REIT[1]	1.30%	2.00%	2.00%
	Entrustment of ownership		0.30%	0.40%	0.40%
Building	Transfer of ownership by sale	Ordinary corporation	2.00%	2.00%	2.00%
		TMK/J-REIT[1]	1.30%	2.00%	2.00%
	Entrustment of ownership		0.40%	0.40%	0.40%
	Initial registration of ownership		0.40%	0.40%	0.40%

[1] A taxpayer must meet certain qualifying requirements to enjoy this rate. Warehouses and associated land acquired by TMK/J-REIT are not subject to preferential registration tax rates.

4 Singapore

Share deal vs. asset deal

The acquisition tax costs associated with an asset deal and share deal are substantially different. In addition, an asset deal or share deal may give rise to a different income tax outcome during the holding period and upon exit and should be carefully evaluated upfront.

Goods and service tax

A goods and services tax of 7% is levied on the purchase of all properties (other than residential property) but there may be exemptions when certain conditions are met. Hence, it is important to evaluate whether an exemption applies as this could help ease cash flow and, in some cases, even help in saving interest costs.

Stamp duty

A buyer's stamp duty of 3% is levied on the purchase of property whereas only 0.2% applies on share purchase. In addition, foreign investor and non-individual investor who acquire residential property on or after January 12th 2013 will have to pay additional buyer stamp duties of 15%.

In this regard, a share deal may be preferred, but the buyer should nonetheless take into consideration the investment intentions (i.e. short-term vs long-term) and anticipated exit strategies when deciding whether to enter into an asset deal or share deal.

For industrial properties bought or acquired on or after January 12th 2013 and sold or disposed of within three years, seller's stamp duty of up to 15% on the price or market value, whichever is higher, will be imposed on the disposal of the property.

For residential properties bought or acquired after January 14th 2011 and sold or disposed of within four years, seller's stamp duty of up to 16% of price or market value, whichever is higher, will be imposed on the disposal of the property.

Interest deduction rules

Singapore does not have any thin capitalisation rules. However, interest expenses incurred on loans that are specifically used to purchase shares are not tax-deductible. Withholding tax at 15% applies to interest payments to non-residents, but this may be reduced with proper planning.

Care is needed when refinancing of an existing property investment is contemplated as there may be tax deduction implications for interest on the replacement borrowings. Essentially the commercial need for the refinancing will have to be demonstrated. Replacing equity with debt will generally be problematic, although not impossible.

Exit

Currently, exit is most tax-efficient through a share sale but this is not always possible. Although Singapore does not impose capital gains tax, gains on the sale of real estate may be taxed as trading gains at the prevailing corporate tax rate (currently 17%). With proper planning at the point of acquiring the property (which would involve proper review of the relevant documentation), it should be possible to reduce the tax exposure on the gain on sale. On a case by case basis, and with detailed analysis, a share deal may also enhance the chance of arguing a capital gain.

With effect from January 1st 2012, any gain derived by a company from the disposal of ordinary shares in an investee company is not subject to Singapore tax (i.e. safe harbour rules), provided it had held at least 20% of the ordinary shares for a continuous period of at least 24 months immediately prior to the date of the share disposal. However, this rule does not apply to the disposal of shares in an unlisted investee company that is in the business of trading or holding Singapore immovable properties (other than the business of property development). The safe harbour rules will expire on May 31st 2017 but is generally expected to be extended.

Capital allowances

Capital allowances are a much disputed area with the Singapore tax authorities. Therefore, a proper capital allowance study should be undertaken to maximise and substantiate capital allowance claims during holding period. This may also be helpful in facilitating a share sale upon exit.

Withholding tax

Intercompany lloans are subject to Singapore's transfer pricing rules. Hence, it is important that a proper benchmarking study is performed on any intercompany loans to substantiate that interest rates charged are at arm's length. In addition, the law has recently been amended such that it is now mandatory to maintain contemporaneous transfer pricing documentation. As mentioned above, withholding tax applies on interest payments to non-residents (e.g. shareholder loans) but this can be reduced with proper planning. Where a reduced rate under a treaty is adopted, it is important to make sure that certain administrative procedures are adhered to. Otherwise, the reduced rate may not apply and penalties may be imposed. An assessment of whether these procedures have been adhered to should be conducted at year end.

Tax incentives

A suite of fairly generous tax incentives is on offer in Singapore for funds managed by Singapore-based fund managers as well as the funds themselves. Under three schemes, known commonly as the Offshore Fund Scheme, the Singapore Resident Fund (SRF) Scheme and the Enhanced Tier Fund (ETF) Scheme, funds can enjoy a variety of safe harbour rules tailored for their needs. This includes the ability to use a Singapore-based fund that has access to Singapore's wide network of tax treaties. Managers who manage or advise funds that are approved under these schemes can enjoy a concessionary rate of tax of 10% on their fee income. It should be noted however that these schemes do not apply in relation to income or gains derived from property situated in Singapore.

Tax losses

Typically, a company that holds property for rental will not be allowed to carry forward tax losses or surrender them for group relief. Accordingly, it is important to examine any flexibility there may be in the timing of tax deductions or income so as to minimise the wastage. In this context consideration should be given to deferring capital allowance claims until they can be used effectively.

Year-end reporting

For fund managers who look after funds that enjoy any of the above schemes, there are certain annual reporting requirements that need to be observed and, in the case of the ETF and SRF, tax returns that may need to be filed for the fund entity.

5 South Korea

Corporation income tax rate

According to the tax amendment effective as of January 1st 2012, the corporate income tax rate is 11% on the first KRW 200m of the tax base, 22% on KRW200m~20 billion and 24.2% for the excess of KRW 20 billion, including 10% surtax.

Losses carried forward

Under the Corporate Income Tax Act (CITA), net operating loss (NOL) carry-forward is allowed for ten years in calculating the tax base for the fiscal year commencing on or after January 1st 2009. According to a proposed amendment of the Corporate Income Tax Act by the government, NOL will be carried forward to offset against the future taxable income, but will offset will be limited to 80% of the taxable income from the fiscal year starting January 1st 2016 if it is amended as proposed. As of now, NOL is allowed to offset 100% of the taxable income.

Depreciation rules

According to CITA, a depreciation method should be determined based on the characteristics of the fixed asset, and a taxpayer may select the useful life of depreciable assets within a range from 75% to 125% of the standard useful life. Generally, the practical standard useful life of a building is 40 years (2.5% depreciation rate).

In general, a selected depreciation method should be consistently applied.

Tax-exemption on interest income on foreign currency denominated bonds

According to the Tax Preferential Control Act (TPCA), there is no Korean withholding tax on interest payments on qualified foreign currency denominated bonds (FCDB) issued overseas by a Korean company to a non-resident or foreign company without Permanent Establishment.

The issue of FCDBs in excess of US$ 30m shall be reported to Ministry of Strategy and Finance for approval. If the total amount is US$ 30m or less, it is only required to be reported to a foreign exchange bank.

Transfer pricing

A transaction between a Korean company and its foreign related party should be made in arm's length basis under the Korean transfer pricing regulations.

The method used and the reason for adopting a particular method of arm's length pricing must be disclosed to the tax authorities by a taxpayer in its annual tax return.

Thin capitalisation rules

A Korean company's borrowings from its foreign controlling shareholders (FCS) (or borrowings from a third party guaranteed by the FCS) should not exceed three times of the equity invested by the FCS. Interest expense on the portion of the borrowings exceeding the 2:1 debt-to-equity ratio is not deductible against taxable income and is deemed to be a dividend distribution to the FCS which is subject to withholding tax.

It should be verified and submitted to tax authorities through an annual tax return whether the debt to equity ratio is maintained within the safe harbour thin capitalisation ratio of 2:1.

Amendment of the Tax Preferential Control Act for REITs and REIFs

Both real estate investment trusts (REIT) and real estate trust funds (RETF) are no longer eligible for a 30% exemption on acquisition tax for real estate acquired in accordance with amendment of the Tax Preferential Control Act effective as of January 1st 2015.

Local Tax Act

In accordance with the Local Tax Act, the acquisition tax applies at the rate of 4.6% including surtax upon real estate acquisition.

New Guidance to determine a 'foreign corporation' for corporate income tax purpose

According to the tax amendment to CITA effective as of January 1st 2013, an entity having its main office overseas shall be categorised as a foreign corporation for CITA and the foreign corporation which receives Korean sourced income would be subject to Corporate Income Tax.

Specific guidelines were introduced under presidential decree of the CITA effective as of February 15th 2013 that an entity would be viewed as a foreign corporation if one of the following conditions is met:

- Has a legal personality in Korea,
- Only comprised of partners with limited liability,
- Has the legal rights and liabilities that are distinct from its members including taking possession of assets or having the legal capacity to be a party to a law suit,
- The same or alike domestic entity constitutes a corporation under Korean laws.

Overseas Investment Vehicle (OIV) and Look-through Approach

The new rules shall not be interpreted as affecting the determination of beneficial owners under Double Tax Treaty with other jurisdictions.

Under the Rule of OIV, in order to claim a reduced treaty withholding tax rate, foreign beneficial owner of the Korean source income is required to provide the withholding agent with the Form 'Application for Entitlement to Reduced Tax Rate on Domestic Source Income' no later than it receives such income. Once a foreign entity is deemed to be an OIV, the entity is not allowed beneficial ownership in applying the tax treaty, but it will be looked through to its ultimate investor. The OIV is required to collect the 'Application for Entitlement to Reduced Tax Rate on Domestic Source Income' from the beneficial owners and submit them together with the 'Report of OIV' and the 'Schedule of the beneficial owners' to the withholding agent. The withholding agent will apply the reduced treaty rate between Korea and the jurisdiction where the beneficial owner is domiciled based on the information provided by the OIV.

America

1 Argentina

Sale of stock by non-residents

On September 23rd 2013 Law 26893 was published, which creates a tax on capital gains arising from the transfer of shares, bonds and other securities. It also includes a tax on dividend distributions.

It should be clarified that the exemption available for foreign beneficiaries (Section 78 of Decree No. 2,284/1991) on income derived from Argentine share transfer was repealed. Thus foreign beneficiaries would become subject to a 13,5% effective income tax withholding rate on gross proceeds or, alternatively, a 15% income tax on the actual capital gain if the seller's cost basis can be duly documented for Argentine tax purposes.

Argentine entities' dividend distributions will be subject to a 10% income tax through a withholding mechanism to be applied by the distributing company. This tax is additional to the so-called equalisation tax (the existing 35% withholding on distributions that exceed the accumulated tax earnings of Argentine entity making distribution).

It is recommended to analyse the impact that may have these measures in structuring projects.

The use of real estate trusts

The use of real estate trusts is regulated by the Civil and Commercial Code, which provides a very flexible legal framework. It has been the preferred vehicle for real estate projects in Argentina and is commonly used in building construction, especially in structures where small and medium-sized investors are involved. There are no major taxation differences compared to other corporate entities.

Real estate investment trusts should be examined as an alternative to structure real estate projects in Argentina.

Transfer pricing

All related-party cross-border payments have to comply with the arm's length principle. Failure to present appropriate documentation to the tax administration may result in the non-acceptance of group charges and penalties for tax purposes.

The arm's length principle should be duly followed and documented.

Thin capitalisation rules

This rule is applied in the case of loans given by foreign related parties to an Argentinean company in the following cases:
- A withholding tax rate of 35% is not applied;
- The amount of the loan is more than two times the equity of the Argentinean company.

If the rule is applied, the non-deductible interest will be treated as a dividend.

It is important to consider possible implications of this disposal in the project financing process. Also ensure before every fiscal year end that thin capitalisation rules limitations are met as there is room for improvement if needed.

Tax prepayments

In the case of declining profits, an application can be made to reduce current tax prepayments.

Cashflow models and profit forecast should be checked in order to improve liquidity by applying for tax prepayment reductions and/or refunds.

Tax treaty network

Argentina has concluded tax treaties for the avoidance of double taxation with various countries, under which reduced withholding tax rates can generally be applied on dividends, interest, royalties and certain capital gains. Currently, there are 17 double tax treaties signed by Argentina.

It is strongly recommended to verify substance requirements to apply double tax treaty benefits.

Losses carried forward

Losses may be used to offset Argentinean profits arising in the same company. Any amount of tax losses that could not be used in the year in which they were incurred can be carried forward for five years. Tax losses cannot be carried back. Losses in transfers of shares generate specific tax loss carry-forwards and may only be used to compensate profits of the same origin.

It is important to monitor taxable profits and losses during the project and when you intend to reorganise your investment structure.

Foreign exchange control regulations

As a general rule, incoming flows of currency (as financial loans or capital contributions) are subject to a compulsory one-year temporary deposit, for which 30% of funds granted brought by non-residents to Argentina must be kept in a reserve (encaje) for the term of 365 calendar days. This bank deposit is made in US dollars and does not earn interest. Direct investments such as holdings in Argentine companies (minimum 10%) or purchase of real estate and certain financial loan transactions, are not subject to said rule.

Regarding outflows of capital, the following remittances abroad do not require authorisation from the Argentine Central Bank ('BCRA'):

- Loans repaid after at least 365 days counted since the inflow of the foreign currency through the foreign exchange market ('MULC') (contract needed).
- Dividends (supported by audited financial statements).
- Non-residents in Argentina can transfer abroad the sale of a direct investment – partial or total liquidation – provided
  - The minimum term of permanence of the investment of 365 calendar days is fulfilled, and
  - f the capital contributions and purchases of shareholdings or real estate were done since October 28th 2011, it is required to prove the inflow of the funds through the MULC.

For payments of services certain rules established by the Tax Authority ('AFIP') – that depend on the amount of the contract and the type of service, it has to be informed to the AFIP, and for accessing to the MULC, the operation informed has to be in state 'exit'– and by the BCRA – that depending on the concept of the service to be paid, the amount and if the payment is going to be done to an entailment company or to a country of law taxation or to a company incorporated in a country of law taxation, the prior authorisation for doing the payment is required – must be fulfilled.

It is important to carefully analyse incoming and outgoing flow effects in each project.

Rural land ownership law

Pursuant to Law 26,737, enacted on December 2011, foreigners shall not hold more than 15% of the total amount of land in the whole country, or in any province or municipality. An additional restriction prevents foreigners of a given nationality from owning more than 30% within the previously referred cap of 15%. The law specifically prevents any foreigner from owning more than 1,000 hectares (approx. 2,500 acres) of rural land in the Argentine 'zona núcleo', or an equivalent area determined in view of its location; and from owning rural lands containing or bordering significant and permanent water bodies, such as seas, rivers, streams, lakes and glaciers.

It is necessary to review hypothetical effects of this law in real estate investment with foreign investors.

Surface right in the new Civil an Commercial Code

A surface right involves a temporary property right over real property not personally owned, which allows its holder to use, enjoy and dispose the property subject to the right to build (or right over what is built) in relation to the said real property. Maximum legal term for this surface right is of 70 years.

The surface right holder is entitled to build, and be the owner of the proceeds. In turn, the landowner has the right of ownership provided that he does not intervene on the right of the surface right holder.

The surface right terminates upon completion of the established term (or by operation of law), or by express resignation, occurrence of a condition, consolidation, or upon 10 years from the last use in cases of construction. The landowner owns what is built by the surface right holder and thus, the landowner must compensate the surface right holder unless otherwise provided by agreement.

It is worth noting that this new legal mechanism is available for real estate projects in Argentina.

Limits to the property right in the new Civil an Commercial Code

The new Civil and Commercial Code establishes that the exercise of individual rights over goods must be compatible with the Collective influence rights. Such exercise must meet national and local administrative laws passed upon the public interest and must affect neither the performance nor the sustainability of flora and fauna ecosystems, biodiversity, water, cultural values, landscape, among others, according to the criteria foreseen in the particular legislation. This broad limitation over the exercise of property rights in Argentina is still to be interpreted and applied by local courts.

This is a current legal concern when exercising property rights.

2 Canada

Investment structures

Foreign investors may invest in property in Canada using a Canadian legal entity (corporation, partnership or trust) or may acquire property directly.

Corporations resident in Canada are subject to Canadian tax on worldwide income. Non-residents corporations are subject to tax on income derived from carrying on a business in Canada (generally through a permanent establishment located in Canada) and on capital gains from the disposal of taxable Canadian property.

Partnership income is determined at the partnership level and the partners are taxed on their share of the partnership income, whether or not such income is distributed.

Income of a trust resident in Canada that is paid or payable to a beneficiary is generally deductible in computing the trust's taxable income and is included in the beneficiary's taxable income.

Compare the various structures that can be used to invest in property in Canada.

Corporate income tax rates

The combined federal and provincial/territorial income tax rates for the 2015 taxation year range from 26% to 31%, depending on the province or territory. The combined rates include the 15% federal rate plus the provincial or territorial rate which is applied when income is earned in one of Canada's nine provinces and three territories.

Corporate income tax rates have been stable, except for Alberta's, which increased from 10% to 12% on July 1st 2015.

Compare corporate income tax rates for different jurisdictions.

Capital cost allowance (tax depreciation)

Capital cost allowance (CCA) may be claimed on buildings and other structures at rates which range from 4% to 10% depending on the age and use of the property (i.e., commercial, residential, manufacturing, etc.)

CCA is calculated on a pool basis, with separate tax classes provided for various types of property. The deduction for CCA is calculated on the tax cost of the entire pool. Most rental properties (i.e. buildings costing more than C$ 50,000) are required to have separate tax pools so that CCA is claimed on a property by property basis and not on a combined pool of properties.

CCA is a discretionary deduction and cannot be claimed on a rental property to create or increase a tax loss unless the CCA claim is being made by a corporation, the principal business of which is the leasing, rental, development or sale of real property.

Ensure additions to a CCA class include the original acquisition price plus related transaction costs incurred to acquire the asset.

Thin capitalisation rules

The Canadian thin capitalisation rules may apply when the lender to a Canadian corporation is a non-resident person who alone or with other related persons owns more than 25% of the Canadian corporation's shares, and interest expense on the loan would otherwise be deductible to the Canadian corporation. If the ratio of these debts to equity exceeds 1.5:1, the interest on the excess is not deductible.

The thin capitalisation rules will apply to debts owed by a partnership in which a Canadian-resident corporation is a member, as well as to Canadian-resident trusts and to non-resident corporations and trusts that operate in Canada, including when these entities are members of partnerships.

Disallowed interest under the thin capitalisation rules will be deemed to be a dividend for Canadian withholding tax purposes that will be subject to dividend withholding tax of 25%, which may be reduced under a tax treaty.

Consider whether the thin capitalisation rules limit the deduction of interest on debt and trigger a withholding tax liability.

Disposition of property by non-residents

A non-resident that disposes of capital property is subject to Canadian tax on the taxable capital gain, i.e. 50% of the gain (proceeds of disposition less capital cost of the property).

In addition, to the extent that the proceeds of disposition of depreciable property (i.e. a building) exceed the property's undepreciated capital cost, the excess (up to the property's capital cost) is taxable to the non-resident as recaptured depreciation, at the tax rate that would apply if the non-resident were a resident of Canada.

A gain on the sale of shares of an unlisted non-resident corporation, or a foreign partnership or trust interest, may be taxable in Canada if the corporation, partnership, or trust owns certain types of properties, including real property in Canada and when the shares or interest derives its value primarily from these properties.

Generally, a non-resident vendor must report the disposition to the Canada Revenue Agency (CRA) and obtain a clearance certificate in respect of the disposition. If no certificate is obtained, the purchaser is required to withhold and remit to the CRA 25% of the sales proceeds. Relief from the reporting and withholding requirements may be available in certain cases.

When the disposition is on income account, i.e. inventory, the non-resident will be taxed on the resulting profit less applicable expenses, subject to treaty relief.

Ensure the tax consequences of property dispositions are calculated properly and any withholding and reporting requirements are met.

Losses carried forward

Losses incurred in a taxation year from a business carried on in Canada are deductible from income, other than income from property. If these losses are not used in the year they are incurred, they can be carried back three years and forward twenty years. However, losses of a non-resident from a business carried on outside Canada are not deductible in Canada.

Capital losses, resulting from the disposition of taxable Canadian property of a capital nature, can be carried back three years, and forward indefinitely, to reduce taxable capital gains realised on the disposition of taxable Canadian property in those years.

Ensure a loss utilisation plan is in place for losses set to expire.

Withholding tax

Payments by a Canadian resident entity to non-residents are subject to withholding tax of 25% of the gross amount of the payment. These payments may include interest paid to related parties, dividends, rents or royalties. The withholding tax rate may be lower when the payment is made to a resident of a country with which Canada has a tax treaty.

Interest paid to arm's length non-resident lenders is generally exempt from Canadian withholding tax, unless paid in respect of a participating debt arrangement.

Planning may be available to minimise withholding taxes.

Transfer Pricing

Canadian transfer pricing legislation and administrative guidelines are generally consistent with OECD Guidelines, and require that transactions between related parties be carried out under arm's-length terms and conditions.

Penalties may be imposed when contemporaneous documentation requirements are not met.

Ensure all transfer-pricing documentation meets the requirements imposed by the Canadian transfer-pricing rules and by the rules of the foreign country.

Land transfer tax and registration fees

All provinces and territories and some Canadian municipalities levy a land transfer tax or registrations fees on the purchaser of real property (land and building) within their boundaries. The tax is expressed as a percentage, usually on a sliding scale, of the sales price or the assessed value of the property purchased.

Rates may be up to 3% depending on the city in Canada. The tax is generally payable at the time the legal title of the property is registered or on the transfer of a beneficial interest.

Take into account the land transfer tax cost when acquiring real property.

Sales tax

The 5% federal Goods and Services Tax (GST) will apply on the purchase of real property and on certain expenses incurred in connection with the operation of the property, although the GST paid is usually recoverable (subject to significant restrictions in respect of residential rental properties). In most cases, a landlord is required to collect and remit GST on commercial rents received. However, a non resident vendor of real property is not generally required to collect GST on the sale of real property.

In addition, some provinces impose have harmonised their sales taxes with the GST. The harmonised sales taxes function as the GST, described above.

If a non-resident owns a property in a province that imposes a sales tax that is not harmonised with the GST, the non-harmonised sales tax will be a non-recoverable additional cost on certain expenses incurred in connection with the operation of the property.

Take into account sales tax when acquiring or collecting rents on real property.

3 Mexico

Books vs. tax depreciation

For book purposes, assets can be depreciated using different methods. For income tax purposes, fixed assets are depreciated on a straight-line basis applying the rates established by law. In addition, tax depreciation is adjusted for inflation, resulting in differences with the amount of the book depreciation.

Review book and tax depreciation, including the adjustment for inflation in the latter, and determine whether the tax depreciation rates are the highest allowed. For taxpayers in a tax loss position, a decrease in the depreciation rates could be analysed.

Income tax vs. flat tax deduction for assets

For income tax purposes, fixed assets are depreciated on a straight-line basis (5% maximum depreciation rate for buildings, land does not depreciate). There is not a flat tax in Mexico since January 1st 2014.

For years before 2014 flat tax deduction for the full amount was claimed when fixed assets were already paid.

Asset impairment

Impairments are allowed under Mexican GAAP. However, impairments are not deductible for income tax purposes.

Check that no tax deduction from impairment of the assets is being taken by the company.

Confirm that impairment adjustments are not from obsolescence of fixed assets, because a tax deduction may be included.

Goodwill

Any amount paid in excess of the fair market value of the real estate is considered as goodwill, which is non-deductible for Mexican tax purposes. In addition to the amount being not deductible, the depreciation as well as any interest related to the goodwill will also become non-deductible.

Check if there is an amount related to goodwill, if such amount is being deducted, and whether the related amounts to depreciation and interest are being deducted.

Classification of real estate acquisition

Real estate must be classified for both book and tax purposes as inventory or fixed assets, depending on whether it is acquired for subsequent sale or for development. This will impact the way in which the real estate is deducted: as cost of goods sold (inventory) or via depreciation (fixed assets).

Review how the real estate is classified and determine how it must be deducted and whether this classification makes sense with respect to the business.

Thin capitalisation rules

Interest derived from debts granted by foreign related parties of the taxpayer that exceed three times its shareholders equity will not be deductible (several special rules apply).

Review the thin capitalisation position of the company and also the computation to determine the non-deductible interest, if this is the case.

Informative returns

Taxpayers are obliged to file informative returns related to several different matters. In general, the deadline to file said informative returns is February 15th of the following year, except for the informative return of transactions with related parties, which is filed together with the annual tax return. Starting in 2015, all taxpayers are subject to reporting relevant transactions on a quarterly basis. Relevant transactions are defined as share acquisitions or dispositions, extraordinary transactions with related parties, and corporate reorganisations, among others on form 76.

Prepare the documentation and ensure that the informative returns are duly filed, as it is a deductibility requirement for expenses and acquisitions made.

Transfer pricing

Mexican income tax regulations require that taxpayers conducting transactions with related parties (i) determine the price or value of such transactions at arm's length conditions and, (ii) secure the corresponding contemporaneous documentation. Otherwise, the tax authorities may determine the price or value that would have been used by independent parties in comparable transactions.

Prepare a transfer pricing study covering each transaction carried out with related parties.

Analyse if the mark up currently used can be adjusted based on the transfer pricing study.

Pension fund exemption

Mexican tax law establishes a tax exempt regime for foreign pension and retirement funds investing in Mexican real estate. Such tax exempt regime on interest, leasing income and capital gains, if certain rules are complied with. Please note that income tax exemptions for foreign pension funds in connection with the sale of real estate or shares (which value is comprised in more than 50% of immovable property located in Mexico), should be available to the extent the real estate property was leased for at least a minimum period of one year (rule in force until December 31st 2013) or four years (rule in force as from January 1st 2014) before the transaction takes place.

Specific analysis of the structures involving foreign pension funds should be carried out in order to apply the tax exemption granted by the Mexican Income Tax Law.

Mexican REITs

A special tax regime is granted for Mexican REITs providing certain advantages, such as the no obligation to file monthly advanced income tax payments.

Review the applicable tax benefits for Mexican REITs.

Creditable VAT for specific business transactions

VAT paid on costs and expenses should only be creditable when the taxpayer carries out taxable activities. For VAT purposes, for example, the sale of land, houses and dwellings is VAT-exempt. Therefore, VAT may be a cost for those real estate companies performing VAT-exempt activities.

Specific review of VAT-able and non-VAT-able activities of Mexican real estate companies should be carried out.

Tax incentive for real estate developers

Taxpayers engaged in construction and sale of immovable property projects may elect to take a deduction for income tax purposes on the acquisition cost of land in the fiscal year that the land is acquired to the extent that this option is applied for a minimum period of five years for all the land being part of its inventory.

Review all requirements for the exercise of this option.

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