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Key Tax Issues at Year End for Real Estate Investors 2021/2022

An overview of year-end to-dos and important issues in real estate taxation in 40 tax systems worldwide

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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 40 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 and is intended for general information purposes only. Further matters may be relevant.

We hope that you will find Key Tax Issues at Year End for Real Estate Investors 2021/2022 a useful reference and source of information. We would be pleased to assist you with any further requests relating to your specific circumstances.

November 2021

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List of abbreviations

ADGM	Abu Dhabi Global Market
AE	associated enterprise
AIF	alternative investment fund
AIFM	Alternative Investment Fund Manager
AIMI	Portuguese additional real estate municipal tax
AMT	alternative minimum tax
ATAD	Anti-Tax Avoidance Directive
ATED	annual tax on enveloped dwellings
ATI	adjusted taxable income
BAT	business activity tax
BCRA	Banco Central de la República Argentina (Argentine Central Bank)
BEAT	Base Erosion Anti-Abuse Tax
BEPS	base erosion and profit shifting
BIR	Bureau of International Revenue
BITA	Business Income Tax Act
BPHTB	Bea Perolehan Hak atas Tanah dan Bangunan (acquisition rights to land and buildings)
CbCR	country-by-country reporting
CCA	capital cost allowance
CET	contribution économique territoriale
CFC	controlled foreign company
CFE	cotisation foncière des entreprises
CGT	capital gains tax
CIT	corporate income tax
CIV	collective investment vehicle

CRA	Canada Revenue Agency
CVAE	cotisation sur la valeur ajoutée des entreprises
DDD	deemed dividend distribution
DGT	Directorate General of Taxes
DIFC	Dubai International Financial Centre
DST	documentary stamp tax
DTT	double tax treaty
EBITD	earnings before interest, tax and depreciation
EBITDA	earnings before interest, tax, depreciation and amortisation
ECJ	European Court of Justice
EEA	European Economic Area
ESR	Earning Stripping Rule
FDII	foreign-derived intangible income
FIIS	fonds d'investissement immobilier spécialisé (Belgian real estate investment fund)
FPI	foreign portfolio investors
FTA	French Tax Authorities
FTC	French tax code
FY	fiscal year
GAAP	Generally Accepted Accounting Principles
GAAR	general anti-abuse rule
GDP	gross domestic product
GIFT	Gujarat International Finance Tec-City
GILTI	global intangible low-taxed income
GST	goods and services tax
GVBF	gespecialiseerd vastgoedbeleggingsfonds (Dutch for FIIS)
GVV	gereglementeerde vastgoed vennootschap (Dutch for SIR)
IFSC	International Financial Services Centre

IFSCA	International Financial Services Centres Authority
IIT	individual income tax
IFRS	International Financial Reporting Standards
IMI	imposto municipal sobre imóveis (Portuguese real estate municipal tax)
IOSCO	International Organisation of Securities Commissions
IPO	initial public offering
IRAS	Inland Revenue Authority of Singapore
IREF	Irish real estate fund
ITA	Income Tax Act
ITC	input tax credit
JDA	joint development agreement
KIK-DIRE	kontrak investasi kolektif – dana investasi real estate
LAT	land appreciation tax
LST	luxury sales tax
LVIT	land value incremental tax
MDR	mandatory disclosure rules
MLI	Multilateral Convention to Implement Tax Treaty Measures and Prevent Base Erosion and Profit Shifting (Multilateral Instrument)
MOF	Ministry of Finance
MREC	mutual real estate company
NATO	North Atlantic Treaty Organization
NCST	list of non-cooperative states and jurisdictions
NFE	net financial expenses
NJOP	Nilai Jual Objek Pajak
NPBT	net profit before tax
NPOP	Nilai Perolehan Objek Pajak
No	number
NOL	net operating loss

NRCGT	non-resident capital gains tax
OECD	Organisation for Economic Co-operation and Development
OIV	oversea's investment vehicle
OREC	ordinary real estate company
PAYE	pay-as-ypu-earn
PBB	Pajak Bumi dan Banguan, land and building tax
PE	permanent establishment
PIT	personal income tax
PPJB	Perjanjian Pengikatan Jual Beli
PSE	Philippine Stock Exchange
PTR	preferred tax regime
Q	quarter
QFII	qualified foreign institutional investors
RERA	Real Estate (Regulation and Development) Act
RCIT	regular corporate income tax
RE	real estate
REIC	real estate investment company
REIT	real estate investment trust
RET	real estate tax
RETT	real estate transfer tax
ROS	Revenue's Online System
RPGT	real property gains tax
RPT	real property transfer tax
RR	revenue regulations
RTC	Russian Tax Code
RUSF	resource utilisation support fund
SAF-T	standard audit file for tax purposes
SC	Secutities Commission Malaysia

SDC	special defence contribution
SEBI	Securities and Exchange Board of India
SEC	Securities and Exchange Commission
SEZ	Special Economic Zones
SIGI	sociedades de investmento e gestao imobiliaria (Portuguese REIT)
SIR	societé immobiliere reglementee (Belgian regulated real estate company)
SITA	Singapore Income Tax Act
SOCIMI	sociedades anónimas cotizadas de inversión en el mercado inmobiliario (Spanish REIT)
SPC	special purpose company
SPPT	Surat Pemberitahuan Pajak Terhutang
SPV	special purpose vehicle
SRET	special real estate tax
SST	sales and services tax
STA	State Taxation Administration
STT	securities transaction tax, stock transaction tax
TCJA	Tax Cuts and Jobs Act
TCP	taxable Canadian property
TIVUL	tax on the increase in value of urban land
TMK	tokutei mokuteki kaisya
TP	transfer pricing
TPD	transfer pricing documentation
UBO	ultimate beneficial owner
VAT	value-added tax
WHT	withholding tax
YA	year of assessment

Europe

1 Austria

Income tax rates

Generally, the corporate income tax rate in Austria amounts to 25% (there are no local corporate taxes in Austria). For individuals, a progressive tax rate of up to 55% depending on the level of income applies.

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 or reorganisations 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 or reorganisations should be reviewed in detail.

Substance requirements

Please note that anti-abuse provisions apply to the application of double tax treaties (DTTs) as well as to the Parent-Subsidiary Directive. Relief-at-source is available only if the direct parent company issues a written declaration confirming that

- It is an 'active' company carrying out an active business that goes beyond the level of pure asset management (holding activities, group financing, etc.),
- has own employees and
- office space at its disposal (substance requirements).

Provided the requirements are not met, Austrian withholding tax (WHT) has to be deducted and the refund method applies. In that procedure the foreign company has to prove that its interposition in the structure is not abusive. Further, the lack of substance can result in the non-deductibility of certain expenses (e.g. if the company which receives interest payments has no substance and the actual beneficial owner is an affiliated company which is located in a low-tax jurisdiction). Finally, it should be mentioned that there is also a general substance-over-form provision in the Austrian Fiscal Code, which shall avoid tax abuse.

Substance requirements are more and more challenged by the Austrian tax authority. Therefore, it should be ensured that these requirements are met.

DAC 6

Austria has already implemented reporting requirements for cross-border tax arrangements according to DAC 6.

Cross-border arrangements should be reported within 30 days in order to avoid fines of up to EUR 50,000.

Transfer pricing

Generally, all business transactions between affiliated companies must be carried out under consideration of the arm's length principle. In 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.

Further, Austria implemented mandatory transfer pricing documentation requirements as defined in Action 13 of the OECD's Action Plan on Base Erosion and Profit Shifting.

The mandatory transfer pricing documentation requirements follow a three-tiered documentation approach, requiring the preparation of a master file, a local file, and a country-by-country report (CbCR). The entire documentation is to be prepared in either German or English.

The arm's length principle should be duly followed and documented in order to avoid negative tax consequences. Further, the mandatory transfer pricing documentation requirements have to be considered.

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.

A debt/equity ratio of 3/1 is usually accepted by Austrian tax auditors. 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%. The low-taxation test has to be passed at the level of the beneficial owner of the income.

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.

Real estate transfer tax (RETT)

Austrian 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 95% or more of the shares in the asset-owning company are transferred or finally held by the buyer. In that case, RETT amounts to 0.5% of a so-called 'property value', whereby this 'property value' is comparable to the market value of the property.

Furthermore, the transfer of at least 95% of the shares in a real estate owning partnership to new shareholders within a period of five years is subject to Austrian RETT.

Shares held by a trustee for tax purposes will be attributed to the trustor and are therefore part of the calculation of the shareholding limit.

RETT is generally triggered on transactions that cause a change in the ownership of Austrian real estate or in the person empowered to dispose of such property. RETT in the amount of 0.5% of the property value is also triggered in situations where the shares of corporations or interest in partnerships owning Austrian real estate are transferred.

Land registration fee

The fee for the registration of real estate and transactions in the land register has to be calculated on the basis of the purchase price of the real estate. The fee 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 market 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 31 March 2002 are taxed at a rate of 30%. The tax assessment base is the profit calculated by sales price less acquisition costs.

Real estate property acquired before 31 March 2002 is effectively taxed at:
- 18% of the sales price, if the real estate property was rededicated from green area to building area after 31 December 1987 and
- 4.2% of the sales price without rededication after this date.

Losses arising from the sale of private real estate can be compensated with gains from other private real estate sales upon application. Further, 60% of the remaining losses can be offset with income from letting private property over a period of 15 years or in the same year (application necessary). Basically, the above-mentioned tax regime for the sale of private property is also applicable for business property held by individuals. However, the transition rules are only applicable for land (and not for buildings).

Losses arising from the sale of business real estate can be compensated with gains from other business real estate sales. With regard to business property, 60% of the losses can be offset against other income and an overhang is added to the loss carry forwards.

The special tax regime is not applicable for corporations since all their profits (including capital gains resulting from the sale of real estate) are taxed with the standard CIT rate of 25%.

Gains from the sale of private property are subject to income tax with a special tax rate of 30%.

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.

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 immediate taxation.

Interest limitation rule

Austria has now implemented the interest limitation rule required by Article 4 of the Anti-Tax-Avoidance Directive (ATAD). The rule entered into force on 1 January 2021 and is applicable for fiscal years beginning after 31 December 2020. The rule caps the deduction of net interest expenses at 30% of the taxable result (the tax-relevant EBITDA). Nevertheless, taxpayers can make use of numerous exceptions (e.g. EUR 3m de minimis, stand-alone entities, loans prior to 17 June 2016, equity test based on consolidated accounting).

Furthermore, two options for carry-forwards apply. Interest expenses which cannot be deducted in the current tax period due to the interest limitation rule can be carried forward to subsequent fiscal years without time limitation and unused EBITDA can be carried forward with a time limitation of five years.

Within a tax group, it is important to note that the interest limitation rule only applies on group level and exceptions should also only be applied on this level.

Existing and future financing structures should be examined and planed in detail to avoid increased taxation and to ensure the interest deductibility.

COVID-19 measures

Due to the COVID-19 pandemic several measures to support the solvency of businesses were introduced in Austria.

Losses carried back

Generally, the Austrian tax law does not provide for a carryback of tax losses. However, due to the COVID-19 pandemic a one-time carryback for tax losses incurred in 2020 to the years 2019 and 2018 is possible. In case of a deviating financial year a carryback of tax losses incurred in 2021 is possible as well.

Depreciation on property

In Austria the depreciation rate for business property basically amounts to 2.5% p. a. and the depreciation rate for habitual purposes amounts to 1.5%. A higher depreciation rate can only be applied in case of providing a corresponding expert opinion.

However, for buildings purchased or built after 30 June 2020 an accelerated depreciation applies. For the first year of depreciation the threefold and for the second year the twofold of the depreciation rate prescribed by tax law is applicable. Consequently, for the first year a depreciation rate of 7.5% or 4.5% p.a. for buildings for habitual purposes and for the second a depreciation rate of 5% or 3% for buildings for habitual purposes applies. In that case, buildings are always depreciated on a full year basis, even if the usage of the building amounted to less than six months (i.e. in the first year of usage). The amendments are applicable for both buildings rented for habitation purposes and business property.

Value-added tax (VAT) on rental income

Rental for residential purposes (i.e. housing/living purposes) and for accommodations, such as hotel rooms, is generally taxable for VAT purposes at a rate of 10%. However, due to the COVID-19 pandemic the VAT rate for the accommodation in hotel rooms was decreased from 10% to 5% in the period from 1 July 2020 to 31 December 2021.

The potential application of the COVID-19 measures should be reviewed in detail.

2 Belgium

Corporate income tax rate

Since financial year 2020, the nominal rate is 25% and the crisis tax has been abolished. Small and medium-sized enterprises (SMEs) are subject to a rate of 20% since 2018 for the first bracket of EUR 100,000 in profit.

Tax advanced payments

Unless a company pays its Belgian corporate income taxes by means of timely tax prepayments, a surcharge of 6,75% will be due on the final corporate tax amount. If tax prepayments are made, a credit ('bonification') will be granted which can be deducted from the global surcharge.

Withholding tax

A uniform withholding tax (WHT) rate of 30% on interest, dividends and royalties is applicable. Some WHT reductions/exemptions are provided for under Belgian domestic tax law, either by implementation of the European Parent-Subsidiary or Interest and Royalties Directive or in other specific situations (such as for dividends paid by the Belgian specialised real estate investment fund or Belgian regulated investment companies to non-resident investors (WHT of 0%) to the extent the income originates from foreign real estate income, interests paid to credit institutions located in the EEA or in a country with which Belgium has concluded a double taxation treaty (0%) etc.).

To benefit from the exemption/reduction, it is now more than ever key that the receiving entity qualifies as the beneficial owner of the income. In its recent decisions, the Court of Justice of the European Union concluded that a broad interpretation of this notion should be followed (so-called 'Danish cases'). In this context, particular attention should be paid to the upper-tier structure of a Belgian company (e.g. substance, back-to-back structures, etc.) so as to avoid any successful challenging of Belgian WHT exemption. One should carefully consider the impact of the MLI (see below).

Note in this respect that since mid-2020, the Belgian tax authorities have increased the number of tax audits on 'passive income' payments such as dividends and interest and related WHT exemptions.

Formalities will in any case need to be properly and timely fulfilled.

Companies should be prepared to defend the compliance of their tax positions (incl. the appropriate and relevant functional level of substance and beneficial ownership of all companies involved with respect to any Belgian WHT reduction/ exemption they are claiming).

Multilateral Instrument (MLI)

On 26 June 2019 Belgium ratified the MLI as adopted by more than 100 jurisdictions to efficiently update their treaties network with some measures to prevent base erosion and profit shifting (e.g. one of the principal purposes of entering into the specific transaction or arrangement was not to obtain the treaty benefit concerned). Upon condition of the fulfilment of the condition of reciprocity of ratification of the covered tax agreements, in Belgium, the MLI is applicable at the earliest since 1 January 2020 for withholding tax purposes and, in principle, since tax periods starting on or after 1 April 2020 for other tax purposes.

Dividend and capital gains tax exemption

Dividend distributions between corporations are generally 100% tax exempt under the so-called dividend received deduction. Certain conditions are to be met. The 100% tax exemption is indeed only granted where the recipient of dividends holds at least 10% of the nominal capital of the distributing corporation (or acquisition value of minimum EUR 2.5m) for a period of at least one year. Furthermore, subject-to-tax conditions should be met at the level of the distributing company.

Since 2018, capital gain on shares are exempt from corporate income tax in the hands of a Belgian company to the extent that the conditions to benefit from dividend received deduction are met.

It will be key to monitor whether all conditions to benefit from the exemption for dividend received / capital gains on shares are duly and timely complied with.

Deduction of interest expenses

Before 1 January 2019, a debt/equity ratio of 5/1 had to be considered in relation to interest payments. Interest expenses relating to intercompany loans exceeding five times the sum of the taxed reserves at the beginning and the paid-up capital at the end of the assessment year are to be disallowed for tax purposes. Since 1 January 2019, this rule has been replaced by the 30% EBITDA limitation rule (except with respect to certain loans for which the debt/equity ratio of 5/1 still applies (i.e. loans concluded prior to 17 June 2016 without 'fundamental modification' (grandfathering rule) as well as loans which beneficial owner(s) are related companies located in a tax haven).

The Belgian 30% EBITDA limitation rule applies not only to intragroup loans but also to bank loans. Loans in relation to public-private co-operation projects and loans granted between Belgian entities that are part of the same group are outside the scope of the exceeding borrowing cost computation.

Exceeding borrowing costs (net basis computation, incl. payments economically equivalent to interest) will be deductible up to the highest amount of 30% tax EBITDA or EUR 3m (= de minimis rule – EUR 3m to be allocated across Belgian group entities via specific allocation keys). Disallowed exceeding borrowing costs can be carried forward without time limit. It is possible to transfer 'deduction capacity' to another Belgian group entity. This must be analysed in conjunction with the consolidation regime (see below).

The taxable basis of certain companies (i.e. regulated real estate companies (SIR/GVV) and real estate investment funds (FIIS/GVBF) does not include net borrowing costs in accordance with the 30% EBITDA limitation rule, if any.

The 30% EBITDA limitation rule needs to be monitored in detail and should be kept in mind going forward, for the calculation of tax provision. Its impact should be carefully analysed (notably in presence of Belgian groups) together with the potential applicability of the consolidation regime (see below).

Anti-hybrid mismatch

Since financial year 2019, anti-hybrid rules have been introduced within Belgian tax law in line with the Anti-Tax Avoidance Directive (ATAD) I and II.

These rules cover not only situations where Belgium is immediately involved in a hybrid mismatch but also imported mismatch situations. More particularly, payments made in the context of an imported hybrid mismatch are disallowed for tax purposes to the extent they (in)directly finance expenses that are deductible at the level of certain foreign taxpayers without any income corresponding to that cost being however included in the taxable income of the beneficiary (unless, of course, an equivalent adjustment is made in one of the jurisdictions involved).

This measure may very well turn the spotlight on certain financing instruments being used notably in a Luxembourg context.

Tax consolidation

Belgian tax law foresees a tax consolidation regime, since financial year starting 1 January 2019 or later. This rule implies that Belgian companies can offset their (new) profits against tax losses of another Belgian affiliated company. Only the consolidated tax base is then subject to corporate income tax.

The scope of the consolidation regime is limited to certain qualifying companies (90% direct shareholding between the companies (or via the EEA parent company), group companies that have been affiliated for at least the last five successive calendar years, SIR/GVV and FIIS/GVBF are excluded etc.).

In order to benefit from this new system of tax consolidation, the group companies concerned have to conclude a 'group contribution agreement' that meets certain conditions.

Tax losses carried forward

Based on current Belgian tax law, 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.

Since 2018, a new order of deduction applies. Non-taxable elements, dividends received deduction of the year, patent income deduction and investment deduction (the last one, since 2019) are fully deductible. Other tax attributes (e.g. tax losses carried forward) can only be claimed on 70% of profits exceeding the EUR 1m threshold. The remaining 30% of profits are fully taxable at the above new rate. Note that this 'basket rule' does not apply to losses incurred by SMEs starters.

In the case of a change of control (including in case of an internal group restructuring), the application of the Belgian change of control rules 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) capital gains on real estate to be taxed in proportion with the depreciation booked on the qualifying asset(s) (located in EEA member countries) in which the realisation proceeds have been reinvested in due time (period of five years for buildings).

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

General anti-abuse rule

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, as if the tax abuse did not take place.

The impact of the anti-abuse measure on real estate transactions (e.g. share deals, split sale structures) should be analysed on a case-by-case basis.

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.

VAT on rent

Since 1 January 2019, the new legislation allowing VAT to be applied to rent is applicable.

This regime provides the following new possibilities:
- Option to apply VAT (in a B2B context) to the rental of newly constructed or newly renovated buildings after 1 October 2018.
- Application of VAT for short-term leases (maximum six months) in a B2B context.
- Simplification of the conditions to apply VAT to the rental of (old or new) warehouses (only 50% of the building must be used for warehousing purposes).

DAC 6

Unlike most other EU member countries, Belgium has already implemented reporting requirements for cross-border tax arrangements.

As from 1 January 2021, there is a thirty-day turnaround period to report to domestic tax authorities. In other words, reportable cross-border arrangements must in principle be reported within 30 days of there having been made available for implementation, being ready for implementation or the first step in their implementation was taken (whichever occurs first).

Recent tax changes

The following recent tax law changes are to be noted:

- **Payments to tax havens**
  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 F275 to be annexed to the tax return. Further to a Circular Letter dd. 1 September 2020 of the Belgian tax authorities, and as confirmed by the Minister of Finance in June 2021, 'partially compliant' countries (i.e. states that are 'not effectively or substantially' applying the Standard on Exchange of Information on Request, like Malta, Turkey, Panama, etc.) are now also in scope of this declaration obligation.

- **Ultimate beneficial owner (UBO) register**
  With respect to the national register of ultimate beneficial owners, Belgian companies need to confirm that the latter is still up to date on an annual basis. Companies are also required since end-2020 to upload in the UBO-register any document that supports and demonstrates the adequacy, accuracy and topicality of the registered data. The deadline for uploading these documents has been extended to 31 August 2021. Penalties should be imposed from 1 September 2021.

- **'Covid-19' rent free period: tax credit for real estate owners**
  Several measures were adopted by the Belgian tax legislator in the light of the COVID-19 pandemic. One of them is an incentive that is made available to Belgian taxpayers owning real estate and encourage them to grant rent free period(s) to their lessees (waive of their payment obligation). The Belgian tax legislator thereby wanted to support the enterprises (as lessees) that were obliged to close their doors in attempts to control the further spread of the virus (in line with the sanitary measures imposed by the Belgian government). For companies, this incentive takes the form of a tax credit for an amount corresponding to 30% of (part of) the rent (and other rent incentives) for which the payment obligation is waived. This tax credit is subject to several conditions and formalities.

Belgian tax law changes should be constantly monitored.

3 Bulgaria

Transfer pricing

In 2019 Bulgaria adopted rules providing for mandatory preparation of transfer pricing (TP) documentation, justifying the arm's length nature of the related party transactions.

The TP documentation shall comprise a local file and a group master file (if the company is part of a multinational group). Bulgarian entities, as well as foreign entities acting through permanent establishments in Bulgaria, which participate in cross-border related party transactions will be required to prepare TP documentation, if as at 31 December of the preceding year two of the following thresholds are exceeded:
- balance sheet value of the assets – BGN 38m
- net sales – BGN 76m, or
- average number of employees – 250

The first year for which a local file should be available is 2020 (i.e. the first round of documentation was due by 30 June 2021). Both, the local and the master file would be provided to the tax authorities upon their request.

Companies should consider the new TP rules in their real estate transactions.

Thin capitalisation/ Interest limitation rules

As of 1 January 2019, Bulgarian tax legislation provides for two regimes of treatment of the interest expenses for the purposes of corporate income taxation – i) thin capitalisation regime and ii) the (new) interest limitation rules.

In broad terms, the company should determine which of the regimes is applicable in any given year (could be none, one or both of them).

Under the Bulgarian thin capitalisation rules, interest expenses may not be fully tax deductible (deductibility may be limited to certain percentage of the EBIT for the year), if the company's debt-to-equity ratio exceeds 3:1 (average between ratios as at 1 January and 31 December taken). Interest expenses restricted in a given year may be reversed (deducted) in following years (without time limitation), under certain conditions and formula in the law.

Interest expenses incurred on bank loans and interest elements of finance lease payments are subject to the thin capitalisation rules, if the bank loan, respectively the finance lease agreements are concluded between related parties or where these are guaranteed by a related party.

The interest limitation regime (introduced under the so called ATAD EU Directive) is applicable if the net borrowing costs incurred during the year exceed EUR 3m. The excess of the company's borrowing costs over its interest income (i.e. net borrowing costs), is tax deductible in the year when incurred, only up to 30% of its tax-adjusted EBITDA.

Borrowing costs are defined very broadly and cover various costs (i.e. interest under bank loans, interest capitalised in the value of a non-depreciable asset or the amortisation of capitalised interest in a depreciable asset, etc.)

The non-deductible borrowing costs from one year can be carried forward and deducted without time limitation under a formula in the law. There is no debt-equity ratio safe harbour rule in respect of the interest limitation rules.

Withholding tax

Bulgarian withholding tax (WHT) applies to certain types of income (e.g. dividends, interest, royalties, consultancy, management services, etc.) accrued in favour of a foreign tax resident (income recipient).

Capital gains generated by non-resident recipients out of disposal of real estate located in Bulgaria, as well as out of disposal of shares in a Bulgarian company, are subject to 10% tax at source in Bulgaria.

An applicable double tax treaty or a domestic exemption may provide for a partial or full relief from the Bulgarian withholding tax. The applicable regime should be assessed on a case-by-case basis, e.g. the new double tax treaty between Bulgaria and the Netherlands, which was signed on 14 September 2020 entered into force on 31 July 2021 and shall apply from 1 January 2022.

Beneficial ownership

A special definition of beneficial owner for the purposes of obtaining withholding tax relief exists in the Bulgarian tax legislation. 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.

In view of the increasing focus by the Bulgarian tax authorities on tax relief entitlement, companies should be in a position to prove, in case of a tax audit, that the income recipients were the beneficial owners of the received income, that they have adequate substance, they are not part of a conduit arrangement or non-genuine/tax-driven structures etc. This is also in light of some recent tax developments with two judgments of the European Court of Justice from February 2019, that stress on the beneficial ownership concept when applying EU WHT exemptions on interest and dividends (Judgment from 26 February 2019 in Joined Cases C-115/16, C-118/16, C-119/16 and C-299/16, and Judgment from 26 February 2019 in Joined Cases C-116/16 and C-117/16).

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.

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 between 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 tax rate the taxpayer should declare this change in the relevant municipality. The period for declaring the change is two months.

Garbage collection fee

Companies are obliged to pay garbage collection fees with respect to their real estate. Generally, the fees are based on the gross book value of the real estate properties and could be material for expensive real estate.

It is expected that as of 1 January 2022, new rules for the calculation of the garbage collection fees will come into force.

Value-added tax

The transfer of ownership over land and the renting out of land is generally VAT-exempt. However, the transfer of regulated land plots in Bulgaria (i.e. land that is eligible to be built upon) is a supply subject to 20% VAT.

The disposal of buildings (and the underlying area plus an adjacent area with three m wide) for which more than five years have passed from the date of issuance of the permit for their use (so-called 'old buildings') is VAT-exempt. The sale of 'new' buildings (and the underlying area plus an adjacent area with three m wide) or units in them is always subject to VAT.

The rent of buildings is a VAT-able supply, except when rented out to individuals for residential purposes.

Where the above supplies are VAT-exempt, there is an option for the supplier to treat them as subject to VAT.

The sale of construction rights over land is VAT-exempt until the issuance of construction permit.

If a company uses a building partly for the provision of taxable supplies, and partly for provision of exempt supplies/performance of non-taxable activity, it would be entitled to partly (pro rata) recover the input VAT incurred on the purchase/rent of the building. A change of the use of the building from taxable to exempt activities over a period of 20 years may have an impact on the right of input VAT credit, which is to be adjusted, based on a specific formula.

Real estate related services (such as those performed by consultants, architects, engineers, supervisors, intermediary brokers, etc.) are always considered with place of supply in Bulgaria and attract Bulgarian VAT when the real estate is located in the country. In case the supplier is a taxable person not established in Bulgaria, the Bulgarian VAT should be self-charged by the recipient of the above services (a taxable person) in Bulgaria under the reverse charge mechanism.

4 Cyprus

Cyprus income tax

Immovable property trading gains and rental income derived from Cyprus immovable property are subject to Cyprus income tax. If the property owner is a company (whether resident or non-resident) the corporate tax rate of 12.5% applies. If the property owner is an individual, rental income is added to his(er) other Cyprus taxable income and the following personal income tax (PIT) rates apply:

Chargeable income for the tax year €	Tax rate (currently applying in 2020) %	Accumulated tax €
0–19,500	0	0
19,501–28,000	20	1,700
28,001–36,300	25	3,775
36,301–60,000	30	10,885
>60,000	35	

Property running expenses incurred in deriving rental income such as insurance, repairs and maintenance, and property management fees as well as any other expenses incurred wholly and exclusively for the production of rental income are deductible if the owner of the Cyprus-situated immovable property is a company. In the case of an individual owner, a flat deduction of the gross rental income is granted instead of claiming actual expenses.

Capital expenditure such as stamp duty and legal costs incurred in acquiring the property are not deductible, but form part of the acquisition for tax depreciation allowances and for costs deductible against sales proceeds realised upon potential disposal of the property.

Special defence contribution (SDC)

In addition to income tax (refer to 'Cyprus income tax' section) SDC is imposed on gross rental income, reduced by 25%, at the rate of 3% (effective rate of 2.25%) earned by Cyprus tax resident companies and Cyprus tax resident-domiciled individuals.

Payment of tax

Corporate property owners should pay the Cyprus income tax liability arising on rental income in two equal provisional instalments by self-assessment due by 31 July and 31 December of the current year. The first instalment may be revised by 31 December. A final balancing payment must be made on or before 1 August of the following year by self-assessment to bring the total payments of tax to the total actual amount of tax due according to the respective tax return.

Corporate property owners also pay SDC arising on rental income in two equal instalments by self-assessment due by 30 June and 31 December – if not withheld at source by the tenant. Corporate property tenants must withhold SDC from rental payments and pay SDC to the authorities by the end of the following month.

Individual property owners that earn rental income must pay personal income tax annually by self-assessment due by 31 July of the following year. Individual property owners must also pay SDC in two equal instalments by self-assessment due by 30 June and 31 December.

Contributions to the General Health System

In addition to income tax and SDC as from 1 March 2019 a contribution to the General Health System (GHS) has been imposed on the gross rental income earned by individuals tax residents in Cyprus, at the rate of 2,65%. This contribution is subject to a ceiling of EUR 180.000.

Deemed dividend distribution (DDD) for 2019

A Cyprus tax resident company is deemed to distribute 70% of its accounting profits of 2019 two years from the end of the tax year in which the profits were generated (i.e. by 31 December 2021), otherwise it will be subject to the deemed dividend distribution (DDD) provisions of special defense contribution at 17% and pay the relevant SDC by 31 January 2022. In addition, to the extent that the ultimate beneficial owners of a Cyprus tax resident company are tax resident in Cyprus, a contribution to the GHS of 2,65% applies and is payable by 31 January 2022.

However, it should also be noted that a Cyprus tax resident entity ultimately held beneficially by 100% non-Cyprus tax resident (or Cyprus tax resident but non-Cyprus domiciled) shareholders is outside the scope of the DDD provisions.

Capital gains on sale of property

Unless the seller is considered to be a trader in real estate (as per badges of trade analysis – in which case CIT would apply, refer to 'Cyprus income tax' section), any gains realised upon disposal of immovable property situated in Cyprus will be subject to capital gains tax (CGT).

Disposal for CGT purposes specifically includes sale, sale by the Director of the Department of Land and Surveys or a District Lands Officer, agreement of sale, exchange, abandoning use of right, granting of right to purchase, and any sums received upon cancellation of disposals.

CGT at the rate of 20% is imposed (when the disposal is not subject to income tax) on gains arising from the disposal of immovable property situated in Cyprus including gains from the disposal of shares in companies that directly own Cyprus-situated immovable property. CGT is also imposed on disposals of shares in companies that indirectly own immovable property situated in Cyprus where at least 50% of the market value of the said shares derives from the market value of the Cyprus-situated immovable property.

Disposal of shares listed (with underlying Cyprus situated immovable property) on any recognised stock exchange are exempted from CGT. In the case of disposal of non-listed company shares, the gain is calculated exclusively based on the gain relating to Cyprus-situated immovable property. The value of the immovable property will be its market value at the time the shares are disposed of.

The taxable gain is generally calculated as the difference between both the disposal proceeds/market value as at disposal date and the original cost of the property plus any improvements as adjusted for inflation up to the date of disposal on the basis of the consumer price index in Cyprus. In the case of property acquired before 1 January 1980, the original cost is deemed to be the value of the property as at 1 January 1980 on the basis of the general valuation conducted.

Other expenses that relate to the acquisition and disposal of immovable property are also deducted from the gain, subject to certain conditions (e.g. interest expenses on related loans, transfer fees, legal costs).

The following lifetime exemptions are available to individuals:

Capital gain arising from:	Deduction €
Disposal of private principal residence (subject to certain conditions)	85,430
Disposal of agricultural land by a famer	25,629
Any other disposal	17,086

The above exemptions are lifetime exemptions subject to an overall lifetime maximum of EUR 85,430.

Depreciation allowances

Annual tax depreciation allowance on capital costs is available both to the individual and the corporate investors at the rate of 3% for commercial buildings, and 4% for industrial, agricultural, and hotel buildings. Land does not qualify for tax depreciation allowances.

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

Any trading tax loss incurred during a tax year and which cannot be set off against other same year income, is carried forward subject to conditions and set off against the profits of the next five years. In addition, for corporate owners of the Cyprus-situated immovable property, provisions of group loss relief apply in respect of same year results.

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. Additionally, no withholding tax will apply in case the recipient of the dividend is an individual who is Cyprus tax resident but not Cyprus domiciled – applicable as from 16 July 2015.

Stamp duty

The general rule is that Cyprus stamp duty is imposed only on written agreements relating to assets located in Cyprus or relating to matters or things that are done or executed in Cyprus. The applicable rates are based on the value stipulated in each instrument and are nil for values up to EUR 5,000, 0.15% for values from EUR 5,001 up to EUR 170,000, and 0.2% for values above EUR 170,000, subject to an overall maximum amount of stamp duty of EUR 20.000 per agreement.

Transfer fees

The fees charged by the Department of Land and Surveys to the acquirer for transfers of Cyprus-situated immovable property are 3% for market values up to EUR 85.000 as follows:

Market value €	Rate %	Fee €	Accumulated fee €
<85,000	3	2,550	2,550
85,001–170,000	5	4,250	6,800
>170,000	8		

It is important to note that, no transfer fees will be payable if VAT is applicable upon purchasing the immovable property, and the above transfer fees are reduced by 50% in case the purchase of immovable property is not subject to VAT.

Leasing of immovable property

VAT on immovable property

VAT at the standard rate must be charged on the lease of immovable property when the lessee is a taxable person and is engaged in taxable activities by at least 90% (with the exemption of residential dwellings). The lessor has the right to opt not to impose VAT on the specific property. The option is irrevocable.

Sale of buildings

The supply of new buildings (before their first use as well as the land on which they are built) is subject to VAT at the standard rate of 19%. The supply of second-hand buildings (after their first use) is exempt from VAT.

Sale of non-developed building land

VAT at the rate of 19% must be charged on the sale of non-developed building land, as from 2 January 2018. Non-developed building land is defined as any land intended for the construction of one or more structures in the course of carrying out a business activity. No VAT will be imposed on the purchase or sale of land located in a livestock zone or areas which are not intended for development such as zones/areas of environmental protection, archaeological and agricultural.

Repossession of immovable property by financial institutions

VAT must be accounted for under the reverse charge provisions on transactions relating to transfers of immovable property during the process of loan restructuring and for compulsory transfer to the lender, as from 2 January 2018. This provision is effective until 31 December 2021.

Leases of immovable property which effectively transfer the risks and rewards of ownership of immovable property.

As from 1 January 2019 leases of immovable property that effectively transfer the risks and rewards of ownership of the immovable property are considered to be supplies of goods which are subject to VAT at the standard rate. This does not apply in cases where the transfer of the risks and rewards take place after the immovable property (building) has been used.

Imposition of the reduced rate of 5% on the acquisition and/or construction of residences (including land purchases) for use as the primary and permanent place of residence

The reduced rate of 5% applies to contracts that have been concluded from 1 October 2011 onwards provided they relate to acquisition and/or construction of residences to be used as the primary and permanent place of residence for the next 10 years. The reduced rate of VAT of 5% applies on the first 200 square metres whereas for the remaining square metres as determined based on the building coefficient, the standard VAT rate is imposed. The reduced rate is imposed, under certain conditions, only after obtaining a certified confirmation from the Commissioner of Taxation.

Imposition of the reduced rate of 5% on the renovation and repair of private residences

The renovation and repair as well as extension (as of 20 August 2020) of used private residences (for which a period of at least three years has elapsed from the date of their first use) is subject to VAT to the reduced rate of VAT of 5%, excluding the value of materials which constitute more than 50% of the value of the services.

VAT registration:

VAT registration is compulsory for businesses with:

a. turnover subject to VAT in excess of EUR 15,600 during the 12 preceding months, or
b. expected turnover subject to VAT in excess of EUR 15,600 within the next 30 days.

Furthermore, an obligation for VAT registration arises for businesses carrying out economic activities from the receipt of services from abroad for which an obligation to account for Cyprus VAT under the reverse charge provision exists subject to the registration threshold of EUR 15,600 per any consecutive 12-month period.

No registration threshold exists for the provision of intra-community supplies of services and/or goods.

As of 1 October 2020, taxpayers who are not established in Cyprus but are engaged or expect to be engaged in taxable activities in Cyprus in the course of their business, will have the obligation to register for VAT purposes, without a VAT registration threshold.

5 Czech Republic

Real estate acquisition tax

In September 2020, the Czech president signed a bill proposal that completely cancels the real estate acquisition tax in the Czech Republic.

The cancelation of the real estate acquisition tax shall be applied retrospectively for the acquisition of the real estate property where proposal for filing of the change of the ownership rights into the cadastral office was legally effective in December 2019 and afterwards.

Those taxpayers that already paid real estate acquisition tax and fall under the aforementioned period may submit a request for refund of a tax overpayment.

DAC 6 implementation

In 2020, an implementation of new EU Directive (DAC 6) has come into force in the Czech Republic. DAC 6 imposes mandatory reporting of cross-border arrangements affecting at least one EU member country that fall within one of a number of so-called 'hallmarks' mentioned in the Directive and in certain instances where the main or expected benefit of the arrangement is a tax advantage.

DAC 6 covers even those cross-border arrangements where the first step in such a reportable arrangement is implemented in June 2018 and afterwards.

The Czech tax advisors are protected by the legal privilege and therefore are not obliged to report the client's cross-border arrangements within the DAC 6 reporting obligation, however the Czech tax advisors have an obligation to let clients know that the DAC 6 reporting obligation shall be fulfilled (if any reportable hallmark exists) by the client on their own or by other advisor participating on a cross-border arrangement.

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.

The debt-to-equity ratio of 4/1 applies for thin capitalisation purposes thus any interest from loans granted by related parties exceeding the debt-to-equity ratio represents tax non-deductible costs. For thin capitalisation calculation purposes equity is calculated as the annual daily weighted average. The current year's profit is not included in equity for thin capitalisation calculations.

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.

In April 2019, a new amendment to the Income Tax Law became effective. The amendment transposes the general rules set out in the EU Anti-Tax Avoidance Directive (ATAD) including interest stripping rule.

The new interest stripping rule was introduced on top of the currently applicable deductibility rules and apply to both related and unrelated loans. The ATAD test applies only to the interest expenses that successfully passed all other interest tax deductibility tests, such as already effective thin capitalisation rules as explained above.

Any net borrowing costs, defined as the excess of tax-deductible borrowing costs over related taxable borrowing income will only be tax deductible up to 30% of a taxpayer's earnings before interest, tax depreciation and amortisation (EBITDA) as defined for tax purposes, or up to CZK 80m per year (safe harbour), whichever is higher. However, any interest costs treated as tax non-deductible due to the interest stripping rule may be carried forward for an indefinite period of time and used as a deduction in the years where the threshold has not been reached. However, any interest carried forward under the ATAD rules cannot be utilised by a legal successor.

Please note that the borrowing costs subject to the ATAD limitation rules comprise not just expensed interest costs but, among others, also capitalised interest and foreign exchange differences arising from financing.

Reserve on repairs of fixed assets

Reserves for repairs of fixed assets are tax-deductible only if created in accordance with the Czech Act on Reserves and 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.

In relation to COVID-19 pandemic the new amendment of the Czech Income Tax Act regarding the utilisation of tax losses has come into force as of 1 July 2020.

The tax loss might be newly carried back in two taxable periods preceding the taxable period when the tax loss was originally calculated. The maximum amount of the tax loss to be carried back is CZK 30m (cumulatively for both taxable periods preceding the taxable period when the tax loss was calculated).

The new rule applies for tax losses that are calculated in the taxable period ending on 30 June 2020 and/or afterwards. The utilisation of the tax losses in the 5 consecutive taxable periods remains valid under the standard conditions.

Please note that there are some limitations and restrictions regarding the tax losses to be carried back in case of business combinations such as mergers and demergers.

As of 1 January 2017, the tax residual value of a demolished building enters the tax basis of the new real estate, if demolished as part of the construction works. So far, it was the accounting residual value that entered the tax basis.

Tax basis of a new real estate built in place of a building that was demolished in the course of construction

Companies should be aware of the above-mentioned potential change to the ITA that is in force from 1 January 2017.

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.

New notification obligation

The amendment to the ITA includes introduction of the new notification obligation applies on tax remitter payments from the Czech source income that is generally subject to withholding tax (WHT) but is WHT exempt or not subject to taxation in the Czech Republic based on the applicable double tax treaty, and when this income is being paid to a Czech tax non-resident, the tax remitter is obliged to announce this payment (or record of liability in the accounting books of the tax remitter) to the Czech tax authority.

The tax remitter is not obliged to report payment provided that the aggregate amount of the same kind of income paid out from the Czech Republic to the Czech tax non-resident does not exceed CZK 300,000 in the respective calendar month. This does not apply for payments which are subject to WHT in the Czech Republic and for payments in the form of e.g. remuneration/salary of board members, statutory representatives etc. These payments have to be announced regardless the amount of income paid out to a Czech tax non-resident.

The extended notification duty applies to any income paid since 1 April 2019. Notifications should be made until the 31 January, following the calendar year in which the WHT was withheld or would be withheld if such income was WHT exempt or would not be subject to WHT in the Czech Republic.

Potential VAT claw-back

If a VAT registered company purchases a building for entrepreneurial activities then, in principle, the input VAT charged on the purchase should be fully recoverable.

However, if the building is used solely for activities generating VAT exempt supplies, then the company is not entitled to recover the input VAT at all.

If the building is used for activities generating both VAT-able and VAT exempt supplies, the company is entitled to partially recover the input VAT, in line with the proportion of i) VAT-able and ii) VAT-able and VAT exempt supplies.

A change in the use of the building (e.g. from VAT-able to exempt activities, or vice-versa) within the period of ten years following the purchase of the building may have an impact on the input VAT claimed. In certain situations this may imply that part of the claimed input VAT has to be paid back.

The above VAT refund adjustment applies also to repair/maintenance costs associated with real estate assets exceeding CZK 200,000, but only in case of a VAT exempt sale of the real estate.

At year end the company should evaluate whether the use of its buildings have changed, in terms of what supplies (VAT-able or VAT exempt) the buildings generate and in this regard, assess a potential claw-back of input VAT already refunded on the purchase of the buildings.

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’. Unreliable VAT payers are considered 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, or
- the payment is made on bank account held by a bank not seated in the Czech Republic.

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

6 Denmark

Corporate income tax (CIT)

Standard corporate income tax rate is 22% for corporate entities, which are either i) incorporated in Denmark, or ii) has their effective place of management in Denmark. The actual place of management is typically the place where the management decisions concerning the company's day-to-day operations are made.

The corporate income tax applies to all types of income, including rental income. The only exclusions are real estate and permanent establishments located outside of Denmark.

Permanent establishment (PE)

Non-resident companies are liable to tax in Denmark on business profits derived through a PE in Denmark. The existence of a PE is determined according to Danish case law, which makes either a reference to a specific DTT or to text similar to Article 5 of the OECD Model Tax Convention.

Danish real estate may constitute a permanent establishment for the foreign company, if the company has other significant activity in Denmark. However, as mentioned above, foreign companies are subject to limited tax liability on income from Danish real estate, including rental income and profits from the sale of the Danish real estate, even though the company in question does not have a permanent establishment in Denmark.

Danish tax consolidation

A mandatory tax consolidation regime obligates all Danish resident companies, permanent establishments and real estate that are members of the same Danish or international group to file a joint group tax return. The definition of a group generally corresponds with the definition of a group for accounting purposes, i.e. controlling interest. The tax consolidated income is equal to the sum of the taxable income of each individual Danish company, Danish permanent establishment and Danish real estate of foreign companies that are a member of the consolidated group.

The top parent company participating in the Danish tax consolidation group will be appointed the role of a so-called 'management company'; this company is responsible for settling tax on account and final corporate tax payments of all group members.

Companies included in a mandatory tax consolidation are jointly and severally liable for payment of corporate taxes. Withholding taxes on dividends, interest, and royalty payments are also covered by the joint and several liability. For companies with external minority shareholders, the company has a reduced liability and is merely liable if none of the other jointly taxed companies are able to pay the taxes.

Sale of shares

Profit from sale of shares in Danish companies is, as a general rule, exempt from Danish withholding tax. This also applies to shares in companies, whose assets either exclusively or primarily consists of real estate.

Stamp duty

A real estate transfer tax of 0.6% of the sales price or the public evaluation (whichever is the highest) is liable on the transfer of title to real property located in Denmark. A fixed registration fee of DKK 1,750 is charged for registration of ownership.

New mortgage loans registered in the Danish land register will be subject to a registration fee of 1.45% of the mortgage debt plus a fixed fee of DKK 1,730. It may be possible to reduce the 1.45% payment by replacing existing mortgages with the new mortgage loan.

Repatriation of dividend

Dividends distributed from a Danish company to a foreign group company are as a main rule subject to Danish withholding tax. However, the foreign group company should be tax exempt on dividends from the Danish company if the foreign group company:

1. Is a tax resident in an EU-member country or a state with which Denmark has a double tax treaty;
2. holds at least 10% of the share capital, and
3. is considered the beneficial owner of the dividends.

Lack of beneficial ownership in the foreign group company could result in the company not being recognised for tax purposes with regards to dividends resulting in a withholding tax obligation for the Danish company on dividends of 27% (refund of withholding tax can be claimed down to 22%).

Payment of interest

Beneficial ownership is decided on a transaction-based assessment and the legal presence of beneficial ownership in agreements, substance etc. is not enough as focus is more on the cash flow.

Payments/accrual of interest are subject to Danish withholding tax, but only on controlled debt. Debt is considered 'controlled' if the lender owns, directly or indirectly, more than 50% of the share capital of the Danish borrower or controls more than 50% of the voting rights. Transparent entities may also be considered to have controlling influence.

If the affiliated recipient benefits from the EU Interest and Royalty Directive or a double tax treaty, no withholding tax should be levied but it is a requirement that the recipient is considered beneficial owner of the interest.

Interest limitation rules

Lack of beneficial ownership in the foreign corporate shareholder could result in the receiving company not being recognised for tax purposes with regards to interests resulting in a withholding tax obligation for the Danish companies on interests (22%).

The Danish interest deduction limitation regime consists of three different rules thin capitalisation, interest ceiling and EBITDA.

If the Danish company is thinly capitalised, it will not be allowed to deduct interest payments or capital losses for tax purposes to the related lender if:

- The controlled debt (including secured external debt) exceeds a threshold of DKK 10m, and
- the loan could not have been obtained from an independent lender without security on similar terms (the company has the burden of proof), and
- the debt/equity ratio exceeds 4:1.

Any limitation to interest deduction according to the thin capitalisation rules will be calculated first. Under the interest ceiling-rule, it is only possible to deduct net financial expenses in a Danish jointly taxed group equal to a pre-determined percentage of the tax value of qualifying assets at year-end. A base amount will always be deductible. The allowed percentage is now 2.3% (2021), which will be adjusted once a year and the base amount is DKK 21.3m. Under the EBITDA rule, the taxable income before net financing costs and depreciation and amortisation may not be reduced by more than 30% when reduced by net financing costs. There is a special provision for groups of companies, whereby it may be possible to obtain more than 30% deductibility under the EBITDA rule, provided that the net finances do not exceed DKK 22,313,400 on a consolidated basis.

Danish general anti-abuse rule (GAAR)

Danish tax law contains a general anti-abuse rule (GAAR), which is based on the EU Anti-Tax Avoidance Directive (ATAD).

According to this provision, taxpayer cannot benefit from the EU directives or a double tax treaty (i.e. withholding tax may be payable on interest and dividends), if the relevant 'arrangement' has been carried out with the main purpose of obtaining a tax benefit that is not in line with the purpose of Danish tax law.

The preparatory works only contains very little guidance regarding the exact application of the provision.

Hybrid mismatches

Danish tax law contains rules that aim to counteract double deduction and deduction without inclusion that arise as a consequence of a hybrid mismatch of instruments (i.e. debt vs. equity) or entities (i.e. transparent vs opaque). In particular, it should be noted, that if a Danish transparent entity is affected by the rules, leading to it being treated as an opaque entity, distribution of profit will be treated as dividend, which can trigger a risk of withholding tax.

Transfer pricing

Danish transfer pricing rules apply to transactions between related parties (e.g. inter-group transactions), whether the transactions are cross-border or purely domestic. The rules apply when a company or person directly or indirectly controls more than 50% ownership of the share capital or more than 50% of the voting power of an entity. Transactions with PEs are also considered subject to the rules.

For income years starting 1 January 2021 or later, the transfer pricing documentation must be submitted no later than 60 days following the filing deadline for the tax return.

For prior income years, the documentation was to be finalised at the deadline for filing the tax return and then submitted upon request from the Danish Tax Agency within 60 days.

Depreciation

Tax depreciation need not be in conformity with book depreciation.

Land cannot be depreciated for Danish tax purposes.

As a main rule, properties used for commercial purposes can be depreciated for Danish tax purposes at a rate of up to 4% annually based on a straight-line basis. The same applies for technical installations. However, certain buildings are not depreciable for Danish tax purposes, including office buildings and o residential buildings (however, technical installations in office building can be depreciated at 4% annual).

Professional advisors’ fees and loan costs

Professional advisors’ fees (financial, legal and tax advisors) are non-deductible for Danish corporate tax purposes and cannot be added to the acquisition price of the Danish real estate.

Costs occurring in close connection with the establishment of a loan can be added to the principal of the loan and be deducted for Danish tax purposes in connection with the repayment of the loan.

Value-added tax

Value-added tax (VAT) in Denmark is 25% on all goods and services. This includes ‘new’ buildings/building sites, i.e. buildings/building sites which 1) has been built after 2011, or 2) has been built prior to 2011, but has undergone significant alteration or renovation after 2011. Such renovation is considered significant, if the costs exceed 25% of the property value.

A building is considered ‘new’ for Danish VAT purposes until it has been taken into use. However, the first sale of a building within five years after the completion will always be regarded as sale of a ‘new’ building from a Danish VAT perspective, regardless of whether the building has been taken into use or not.

Recent case law has provided clarification on the definition of ‘building site’ in relation to VAT. As such, a building does not constitute a building site for VAT purposes, if the parties intend to demolish the building immediately following the transaction. Instead, the assessment must be made objectively at the time of transfer. However, it is important that the seller is not responsible for the actual demolition as an integral part of the transaction.

Planned tax changes

In October 2020, a political agreement to introduce mark-to-market taxation of investment properties was entered into by a majority of the Danish parliament. The rules are expected to become effective for taxable years starting in 2023.

Whereas companies are currently only liable to tax on profits from sale of property when a property is sold in an asset deal (realisation principle), they will, as of 2023 (entry values at fair market value) and onwards, be liable to tax on the yearly increase in value. Similarly, if the value has decreased over the year, a deduction can be claimed.

The details regarding the expected rules are still uncertain or unknown and draft legislation is not expected to be presented until 2022.

As it appears from the political agreement the new mark-to-market taxation should not apply to:

- Properties which a company uses for its own business operations. This exception will apply to properties which are used by the company itself or a group company for purposes of administration, warehouse, production facility or farming.
- Groups with small property portfolios within a DKK 100m threshold. These are exempted in order to reduce the administrative burden, both in respect of the companies and the tax administration.

It does not appear from the political agreement how the concept of a ‘group’ is to be interpreted in relation to the above exceptions. We find it likely that the definition could take place at the level of joint taxation, however this remains to be seen.

In connection with the introduction of mark-to-market, it also follows from an answer from the Danish Ministry of Taxation that it contemplated not to allow tax depreciation on properties subject to mark-to-market taxation.

7 Estonia

Corporate income 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).

Since 1 January 2018 the corporate income tax rate for companies paying regular dividends has dropped from 20% to 14% taking into account the period of three years cycle. That means that the payment of dividends in the amount which is below or equal to the amount of taxed dividends paid during the three preceding years (20%), will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80).

In cases where the recipient of the 14% dividend is either a resident or non-resident individual, a 7% withholding tax (WHT) rate will apply unless a tax treaty provides for a lower WHT rate (5% or 0%).

Estonian companies can choose whether to distribute profits based on the regular regime where 20% corporate income tax is paid or pay out profits regularly, which allows to use reduced rate.

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 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). The definition of related persons 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 and services arrangements. We recommend reviewing 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 31 March and 1 October. The rate of land tax applicable in Tallinn, the capital of Estonia, is 2.5%.

Significant amendments derived from Anti-Tax Avoidance Directive (ATAD)

Firstly, a new general anti-tax avoidance clause was introduced in the Income Tax Act disregarding of non-genuine arrangements.

Secondly, exit tax provision came into force in Estonia. When a resident company transfers assets from Estonia to its permanent establishment(s) in other state(s), then income tax is charged on the amount which equals to the (positive) difference between the fair market value of the transferred asset and the book value at the time of the asset transfer. Several exceptions were also implemented.

Exemption method on dividend distribution is granted to dividends paid on account of assets upon the transfer of which exit tax was paid or dividends received from controlled foreign companies or from sale of shares in such companies to the extent of the amount that was taxed.

Thirdly, the Estonian CFC rules have previously applied to private individuals. These provisions remained in force, but an additional tax object was included. Namely, profits of a controlled foreign company are taxed in the hands of an Estonian resident company (or a permanent establishment) if specific criterion are met. A controlled foreign company is defined as any non-resident enterprise in which the resident company alone or together with its related parties holds more than 50% of the voting rights or capital or is entitled to receive more than 50% of the profits.

Fourthly, an interest limitation rule was introduced under which the net financing expense exceeding EUR 3m, 30% of EBITDA and earned losses is taxable. Several exceptions were also implemented.

Fifthly, from 1 January 2020 hybrid mismatch clause came into force based on which double deductions or deductions without inclusion due to differing qualifications of payments, entities, financial instruments, etc. are not allowed.

Significant VAT amendments

Before 1 October 2018, the sale of land was subject to VAT in case the land is a plot that has an approved zoning plan and construction rights provided there are no buildings located on the plot. Such definition of the tax object depends on the existence of a zoning plan and thus does not allow taxation of all land that are essentially considered as building land.

Thus, instead of a plot a new concept called ‘building land’ was introduced. Building land is defined as immovable property without buildings, which according to its design specifications, zoning plan or a state or local government special spatial plan is designed for construction or for which a building notice has been submitted or for which intended use of cadastral unit is residential or business land.

After the amendment, it can be concluded that:
- A land without buildings planned for construction works that has a civil engineering work is subject to mandatory taxation;
- Building land is any type of unimproved building land planned for buildings (with detail plan, special spatial plan, design specifications, submitted building notice);
- In case a land, with an intended use of commercial or residential land, is sold, this land is considered to be equal to building land and is subject to taxation.

8 Finland

The Finnish Budget Proposal for 2022

The Finnish Government has given its budget proposal for 2022 which includes the following policy decisions on upcoming legislative changes that are relevant for real estate investors:

1. The interest deduction limitation rules will be tightened as of 2022 in order to avoid aggressive tax avoidance. This includes limiting the use of the balance sheet exemption rule. The aim is to efficiently prevent transferring taxable profits to other jurisdictions.
2. Currently, similarly to domestic special investment funds, certain foreign contractual investment funds are eligible for full income tax exemption of their Finnish source rental income and capital gains. The government now intends that the profits made from real estate investments by foreign funds will be taxed as extensively as possible starting from 2023. Noting that the change is complex to implement in practice and subject to equal treatment of Finnish and foreign funds, we recommend monitoring the developments in this respect closely.
3. Currently, pursuant to the Finnish domestic tax legislation, non-resident companies are subject to capital gains tax on the sale of shares in Finnish companies in case the company being sold is a mutual real estate company or limited liability company holding directly majority of its assets in Finnish real estate. The government intends to extend the related provision to include indirect ownership of Finnish real estate as from 2023. In particular investors from jurisdictions where tax treaty protection is not available should monitor related developments closely.

Interest deduction limitation rules

The actual legislative changes arising from the above policy decisions should be closely monitored. Finnish interest deductibility limitation rules that implemented Anti-Tax Avoidance Directive (ATAD) I (EU 2016/1164) entered into force as of 2019. Broadly, the deductibility of a company's net financing expenses in Finland are limited to 25% of the company's adjusted taxable income (EBITD) and is applied at the level of an individual company.

In case the total net financing expenses (including both internal and external financing) exceed EUR 500,000, the interest deduction limitations will apply. Should the total net financing expenses exceed the threshold of EUR 500,000, the deductible net financing expenses are limited to 25% of the company's adjusted taxable income (EBITD, i.e. taxable income including group contributions and adding back interest expenses and tax depreciation). Thus, in this case, the amount that exceeds 25% of the company's EBITD is non-tax deductible. However, external net financing expenses are always fully deductible up to EUR 3m and will be deducted before internal financing expenses. This means that in case the net external financing expenses already exceed 25% of the company's EBITD, any of the internal financing expenses cannot be deducted.

External bank loans may be contaminated into related party loans in certain situations such as e.g. when related party to the borrower has provided a security for the repayment of the bank loan in the form of a receivable.

Pursuant to the preparatory works and tax authorities' guidance, derivative instruments have previously typically been treated as other business expenses that are not subject to the interest deduction limitations. This being said, the Supreme Administrative Court has recently issued a decision according to which payments made on interest rate swap agreement (including floor provisions) should be regarded as payments similar to interest payment subject to the interest deduction limitations.

We recommend that real estate investors analyse the impact of the interest deduction limitation on all existing and new investments. In particular, the security packages of external bank loans should be reviewed in order to conclude whether the external bank loan has been contaminated into related party loan. Similarly, as a result of recent case law, the terms hedging instruments should be reviewed to conclude related tax treatment.

Abolishment of income sources and group contributions and related impact to the year-end tax planning

As of 1 January 2020, onwards, most limited liability companies, cooperatives and certain other corporations are taxed in accordance with Business Income Tax Act (BITA) (except for income derived from agriculture), regardless of whether it arises from business activities or other activities. In this respect, BITA is applied to all corporations, excluding public bodies, religious organisations, housing companies, mutual real estate companies (MREC) and non-profit organisation, even when their activities do not meet the conditions of business activities.

Coverage of group contribution regime broadened as a result of extending the scope of entities taxed in accordance with BITA. Companies within the same group, taxed in accordance with the BITA, can level their income by giving and receiving group contributions. Hence, group contributions between e.g. holding companies and ordinary real estate companies (OREC) are now possible. The group contribution is considered deductible cost for income tax purposes of the distributing company and taxable income for income tax purposes of the recipient company.

Typically, Finnish real estate is owned via mutual real estate companies. 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.

Group contributions may now be utilised in some real estate portfolios to level income within the portfolio companies. Payments between the MREC and its shareholder(s) need to be carefully planned and documented. The amount of tax depreciation, condominium charges and group contributions should be optimised from the group's perspective taking into account interest deduction limitations.

Real estate tax

A real estate 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. Real estate tax is assessed separately for land and buildings.

Real estate tax rates are set annually by municipalities within the limits provided in tax legislation. Currently, the general real estate tax rate for land and most non-residential buildings is between 0.93% and 2.00%, depending on the municipality.

For residential buildings, the real estate tax rate is currently between 0.41% and 1.00%. Higher real estate tax rates are applied e.g. to power plants (maximum tax rate 3.10%) and vacant construction sites (maximum tax rate 6.0%).

The Finnish Ministry of Finance is also planning to reform the real estate tax legislation. The intention is to reform real estate taxation so that the tax better reflects the real price level and construction costs in the area. The aim of the reform is not to change the level of real estate tax in general. However, for individual properties and buildings the tax may change. The reform is postponed, and according to the current schedule, it will take effect in 2023. The government's proposal for the reform is scheduled for fall 2021. However, we expect that the reform may be postponed further to 2024.

The tax law changes with respect to real estate tax rates should be closely followed. While the intention of the legislator does not seem to be to increase tax collection, the reform will impact differently on different types of properties. Impact analyses should be considered as soon as further details are available.

Transfer pricing

All related party transactions must comply with the arm's length principle. The transactions should be carefully analysed and documented. During the past few years, the Finnish tax authorities have increasingly paid attention to management fees and financial transactions (e.g. interest payments).

On 11 February 2020 OECD released a report on Transfer Pricing Guidelines on Financial Transactions providing detailed guidance on financial transactions in light of the arm's length principle. The report forms Chapter X of the OECD Transfer Pricing Guidelines and is applied in Finland in the transfer pricing assessment of financial transactions. Real estate market operators should carefully analyse their financial transactions and intercompany pricing policies considering the updated guidance.

Ensure compliance with transfer pricing rules, especially regarding management fees and intercompany financing arrangements.

Transfer tax

A transfer tax of 4% of the sales price is payable on the transfer of real estate located in Finland. The transfer of shares in Finnish companies (other than housing companies and real estate companies) and other domestic securities is subject to a transfer tax of 1.6%. The transfer of shares in Finnish housing companies and real estate companies is subject to a transfer tax of 2%.

No transfer tax is payable if both the seller and the transferee are non-residents. Transfer tax is, however, always payable on transfers between non-residents if the transferred shares are shares in a Finnish housing or real estate company.

Transfer tax implications need to be carefully analysed before a transaction takes place. Transfer tax issues are closely investigated by the Finnish tax authorities and there are currently several ongoing disputes. In few recent rulings, the basis for transfer tax has been reconsidered, and in certain cases, it is possible to claim refunds.

It is recommended to review transactions that have taken place since 2017 in the light of the recent case law as there may be potential to obtain refunds on the grounds of the new rulings.

Input VAT deductions on transaction costs

Based on a ruling of the Supreme Administrative Court, input VAT on transaction costs related to sales and purchases of real estate and shares of mutual real estate companies can be deducted (as overhead costs) if the real estate has been or will be used for VAT taxable purposes.

It should be verified whether the requirements for VAT deduction have been met.

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 determine 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 2018

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 calendar year during which the financial year ended.

If there are non-deducted VAT in the purchases, it can be investigated whether it is possible to apply the refund before the end of the year. This relates also to any transaction costs relating to which you have not made the deduction, or the deduction has been denied.

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.

Definition of a real estate from VAT point of view	The definition of a real estate, for VAT point of view changed as of 11 January 2017. The definition of a real estate is determined based on the Council Implementing Regulation (EU) No 1042/2013. The Regulation also includes an example list of transactions identified as services connected with real estate. Services that are considered to relate to real estate are subject to VAT in the country where the real estate is located, i.e. reverse charge rules are not applicable. The new definition has widened the scope of real estate. Thus, also the scope of investment subject to VAT adjustment right and liability is wider and should be taken into account when making the adjustment liability calculations.
VAT deductions of real estate investors	The Finnish Tax Authorities have lately audited several real estate investors (e.g. funds and joint ventures) and denied deduction rights of input VAT relating to costs which the Tax Authorities see as costs related to activities as an investor (e.g. costs related to sales of real estates even when the real estates have been in VAT taxable use). Especially in exit phase, it should be carefully investigated whether the deduction rights for exit costs are VAT deductible.

9 France

List of states or territories defined as NCST

The French list of non-cooperative states and territories (NCST) was amended on 26 February 2021. Bahamas and Oman are removed from the list, while Dominica and Palaos have been added to it, as these two states are considered as non-compliant with the criteria listed by the EU.

The French list of NCSTs also includes the states and territories, that are considered as NCSTs by the European Union, listed in Annex I of the revised EU list of NCSTs. In this respect, French legislation distinguishes between:

- The states and territories included in the EU list on the ground that they facilitate the creation of extraterritorial structures or devices intended to attract benefits that do not represent real economic activity (i.e. Vanuatu)
- The states and territories included in the EU list because they do not meet at least one of the other EU criteria defined by Annex V of the list, namely tax transparency, the absence of preferential tax measures that are potentially harmful or the implementation of the Base Erosion and Profit Shifting (BEPS) (i.e. Fiji, Guam, American Virgin Islands, Dominica, Panama, American Samoa and Trinidad and Tobago).

To date, French NCST list is identic to the EU list except for British Virgin Islands which remain on the French list but not the EU list.

As a reminder, French interest, dividends, capital gains (non real estate companies) realised by tax residents of NCSTs or paid in a bank account located in NCSTs are subject to a withholding tax of 75%. Capital gains on French real estate companies shares realised by those tax residents are computed as follows: (sale price – purchase price – 2% of the acquisition price of the construction per year of holding). These capital gains are subject to withholding tax (WHT) at the standard corporate income tax (CIT) rate.

Decrease of the standard corporate income tax rate

For fiscal years from 1 January to 31 December 2021, the standard CIT rate is set at 26.5% (i.e. effective CIT rate of 27.37% taking into account the additional 3.3% contribution assessed on CIT exceeding EUR 763k for companies with a turnover in excess of EUR 7,63m).

This rate will be reduced to 25% for fiscal years beginning on or after 1 January 2022 (i.e. 25.825% with the additional 3.3% contribution).

For companies with a turnover in excess of EUR 250m, the CIT rate is set at 27.5% on all profits for fiscal years starting from 1 January 2021 to 31 December 2021 (i.e. 28.41% with the additional 3.3% contribution), and 25% on all profits for fiscal years starting from 1 January 2022 to 31 December 2022 (i.e. 25.825% with the additional 3.3% contribution).

Moreover, a reduced rate of 15% is applicable to small and medium-sized enterprises (with a turnover below EUR 7,63m) up to a taxable profit of EUR 38,120.

Decrease of the domestic withholding (WHT) rate on dividends

Dividends paid by a French corporation to a non-resident shareholder are subject to a 26.5% WHT, unless a tax treaty provides for a lower rate or the EU Parent-Subsidiary Directive applies.

Under the Directive, dividends paid by a French corporation to qualifying EU parent company are exempt from WHT.

The 26.5% domestic WHT rate will be reduced to 25% for fiscal years beginning on or after 1 January 2022 in line with the reduction in the standard CIT rate.

DAC 6

On 21 October 2019, the French Government adopted a Ministerial Order (hereafter 'the Order') transposing into French law the EU Council Directive 2018/822/EU on cross-border tax arrangements (also known as 'DAC 6' or 'EU MDR') in force since 25 June 2018.

Pursuant to the EU Council Directive 2018/822/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, intermediaries and taxpayers fall in the scope of new reporting obligations with respect to cross-border tax planning arrangements that meet certain hallmarks.

The provisions of the Order were scheduled to be effective as of 1 July 2020 with specific transitional measures applicable to arrangements implemented between 25 June 2018 and 30 June 2020.

Due to the COVID-19 pandemic, the 2020 amending finance bill implemented six months extension of the deadlines for reporting and exchanging information under DAC 6.

French Tax Authorities (FTA) have published their definitive guidelines regarding DAC 6 provisions on 25 November 2020.

ATAD II, including hybrid mismatches with third countries

The 2020 finance bill transposed the measures to combat hybrid mismatches set forth by Directive EU 2016/1164 dated 12 July 2016 (so-called 'ATAD I' Directive) and Directive EU 2017/952 dated 29 May 2017 (so-called 'ATAD II' Directive), the latter being in line with the works of the OECD as part of the Action Plan against BEPS.

Article 212 I, b of the French tax code (FTC) (which conditioned tax deductibility of interest paid to a related party to the taxation of such interest at a rate exceeding 25% of the French CIT rate) was repealed and new provisions were introduced in Articles 205 B to 205 D of the FTC.

These provisions aim at neutralising asymmetrical tax effects (deduction/non-inclusion, double deduction) caused by certain so-called 'hybrid' mismatches resulting from differences in qualification of certain financial instruments and/or entities or in the attribution of payments.

Four categories of hybrid mismatches were identified in the 2020 finance bill:
- hybrid mismatches resulting from payments in relation with financial instruments;
- hybrid mismatches resulting from differences in the allocation rules of payments made to hybrid entity or establishment;
- hybrid mismatches resulting from payments made by a hybrid entity to its beneficiary or payment made between the head office and the establishment (or between two establishments or more);
- double deduction effects.

Expenses paid in the context of a hybrid mismatch would not be tax deductible in France if not included in the taxable basis of the beneficiary of the payment.

These rules apply to financial years beginning on or after 1 January 2020, except for the provisions relating to reverse hybrids, which will apply to financial years opening on or after 1 January 2022.

It should be noted that several of these provisions are yet to be clarified by the FTA which are still to publish their guidelines.

Contribution économique territoriale (CET)

The territorial economic contribution (*contribution économique territoriale* or CET) is made of two components:
- the companies' land contribution (*cotisation foncière des entreprises* or CFE); and
- the companies' added value contribution (*cotisation sur la valeur ajoutée des entreprises* or CVAE).

The CET is capped according to the value-added produced by company. In the hypothesis where the CET exceeds 2% of the produced added value, the excess may be subject to a rebate.

Moreover, establishments created as from 2021 may be exempted of CFE and CVAE during a three-year period subject to local authorities ruling.

CVAE

CVAE is payable by the landlord of the property that is let, and the landlord will be taxable, based on the value-added derived from the rental activity. CVAE will be payable by the landlord of the property if their turnover exceeds EUR 500k.

The 2021 finance bill provided for a decrease of 50% of the CVAE rate, which goes from 0.25% for turnover of EUR 500k to 0.75% (instead of 1.50%) for turnover exceeding EUR 50m (excluding VAT).

Property sale and lease-back

A sale and lease back is a transaction whereby a company owner of a property sells it to a credit institution that leases it immediately after to the seller under a financial lease agreement.

If these transactions already benefit from a preferential regime in terms of registration fees (benefiting from the reduced rate, pursuant to Article 1594 F quinquies, H of the FTC), the law did not (no longer) provide for any preferential regime in terms of capital gains taxation.

In order to facilitate the refinancing of companies affected by the consequences of the COVID-19 pandemic, and to enable these companies to meet their increased cash requirements, the 2021 finance bill provided for the reinstatement of a mechanism for spreading the capital gain on the sale of a property in the context of a sale and lease back transaction (Article 39 novodecies of the FTC).

Under these provisions, capital gain realised upon the sale of a property can be taxed over the financial lease agreement period, without exceeding 15 years. The spreading of the capital gain is only allowed if the lessee allocates the property to his commercial, industrial, liberal craft or agricultural activity.

These provisions do not apply to properties allocated by the transferring companies to the management of their own assets, unless:

- The property is rented by the transferring company to a related company.
- The acquiring company uses the property for its commercial, industrial, craft, liberal profession or agricultural activities.

These measures apply to sales of properties performed between 1 January 2021 and 30 June 2023, preceded by enforceable promise to sell executed between 28 September 2020 and 31 December 2022.

Revaluation of fixed assets

In the absence of special tax provisions, the revaluation difference generated by the free revaluation of assets performed by a company constitutes, from a tax standpoint, taxable income at the standard CIT rate pursuant to Article 38, 2 of the FTC.

Article 238 bis JB of the FTC allows companies to defer taxation of the revaluation difference occurring during the financial year in which the revaluation is carried out.

The tax neutralisation is differentiated according to whether the revaluated assets are depreciable or not. Taxation of the revaluation difference relating to non-depreciable fixed assets is deferred until their subsequent disposal, whereas the revaluation difference relating to depreciable fixed assets is spread over time (i.e. 15 years for buildings, plantations, fixtures and fittings of land plots depreciable over at least same period of time; and five years for other fixed assets).

The 3% tax on French real estate

As from FY 2021, 3% tax returns have to be filed electronically via a dedicated platform on the website of the FTA.

In order to do so, each entity required to file a 3% tax return have to be registered with the FTA in order to obtain an identification number called ‘SIRET’ allowing it to access to the 3% tax platform.

Such registration must be made through the completion, signing, and filing of an official French form 15928*02 called ‘Déclaration EE0’ (EEO form) per entity to be registered.

As a reminder, the 3% tax on French real estate applies to all French and foreign entities at large (i.e. including entities with no separate legal personality) which directly or indirectly own one or more real properties located in France.

The tax is assessed on the fair market value of the French real estate, as at 1 January of each year, in proportion to the direct or indirect interest in the French real estate.

The 3% tax applies to entities whose real estate assets in France represent more than 50% of overall assets French assets (the 'French assets test'). French properties that are allocated to a professional activity (i.e. other than a pure real estate activity) are not included for purposes of computing the 50% ratio including where the professional activity is carried out by a related party (ex: property rented to a related party of the lessor who uses it for its own commercial or industrial business).

All entities of a chain of ownership between the French estate and the ultimate shareholders are jointly liable for the payment of the 3% tax whenever the latter is due.

Exemption cases do exist some are automatic and the other are conditional. Generally, filing a 3% tax return on a yearly basis is required to benefit from a conditional exemption.

Temporary easing of the carry back mechanism

French tax law provides the companies with the possibility to offset the tax losses of a financial year on the profits from the previous financial year (i.e. carry-back mechanism). The option for the carry-back can only be exercised for the tax losses recorded during the relevant financial year. These tax losses can only be carried back against the profits of the previous financial year, up to the lowest amount between the said profit or EUR 1m. The tax losses that could not be carried back can be carried forward under the usual condition.

The 2021 amending finance bill provides for an easing of the carry-back mechanism for the loss recorded in respect of the first financial year ending between 30 June 2020 and 30 June 2021:

- the amount of the tax loss that can be carried back is fully de-capped; and
- the carry-back can be done over the last three financial years.

The deadline for electing for the carry-back mechanism can be exercised until the CIT return filing deadline for the fiscal years ending 30 June 2021 (i.e. 30 September 2021) and at latest before the liquidation of the CIT due for the fiscal year following the one for which the option is exercised.

10 Germany

Tax rates

Despite the extraordinary financial burdens on the German state budget caused by the COVID-19 pandemic, no tax rate increases are currently planned.

The statutory corporate income tax rate is 15.825% (including 5.5% solidarity surcharge. The trade tax rate varies between 7.0% and 21.0%, depending on the local municipality in which the business operations are carried out. The overall tax rate for a German corporation ranges thus between 22.825% and 36.825%.

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 restriction 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. Since 1 January 2019 this generally also includes capital gains derived by selling shares in foreign corporations which assets – directly or indirectly – consists more than 50% of German real estate. If the shareholder is a foreign resident corporation, the capital gains are 100% tax exempt according to case law of the German Federal Fiscal Court. Currently, there is no minimum holding requirement.

Consider restructuring shareholding before distributing dividends (and sales of shares). Foreign corporate shareholders may claim a tax refund if they were taxed upon selling shares in other corporations.

Share capital repayments

Share capital repayments received by a German shareholder from a foreign corporation are generally treated as a taxable dividend in Germany. However, share capital repayments may not be qualified as taxable dividends but as repayment of shareholder equity upon application. Such application has to be filed up to the end of the calendar year following the calendar year in which the share capital repayment has been received.

Apply for equity qualification of share capital repayments received in 2020 before 31 December 2021.

Rollover relief	Gains of a German permanent establishment from the sale of land and buildings need not be taken to income immediately but may be deducted from the cost of purchasing replacement premises in the same or in the previous year. Alternatively, the gain may be carried forward and be deducted from the purchase price of land and buildings acquired during the following four years or from the construction costs of a building erected during the following six years (extended by one year due to the COVID-19-pandemic if certain criteria are fulfilled). For gains from the sale of land and buildings which do not belong to a German permanent establishment no rollover relief is available. However, the taxation of capital gains reinvested in another EU member country may be deferred and spread over five years. The application for tax deferral has to be made up to the end of the financial year in which the land or building has been sold. Apply for tax deferral on capital gains for EU land and buildings sold in 2021 before 31 Decembe 2021.
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 2022 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 31 December 2021. 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 2022.
Net operating losses (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 more than 50% of shares/interests (or similar measures, e.g. in the course of restructurings) may lead to a total forfeiture of losses and interest carried forward at the German entity's level. Exemptions may apply for tax privileged restructurings and where the entity continues to perform the same business as prior to the share transfer (restrictive requirements). Currently a case is pending at the German Supreme Court to determine whether the loss forfeiture rules are unconstitutional. The upcoming decision by the Supreme Court may have retroactive effect. It is strongly recommended to explore structuring alternatives where you intend to reorganise your investment structure. All tax assessments for years in which a harmful share transfer has occurred should be kept open.

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 1 January 2022 onwards (if the fiscal year equals the calendar year) in order to mitigate trade tax on income derived in 2022.
Tax prepayments	In the case of declining profits, an application can be made to reduce current income and trade tax prepayments. Cash flow 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 must fulfil strict substance requirements in order to benefit from a dividend withholding tax exemption/reduction. The substance requirements for withholding tax exemptions/reduction have been significantly tightened in June 2021. It should be ensured that the tightened 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.
Tax group	The acceptance of a tax group is subject to strict observation of certain legal requirements. The profit transfer agreement needs to be registered with the commercial register before 31 December 2021 in order to become effective for the fiscal year 2021. If companies do not obey the requirements during the minimum term of five years, the tax group will not be accepted from the beginning. Special precautions need to be taken regarding tax groups for VAT and RETT purposes as there are different legal requirements. Where a tax group shall be established in future, the profit transfer agreement needs to be drafted properly and registered in time.
Land tax refund	For vacant buildings and buildings rented at low rents land tax up to 50% is refunded upon application of the landlord. Apply for land tax 2021 refund before 1 April 2022.

Land tax reform

In the course of the land tax reform the tax base will be aligned to the fair market value as at 1 January 2022. The reformed land tax will be levied for the first time on 1 January 2025 on this new tax base. According to the intention of the legislator this increase in tax base should not lead to an increase in land tax burden. Based on an opening clause the Federal States can levy land tax according to other valuation methods.

Consider new filing requirement from 2022 onwards and changing land tax burden from 2025 onwards.

Real estate transfer tax (RETT)

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 (6%), North-Rhine Westphalia (6,5%), Rhineland-Palatinate (5%), Saarland (6,5%), Saxony-Anhalt (5%), Schleswig-Holstein (6,5%) and Thuringia (6.5%). Future increases are expected.

From July 2021 onwards the RETT rules for share transfers have been tightened resulting in a larger number of share transfers becoming subject to German RETT.

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.

It is strongly recommended to explore structuring alternatives where you intend to transfer shares in your investment structure.

DAC 6

Unlike most other EU member countries, Germany has implemented reporting requirements for cross-border tax arrangements in July 2020.

Report cross-border tax arrangements within 30 days in order to avoid fines of up to EUR 25,000.

Planned tax changes

German tax law is subject to continuous changes. Due to the end of the electoral period, there are currently no tax amendment acts in the legislative process which impact taxation of real estate investments.

11 Greece

Reduction of the CIT rate and advance income tax payment

From the tax year 2021 onwards, the corporate income tax rate is reduced from 24% to 22%. Regarding the advance income tax payment for the tax year 2021 onwards, the advance tax payment rate is reduced from 100% to 80% for legal entities.

Special real estate tax (SRET) – Key framework

Designed to deter Greek taxpayers from avoiding disclosure of their real estate property through the use of offshore vehicles, this is a tax that applies to all companies owning real estate in Greece, unless they can fall into one of the exemptions that aim to single out the non-disclosure cases.

If no exemption can be achieved, the company must pay an annual 15% tax on the objective value of the property.

Key exemptions inter alia include:
- Legal entities irrespective of the country of their establishment, exercising commercial, manufacturing or industrial, activity in Greece, provided that the relevant tax year the gross revenue from this activity is higher than the gross revenue from the real estate they own.
- Legal entities irrespective of the country of their establishment, constructing premises to use exclusively for the exercise of their commercial, manufacturing or industrial activity (self-use) and for a period of seven years starting from the issuance of the initial building permit.
- Legal entities that have their registered seat in Greece or in an EU member country, provided that they disclose their ultimate shareholders all the way up to an individual, who have a tax registration number in Greece. In case other legal entities are participating in the shareholder chain, the exemption is granted to the extent that the shares of the ultimate shareholder entity are traded on regulated exchanged markets.
- Legal entities that have their registered seat in Greece or in an EU member country or in a third country which is not considered as a non-cooperative country as per the ITC, provided that they disclose their ultimate individual shareholders, who have a tax registration number in Greece. In case other legal entities are participating in the shareholder chain, the exemption is granted to the extent that the shares of the ultimate shareholder entity are traded on regulated exchanged markets, which should be supervised by an authority accredited by the International Organisation of Securities Commissions (IOSCO).

It should be noted that the aforementioned disclosure of individual shareholders is not a prerequisite if the total of the shares is owned by a listed company or the whole or a part of the registered shares belong to:
- Credit institutions including savings banks or deposit and loan funds;
- social security funds;
- insurance companies;
- mutual funds including:
  - Closed- or open-ended real estate investment funds and their managers;
  - Real estate investment funds governed by Law 2778/1999, and their managers;
  - Venture capital funds ('ΑΚΕΣ') governed by Law 2992/2002.

- European long-term investment funds (ELTIFs) regulated by EU Regulation 2015/760 and their managers;
- Alternative Investment Fund Managers (AIFMs) regulated by Law 4209/2013 or/and EU Directive 2011/61;
- Alternative investment funds (AIFs) managed by AIFMs regulated by Law 4209/2013 or/and EU Directive 2011/61;
- Managers of collective investment undertakings governed by Law 4099/2012 and Directive 2009/65/EC;
- Collective investment undertakings (UCITS) governed by Law 4099/2012 and Directive 2009/65/EC;
- European venture capital funds (EUVECA) and their managers regulated by EU Regulation 345/2013;
- European social entrepreneurship funds (EUSEF) and their managers regulated by EU regulation 346/2013, and
- Mutual fund managers and fund and/or mutual fund management and/or consulting companies, whose registered office is not in a non-cooperative country or in a country not assessed by the Global Forum on Transparency and Exchange of Information for Tax Purposes and are supervised by a respective authority in their state of establishment.

SRET is not designed to capture international and notably institutional investors, but, considering the far-reaching effects of the law, this is an issue that should always be carefully considered when structuring a real estate investment.

The Greek tax authorities tend to strictly apply documentation requirements in support of the abovementioned exemptions. The latest enacted Decision. 1206/2020 provides for a detailed list of documentation required for every specific SRET exemption category and determines the exact process to be followed for invoking an exemption.

VAT – Suspension of VAT on real estate sales until 31 December 2022

A 24% VAT applies on the sale of new buildings in Greece by persons subject to VAT. In particular, the supply of real estate subject to VAT is the transfer for consideration of ownership or rights in rem of buildings or part of buildings and the land on which they stand, before their first occupation. The above transaction is taxable only when the following conditions are fulfilled:

a. The person who transfers is a taxable person, or anyone who carries out, on an occasional basis, the transaction on condition that he opts for the standard VAT regime and
b. the construction permit is issued after 1 January 2006.

A suspension of VAT on real estate sales for until 31 December 2022 has been introduced, levying of real estate transfer tax on all unsold immovable property with a construction permit issued from 1 January 2006 onwards, upon relevant application by taxable persons.

For permits issued from 1 July 2020 onwards, the application shall be submitted within a six-month deadline from the issuance of the permit.

Exemption from donation tax for the purchase of a main residence

Based on the Greek Donation and Inheritance Tax Code, cash donations and parental grants provided by parents to their children for the purchase of a main residence shall be exempt from donation tax up to the amount of EUR 150,000.

Real estate investment companies (REIC)

The Greek real estate investment company (REIC) was introduced back in 1999 by Law 2778/1999. The initial version of the law was poorly adapted to the needs of the market, and no REICs were established.

A further amendment to the law, which lifts a number of restrictions (e.g. increases limitations on leverage, allows investments in real estate SPVs rather than only direct ownership of properties) has led to the establishment of more REICs, whilst the relevant market is still growing.

Considerable tax exemptions are the key advantage of the Greek REIC regime. Key exemptions are:
- Exemption from real estate transfer tax on acquisition of real estate property;
- Exemption from income tax;
- The transfer of non-listed shares to a REIC is exempt from capital gains tax;
- Dividends distributed by a REIC are exempt from income tax.

REICs are subject to several regulatory restrictions, as well as an obligation to list their shares within a 2-year period from their establishment, which can be further extended for another 36 months in total.

There is a growing interest and market for such type of institutional investors in real estate property.

Special non-dom regime for high net-worth individuals/investors

Foreign individuals transferring their tax residence in Greece may be subject to an alternative taxation for their income derived abroad.

The following conditions shall be met cumulatively:
- The taxpayer must not have been tax resident in Greece the previous seven years out of eight year before the transfer of the tax residence in Greece.
- The taxpayer provides evidence that themselves or relatives are in possession of the majority of shares or participation in immovable property, business, tangible assets or shares of legal person/entities tax resident in Greece. The amount of this investment shall at least be equal to EUR 500,000 and the investment shall be completed within three years from the application submission date.

Under this regime, individuals will pay a lump-sum tax of EUR 100,000 per tax year, irrespective of the amount of income earned abroad, for a maximum of 15 fiscal years. It is also possible to extend the regime to any of their relatives by paying an additional tax equal to EUR 20,000 per person per tax year.

Any tax paid abroad on income covered by the alternative taxation regime will not be offset against the tax liability of the above persons in Greece. In case the individuals, who have opted for the non-domiciled regime, earn in parallel income subject to income tax in Greece (e.g. income arising from the leasing of a real estate property located in Greece), this will be taxed in accordance with the general income tax law provisions and will not be covered by the non-domiciled regime.

Taxpayers opting for the regime are not obliged to declare any income earned abroad. They will be able to justify the imputed income calculated based on deemed expenses and assets acquisition by importing funds from abroad.

Special non-domiciled regime for pensioners

In parallel, a special non-domiciled regime intended specifically for foreign pensioners is provided in domestic legislation, enabling individuals entitled to a pension arising abroad to be subject to a favourable taxation of their income.

Foreign pensioners wishing to enter the special regime should cumulatively meet the following eligibility conditions:
- Be earning non-Greek source pension amounts; the scope of qualifying pensions should be further defined.
- Have held their tax residence outside Greece for 5 out of the last 6 years; and
- be former residents of a state with which an agreement on administrative cooperation in the field of taxation is in force with Greece.

The qualifying individuals should be in a position to evidence that Greece is the center of their vital interests.

The key tax benefit provided in the context of this special regime is that qualifying individuals will pay flat tax on an annual basis at the rate of 7% on their foreign sourced income, with exhaustion of the tax liability for this income. Any tax paid abroad will be deducted from the tax due in Greece, up to the amount of the latter.

Qualifying individuals shall not be exempted from inheritance tax or property donations tax on wealth located abroad. In addition, any Greek-sourced income of qualifying individuals/pensioners (e.g. income from leasing of real estate property located in Greece) will be subject to tax, in accordance with the general income tax provisions. Pensioners subject to this regime are required to declare their income earned both in Greece and abroad. This regime has applied to tax years beginning on or after 1 January 2020. The maximum duration of applicability of the regime is set at 15 tax years, starting from the next tax year from the date of submission of the application, while the possibility of revocation is provided within the fifteen-year period.

A special regime for angel investors has been set in effect as from 29 July 2020.

Special regime for angel investors

According to this regime, angel investors i.e. individuals who contribute capital to a duly registered start-up company, shall deduct from their taxable income, an amount equal to 50% of the amount of their contribution, in the tax year in which it took place.

This incentive applies to capital contributions via a bank deposit of up to EUR 300,000 per tax year, which are invested in up to three start-ups with a maximum investment of EUR 100,000 per start-up.

Fines and penalties may be imposed in case, following a tax audit, if it arises that the capital contribution has been made with a view to obtain a tax advantage, which would effectively frustrate the purpose of the regime, which is, in essence, the increase investment activity through the support of start-ups during the early stages of their operations. In case of a tax audit during which there is evidence that the capital contribution to the start-up company has been made for the purpose of the tax advantage, the amount of the fine imposed to the angel investor may reach the amount of the pursued tax benefit.

12 Ireland

Taxation of rental income

Rental income profits are subject to corporation tax at the rate of 25% where the real estate asset is held through an Irish company. The income tax rate on rental profits is 20% where the asset is held directly by a non-resident.

Interest deductions

A deduction for interest is only allowed in computing the rental profits for the year where the money borrowed has been used on the purchase, improvement or repair of the property which generates the rental income. As of 1 January 2019, a 100% interest deduction is restored for qualifying residential lettings.

There is no limit on the deductibility of interest on borrowed money used to purchase, repair or improve commercial property.

Landlords must ensure that residential properties are registered with the Private Residential Tenancies Board in order to obtain an interest deduction.

Other allowable deductions

Deductions against rental income are generally allowable where the expense directly relates to costs associated with a rental business and are not considered capital in nature.

Capital allowances

Tax depreciation is available on plant and equipment at an annual rate of 12.5% of the cost over eight years. On the acquisition of a property, an analysis of the plant and machinery element of the purchase price should be undertaken and documented as evidence of the cost eligible for capital allowances.

Excess allowances over rental income profits can be carried forward as a loss to offset against future rental income.

Buildings which qualify as industrial buildings e.g. factories, hotels, nursing homes etc. may be able to avail of capital allowances at an annual rate of 4% of the cost over 25 years.

Consideration will need to be given to the possibility of a clawback of capital allowances on the disposal of real estate assets where the proceeds received exceed the tax written down value of the asset.

Withholding tax on rent

Rental payments made by a lessee to a non-resident landlord are subject to a withholding tax of 20% which the lessee must pay to the Irish Revenue Commissioners.

Non-resident landlords should appoint an Irish collection agent to collect the rents from the lessee in order to avoid Irish withholding tax.

Interest withholding tax

Interest payments made by an Irish resident company to a non-resident are generally subject to Irish withholding tax of 20%. The Irish resident company is obliged to withhold the tax from the interest payment and pay it directly to the Irish Revenue Commissioners. A number of exemptions are available under the Irish tax legislation.

Investors making interest payments to non-resident lenders should ensure appropriate exemptions are available before paying interest gross to lenders.

Dividends withholding tax

Distributions made by an Irish resident company are generally subject to withholding tax at a rate of 25%. A number of exemptions are available under the Irish tax legislation subject to having the appropriate declarations in place.

Companies making dividend payments should ensure appropriate documentation is in place before paying dividends gross to shareholders.

Disposals by non-residents

A non-resident will be subject to capital gains tax in Ireland on the disposal of Irish specified assets. Land (including tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land) situated in the state is considered to be an Irish specified asset.

Additionally, shares in a company which derives the greater part of its value from land are also considered to be Irish specified assets. A disposal of such shares by a non-resident would also be within the scope of Irish capital gains tax.

A vendor who is disposing of an Irish specified asset where the consideration exceeds EUR 500,000 (or EUR 1m where the asset is residential property) should obtain a Form CG50A from the Irish Revenue Commissioners to avoid any withholding tax. If the vendor does not obtain the Form CG50A, the purchaser is obliged to withhold 15% of the purchase price and pay it directly to the Irish Revenue Commissioners.

Tax filing obligations

An Irish tax resident company is obliged to pay its corporate income tax liability and file its corporation tax return within nine months of the end of its accounting period. If that date is later than the 23rd day of the month, the corporation tax return must be filed by the 23rd day of the month.

A non-resident is required to pay its income tax liability and file its income tax return by 31 October in the year following the year of assessment. The year of assessment for income tax purposes is between 1 January and 31 December.

Stamp duty

Stamp duty applies to the conveyance of real estate assets and is payable by the purchaser. The rate of duty is 7.5% on the acquisition of commercial property and 1% on residential property up to a value of EUR 1m and 2% on the excess over EUR 1m.

Furthermore, Irish legislation contains anti-avoidance provisions which apply the higher stamp duty charge to certain conveyances or transfers of:

- Shares (in Irish and non-Irish incorporated companies)
- Shares/units in Irish real estate funds (IREFs)
- Interests in foreign collective investment schemes
- Interests in partnerships

that derive their value or the greater part of their value, directly or indirectly from Irish non-residential land and buildings. The 7.5% stamp duty charge will only apply where:

a. The transfer results in a change in the person or persons having direct or indirect control over the real estate assets listed above, and
b. It would be reasonable to consider that the real estate assets concerned:
    1. Were acquired by the company, IREF or partnership with the sole or main object of realising a gain from its disposal;
    2. Were or are being developed by the company, IREF or partnership with the sole or main object of realising a gain from its disposal when developed; or
    3. Were held as trading stock by the company, IREF or partnership.

The rules apply not only to conveyances or transfers of shares/units/partnerships interests that are caught under the above provisions, but also to contracts for the sale of any such shares/units/interests which might otherwise not be stampable.

A new 10% stamp duty rate in respect of purchases of 10 or more residential houses applies to purchases of 'relevant residential units' from 20 May 2021. A residential unit will be considered a 'relevant residential unit' where it is part of a bulk purchase of 10 or more residential units, or where the buyer has bought at least 9 other residential units in the 12 months preceding the current purchase.

Residential units in apartment blocks are not liable to the new 10% rate.

Stamp duty does not apply to moveable plant and machinery which can pass by delivery.

Upon the acquisition of Irish property, an analysis should be performed to determine the amount of the purchase price which relates to moveable plant and machinery. This amount should be clearly identified in the contract for sale.

Losses carried forward

Rental losses can be carried forward and used to offset the tax liability on rental profits which may arise in a future period. There is no time period in which the losses must be used i.e. they can be carried forward indefinitely.

Losses on the disposal of real estate property can be carried forward and set off against future capital gains. A restriction applies to gains made on development land. Only losses incurred on disposals of development land can be offset against gains made on the disposal of development land.

Value-added tax (VAT)

Where VAT has been charged on the acquisition of property, it may be necessary to charge VAT on the rental payments due from the tenant in order to avoid a clawback of any VAT reclaimed on the purchase of the property. VAT is only chargeable on commercial properties and cannot be charged on residential lettings. A landlord who leases out a mixture of commercial and residential properties can only reclaim VAT on expenses incurred in relation to the commercial properties. For dual use expenses (i.e. expenses relating to a mixture of commercial and residential properties), a recovery rate must be calculated to determine the proportion of the VAT which can be reclaimed on such expenditure.

The recovery rate applicable to dual use expenses must be calculated each year and must be a true representation of the mixture of the commercial and residential properties to which the expenditure applies.

Local property tax

Local property tax is only chargeable on residential properties and is generally payable by the owner of the premises. The local property tax for 2020/2021 is calculated based on the market value of the property as at 1 May 2013. The local property tax for 2022 will be calculated based on the market value of the property as at 1 November 2021.

Landlords should check that the local property tax on any premises registered to them is fully paid as this may impact the landlord's ability to obtain a tax clearance certificate.

Tax clearance certificates

Tax clearance certificates can now be obtained online through Revenue Online Service (ROS). A request is submitted online and tax clearance can be provided immediately where the taxpayer is compliant under all tax heads. An access number is provided to the taxpayer who can then give this to tenants/licence applicant authorities etc. where required in order to avoid withholding tax being applied to payments.

Transfer pricing

Irish transfer pricing legislation endorses the OECD Transfer Pricing Guidelines and adopts the 'arm's length' principle. The rules apply to domestic and international arrangements entered into between associated persons, involving the supply or acquisition of goods, services, money, or intangible assets, and relating to trading activities within the charge to Irish corporation tax at the trading rate of 12.5%.

Under Irish rules, the Irish tax authorities have the power to recompute the taxable profit or loss of a taxpayer where income has been understated or where expenditure has been overstated as a result of non-'arm's length' transfer pricing practices. There is, however, an exemption available for small and medium sized enterprises.

Finance Act 2019 introduced provisions to bring Ireland's domestic transfer pricing rules in line with the 2017 OECD Guidelines by extending the application of the rules to certain non-trading transactions, enhancing documentation requirements and introducing a 'substance over form' provision which provides Irish Revenue with the ability to disregard and recharacterise a transaction in certain circumstances.

DAC 6

Finance Act 2019 transposed the EU Directive on the mandatory disclosure of certain cross border arrangements (known as 'DAC 6') into the Irish tax code. The new provisions align very closely with the Directive and operate in addition to Ireland's domestic mandatory disclosure regime which was introduced with effect from 2011. In light of the restrictions imposed on businesses during the COVID-19 pandemic, Ireland exercised an option given to member countries to postpone by six months the filing dates for the first returns of information in relation to reportable cross-border arrangements. The 30-day period for reporting to the Irish Revenue Commissioners commenced on 1 January 2021.

Anti-hybrid legislation

The Irish anti-hybrid rules, brought into force via Irish Finance Act 2019, apply with effect from 1 January 2020 and implement the requirements of EU ATAD II. The rules broadly deny deductions or impose tax on transactions between associated entities where there is an element of hybridity in the transaction or due to the form of the payor/payee.

Interest limitation rules

It has been confirmed that Ireland will introduce interest limitation legislation with effect from 1 January 2022. The rules impose a cap on interest deductions to no more than 30% of EBITDA.

13 Latvia

Changes as of 1 January 2021

As of 1 July 2021, stamp duties to be paid for registering ownership rights in the Land Register have changed significantly. Namely, stamp duties per immovable property are determined as follows:

- For alienation of real estate (RE) on the basis of a contract is 2% of the RE value if ownership rights are transferred to a legal entity.
- For alienation of RE on the basis of a contract is 1.5% of the RE value if ownership rights are transferred to an individual.
- Investment of RE into the share capital of a company is 1% of the RE value invested into the share capital.

Stamp duty is paid by the entity which acquires the ownership rights. In cases where RE ownership rights are obtained as a result of reorganisation, the new owner does not have to pay stamp duty.

Up to now the application of corporate income tax (CIT) Act to income from the sale of a real estate differed for Latvian residents and non-residents. Sale of real estate by non-residents would be subject to 3% CIT on gross proceeds. This tax must be either withheld by the Latvian purchaser or, in case the transaction is between two non-residents, declared and paid by the non-resident seller.

CIT Act allows non-residents from EU or double tax treaty (DDT) countries to pay 20% on profit from such sale, on condition that the company can justify the acquisition costs by documentary evidence. This tax must also be withheld on a non-resident company's proceeds from the sale of particular real estate or shares in a Latvian or foreign company if Latvian real estate represents more than 50% of the company's asset value (whether directly or indirectly through participation in one or more other Latvian or foreign entities) in the tax period the sale is made, or in a previous tax period.

Taxation of dividends

PIT: The rate of PIT on dividends is 20%.

CIT: Flow through dividends would be exempt from CIT provided that they are received from corporate income taxpayer or tax has been withheld at source state. In addition, some anti-avoidance provisions would apply aimed at offshore entities or artificial structures.

Review your dividend payment policy in order to benefit from the new tax reform (e.g. profits paid out of retained earnings up to 31 December 2017 are not a subject to CIT).

Management fees

Management and consulting fees paid to non-residents are subject to a 20% withholding tax (WHT). However, WHT may be eliminated under provisions of the respective tax treaty. In order to apply for a more favorable tax regime, the non-resident has to provide the payer with a tax bresidency 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 income is not taxed before the submission deadline of the last CIT return (i.e. 20 January of the following year).

Sale of shares and securities

In line with the CIT Act the income arising on the disposal of shares constitutes CIT taxable base. At the same time, CIT Act provides the relief determining the reduction of the taxable base in case of a disposal of direct participation shares held for at least 36 months (i.e. three years). Mentioned relief is not applicable to the shares held in the companies established in black-listed jurisdictions.

Please note there are specific rules for the sale of real estate company shares by non-residents.

If relevant, please take into account that income gained on disposal of shares held for 3 years or more may be used in order to reduce CIT taxable base.

Sale of real estate/rental income

The sale of property by non-resident directly is subject to 3% WHT. The same applies also to the 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 in Latvia.

Non-resident from the EU or tax treaty country can choose whether to pay 3% WHT from the sales proceeds or 20% tax from the profit. The same principle applies to income from consulting services.

The change of real estate ownership attracts a stamp duty payable. Please see more details on first page.

In case of the sale of real estate EU/tax treaty resident may choose between 3% WHT payment calculated on total income or 20% tax on profit.

Losses carried forward

The CIT Act does not include the concept of tax losses.

Transitional rules stipulate that the tax losses can be utilised by the companies during five financial years (beginning in 2018) by deducting an amount equal to 15% of the total loss brought forward from CIT calculated on dividends for the financial year. However, such deduction is capped at 50% of the amount of CIT charged on dividend for the financial year.

Review the possibilities to utilise tax losses carried forward in next 3 years (until 2022).

Deductibility of interest payments

CIT is payable on the increased interest payments. The allowable interest shall be calculated applying two methods.

If both methods are applicable, the higher of the two amounts calculated which exceed the calculated threshold should be added to the CIT taxable base.

There are number of exemptions from above rules, e.g. qualifying loans from credit institutions do not fall under the mentioned regulation.

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

Exchange of shares

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. Currently, tax authorities accept only one round of share for share exchange.

Provision for bad debts	Provisions for bad debts do not become a subject to CIT if debts are repaid during a 36-months period. 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 listed in the CIT Act in order not to constitute the CIT taxable base, when written off. Consider whether the particular debt complies with these criteria.
Transfer pricing	All related-party cross-border payments as specified in the Taxes and Duties Act must 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.
Real estate tax	Companies have to pay annual real estate tax (RET). Generally, the RET is between 0.2–3% of the cadastral value. The exact rate is determined by each municipality. In accordance with The National Cadastre of Real Estate Act the cadastral values will change once every two years if the property market or factors affecting the value of an area have changed. Consider the RET payments taking into account the available exemptions and possible changes in cadastral value.
Value-added tax (VAT) legislation regarding sale of real estate in Latvia	According to VAT Act sale of unused real estate and development land attracts the standard VAT rate. Under 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. Input VAT incurred upon construction works, renewal, rebuilding or restoration is recoverable if the building is intended to be used for taxable transactions. The taxable person should follow the deducted input VAT for 10 ten years, that is, follow whether the actual use of real estate is not different from the planned one and no adjustment of the deducted input tax is required. There might be claw-back provision, if a 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. Option to tax allows a registered taxable person to charge VAT on supplies of used 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 real estate has been applied correctly.

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. 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 31 December 2011. Make sure that reverse-charge VAT has been applied correctly.
Permanent establishments	If you have not registered a legal entity or a branch in Latvia, consider if your business operations have created a permanent establishment (PE), which requires a CIT compliance in Latvia. Consider the requirements for registering a PE in Latvia.

14 Lithuania

Investment in real estate and land

There are no restrictions for foreigners to acquire the immovable property in Lithuania (except for land). Agricultural, non-agricultural and non-forestry land, inland waters and forests can be acquired only by companies or individuals who are established or residing in the EU member countries or in countries that are the members of OECD, NATO or EEA and receive relevant permissions from local authorities.

Real estate (RE) related transactions are subject to a notary's approval. The notary fee charged in case of a sale and purchase of RE amounts to 0.37% of the RE price but not lower than EUR 33 and not higher than EUR 5,000 (plus VAT).

In case of a share deal the transfer of shares in a RE holding entity is subject to the notary fee of 0.33–0.41% on the value of transaction (the fee shall not be less than EUR 17 or exceed EUR 5,000 (plus VAT) when:
- ≥25% of limited liability company's shares are sold.
- The sale price of the limited liability company's shares sale exceeds EUR 14,500 except for certain exemptions.

Group taxation

Generally, tax grouping is not allowed in Lithuania (except for intra-group tax loss transfer possibility), thus each company is taxed separately.

Real estate tax (RET)

The real estate tax (RET) is applied both for local and foreign tax residents holding real estate in Lithuania. The tax rate may vary from 0.5% to 3% depending on municipalities. In Vilnius, the RET rates established for 2021 are:
- 1% – standard RET rate;
- 0.7% – for cultural, leisure, catering, sport, educational or hotel buildings (with some exceptions);
- 3% – for actually used real estate, that is not 100% completed and for real estate that is not used at all or is abandoned or unattended.

Residential and other personal premises owned by individuals are exempt from tax where the total value of EUR 150,000 is not exceeded, whereas the excess value is subject to progressive taxation:
- 0.5% RET rate is applied on taxable value exceeding EUR 150,000 but not exceeding EUR 300,000.
- 1% RET rate is applied on taxable value exceeding EUR 300,000 but not exceeding EUR 500,000.
- 2% RET rate is applied on taxable value exceeding EUR 500,000.

RET base is the value of the property: depending on the type and purpose of the property it can be assessed either by mass valuation method (performed every 5 years) or using the replacement value (costs) method. There is a possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20%.

Procedure of filing advance real estate tax return

Legal entities have an obligation to pay advance RET on a quarterly basis. Advance RET return for the first 9 months of the current tax period should be submitted together with the annual RET return for the previous tax period.

Value-added tax (VAT)

The standard VAT rate in Lithuania 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 building land and land transferred together with a new building that has been used for less than two years and land for construction). Rent of RE is also VAT-exempt (with some exceptions).

Additionally, the reduced 9% VAT rate is applicable to accommodation services until 31 December 2022.

Reverse-charge VAT on construction service

Local reverse-charge VAT mechanism applies for supply of construction services, when such services are supplied to a taxable person Lithuanian VAT payer. If a foreign entity supplies construction services in Lithuania to a taxable person Lithuanian VAT payer, then the foreign entity is required to register with the Lithuanian VAT payers' register and apply local VAT reverse-charge mechanism for construction services.

Reverse-charge VAT mechanism is also applicable to supply of goods installed in immovable property in which construction services are performed and after such installation the goods become an integral part of the property. Such treatment is applicable when goods are supplied under a single agreement (supply of goods and installation services).

IT-based tax administration system – i.MAS

The Lithuanian tax authority has introduced an IT-based tax administration system (i.MAS).

For the tax period starting from October 2016, all persons registered for VAT purposes in Lithuania are required to submit invoice data to i.SAF subsystem on a monthly basis (with some exceptions).

In addition, following certain turnover thresholds, with effect from 2017 till 2019, companies established in Lithuania are required to prepare their accounting data in a SAF-T file and upon request provide it to the tax authority or other authority.

Corporate income tax

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 CIT rate of 0% for the first tax period and 5% for the consecutive tax periods with certain exceptions.

Generally, the taxable period for CIT is the calendar year. The tax return has to be filed and CIT due has to be paid before 15 June of the next taxable period.

The companies with annual turnover exceeding EUR 300,000 are also subject to advance CIT payment in Lithuania.

Dividends exemption rule	Dividends distributed by a Lithuanian company to another Lithuanian company are generally subject to a 15% CIT, which is withheld by a distributing company. Dividends distributed by a Lithuanian company are exempt from withholding tax (WHT) if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period and the distributing entity is subject to 5% or 15% Lithuanian CIT rate (except for blacklisted territories). Dividends distributed by a foreign company are subject to a 15% CIT that is to be paid by the receiving Lithuanian entity. However, dividends distributed by a foreign company to a Lithuanian company are exempt from CIT in Lithuania if the distributing foreign entity is established in the EEA and related profit is properly taxed in the domiciled country.
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 8 to 20 years (new buildings over 8 years), machinery and plant – over five years. Land is not subject to tax depreciation.
Withholding tax on sale of real estate	Income from the sale of RE situated in Lithuania and derived by a foreign entity is subject to a 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 or 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.
Deduction of interest expenses	Interest on the debt in excess of the controlled debt-to-fixed-equity ratio of 4:1 is non-deductible for CIT purposes if the company cannot substantiate that the same loan under the same conditions would be received from a non-associated party. Additionally, an entity is given the right to deduct interest costs exceeding interest revenue up to a 30% of taxable EBITDA or up to EUR 3m. If an entity belongs to the group of entities, the above criteria shall be applied jointly for all Lithuanian entities and permanent establishments of foreign entities in Lithuania that belong to the same group. Restrictions do not apply if an entity's financial results are included in the consolidated financial results of a group, and the equity-to-asset ratio of that entity is not more than 2 percentage points lower than the equivalent ratio of the group. Interest costs exceeding interest revenue could be carried forward without time limitation. Mentioned rules do not apply to financial institutions and insurance companies.

Transfer pricing

According to the new transfer pricing guidelines in force from 1 January 2019 transfer pricing documentation (TPD) should consist of two files: 1) Master File, which describes inter-company transactions in the worldwide context of an entity's group, and 2) Local File, which includes more detailed information and analysis about the local entity's inter-company transactions.

Local File should be prepared by all Lithuanian entities with the annual revenue for the previous period exceeding EUR 3m.

Master File is mandatory if an entity belongs to the international group of companies and its previous period's revenue in Lithuania exceeds EUR 15m.

Penalties, amounting from EUR 1,820 to EUR 6,000 for non-compliance with the TPD procedures for transactions between associated persons could be imposed for CEO of the company.

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

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 (indefinitely for financial institutions) 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.

Land tax

Land tax applies on land owned by companies and individuals, except for the forest land.

Land tax rates range from 0.01% to 4% depending on local municipalities. In Vilnius, the Land tax rates established for 2021 are:

- 0.12% – standard tax rate for individuals and companies;
- 4% – for the land that is not used and for the land with buildings recognised as unauthorised construction.

The tax base is the average market value determined according to the mass valuation performed not rarer than every 5 years. There is a possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20%.

Land lease tax

Users of state-owned land are subject to land lease tax. The tax rate ranges from 0.1% to 4% of the value of the land. The actual rate is established by municipalities. In Vilnius, the land lease tax varies from 0.5% to 4%.

Personal income tax

For local and foreign individuals, income from the rent of RE located in Lithuania is subject to 15% PIT on gross income for the income amounts (not including employment related income) not exceeding EUR 162,324 per calendar year of 2021 and 20% PIT rate is applied on the part exceeding this threshold. Upon certain conditions, individuals can opt to pay a fixed amount of tax on rent of RE once a year, if such property is rented to individuals and not to legal entities. In such case individuals should obtain a business certificate for rent of residential premises.

DAC 6

The European Union (EU) Directive on the mandatory disclosure and exchange of reportable cross-border tax arrangements (referred to as DAC 6 or the Directive) has been introduced into Lithuanian law. Under DAC 6, starting from 1 January 2021 taxpayers and intermediaries are required to report cross-border reportable arrangements which include at least one of the distinguishing hallmarks defined in the law.

15 Norway

Tax returns

Companies are, in general, required to file their tax returns electronically by the end of May in the year following their financial year. Upon application, an extension to file the tax return will normally be granted until end of June. The tax returns and the basic attachments are obligatory for all corporate taxpayers. Additional requirements may apply for specific business sectors, such as hydro power production. Under the petroleum tax regime, the filing deadline is the end of April.

The taxpayer is responsible for reporting the taxable income in the tax return, which will be the basis for the tax assessment. The taxpayer can voluntarily and retroactively change information given in the tax return for up to three years after submitting.

Due to the COVID-19 pandemic, the general tax filing deadline for corporations for the income year 2020 has been extended to 20 August 2021. Other extensions have been granted to value-added tax (VAT), pay-as-you-earn (PAYE), employment tax, and financial activity tax payment and/or filing deadlines.

Payment of tax

Companies are required to make advance payments of tax on 15 February and 15 April in the year following the income year. The two payments should together cover all of the expected CIT to be assessed but could be complemented by an additional payment within 31 May to avoid interest on any remaining tax balance. If the remaining tax balance is not paid by 31 May, the company will receive an invoice from the tax authorities that is due for payment three weeks after the assessment has been made public (i.e. in October of the year following the relevant accounting year).

Introduction of withholding tax (WHT) on interest and royalties

WHT on interest, royalty and certain rent payments to related companies in low-tax jurisdictions entered into force from 1 July 2021 (1 October 2021 for rent payments). The withholding tax rate is 15% (reduced rates may apply under applicable double tax treaties). There will be an exemption for payments to low-tax jurisdictions within the EEA, provided that the receiving company is genuinely established and fulfills an overall substance test. The application of WHT on royalties and interest will be limited by existing Norwegian tax treaties.

16 Poland

Polish Deal

Considered changes within the so-called 'Polish Deal'

On 26 July 2021 the first draft of the amendments to the Polish Corporate Income Tax (CIT) Act (as well as other tax acts, including the Value Added Tax (VAT) Act and the Tax Ordinance) – called Polish Deal – were published on the Government Legislation Centre's website. Afterwards, the draft bill was subject to amendments. Key changes are expected to enter into force as of 2022. A number of the changes is likely to have a significant, direct impact on the taxation of the real estate investments in Poland, i.e. in particular the following:

Tax depreciation of the real estate assets

Based on the draft amendments, tax depreciation write-offs recognised in relation to buildings cannot be higher than depreciation write-offs made for accounting purposes. In practice this may mean that if a given entity does not depreciate the building for accounting purposes (but rather revaluates this property to its fair market value) tax depreciation of such a building should be excluded.

Moreover, it has been proposed that tax depreciation should be specifically excluded in relation to residential buildings and apartments (irrespective of their accounting treatment). It is not clear how these provisions could apply to premises in technically non-residential buildings which formally do not constitute apartments, but are used e.g. for short-term lease purposes.

Thin capitalisation rules

It is planned to specify that the thin capitalisation deductibility threshold should be understood as 30% EBITDA or PLN 3m (whichever is higher). So far, the above was not clear based on current rules but the prevailing interpretation (supported also by the judgements of the administrative courts, however not accepted by the tax authorities) assumed that the above limit should rather be calculated as 30% EBITDA plus PLN 3m. As such, the amendment could lead to a significant change in this area and limit the deductibility threshold for the taxpayers.

Withholding tax (WHT): Pay-and-refund mechanism/WHT special rulings

The draft amendments contain certain changes to the WHT 'pay-and-refund' mechanism for foreign payments with the aggregated amounts exceeding PLN 2m per year. This mechanism was introduced to the Polish CIT law already in 2019, but its applicability has been suspended (postponed) until 2022 (further postponement cannot be excluded – the developments in this respect should be closely monitored).

The currently proposed changes assume that the WHT pay-and-refund mechanism would apply only to interest, dividend and royalties payments to related parties. As such, other payments (e.g. service payments or payments to non-related entities) should not be currently captured. It is also planned to change the definition on the 'beneficial owner' – in particular, with respect to the criterion of conducting actual business activity, it is intended to:

- replace: the reference to the broad criteria regarding conducting actual business activity, provided in the regulations regarding the so-called 'controlled foreign companies';
- with: the statement that the nature of the business activity of a given entity should be taken into account.

As another important change, it is proposed that the special formal ruling on the applicability of preferential WHT regime can be obtained not only in relation to WHT exemptions resulting from the directives of the European Union (i.e. Parent-Subsidiary Directive and Interest-Royalties Directive; 'EU Directives'), but also in relation to the WHT exemptions or reduced WHT rates resulting from the respective double tax treaties (DTT(s)).

Additionally, the draft amendments will specifically impose on the tax remitters higher standards of 'due diligence' in relation to payments to related parties.

'Hidden dividends' rule

The draft amendments include provisions intending to exclude from tax deductible costs so-called 'hidden dividends', i.e. certain payments made for the benefit of shareholder (or entities related to shareholder/taxpayer) which could be seen as aimed at replacing dividends.

The proposed regulation is not entirely clear, however, it should be assumed that – if it enters into force – each payment to the shareholder/related entity should be analysed in the light of (i.) its terms (i.e. whether it is in line with market conditions) and (ii.) its impact on financial result of the taxpayer (i.e. whether the taxpayer would have made a profit if it had not provided the benefit to the related entity). Such considerations may have an impact on the potential tax deductibility of the discussed payments.

Introduction of a 'diverted profits tax'

The draft amendments provide for new regulations introducing so-called 'diverted profits tax'. This tax can be imposed at 19% on 'diverted profits', understood as costs (such as in particular intangible services, royalties or debt financing costs) incurred – directly or indirectly – for the benefit of related entities (provided that certain conditions are met). However, as a 'safe harbour' mechanism, the 'diverted profits tax' should not apply if the above costs are incurred for the benefit of a related entity subject to taxation on its worldwide income in the EU/EEA (assuming that this entity conducts a genuine and material business activity).

New type of ‘minimum tax’

Based on the current wording of the Polish CIT Law, a kind of ‘minimum CIT’ is already applicable to the real estate companies (as a percentage of the property value). However, currently, a new type of ‘minimum tax’ is proposed to be applicable to all taxpayers declaring tax losses or relatively low income (<1% of the revenue).

Calculation of the new minimum tax: 10% of a ‘hypo basis’ including i.a.:
1. 4% of the revenues from sources other than ‘capital gains basket’ plus
2. excess of the financing costs over 30% tax EBITDA plus
3. excess of the intra-group service costs over 5% tax EBITDA increased by PLN 3m.

Certain deductions or exempt categories of income may reduce the above ‘hypo base’. The ‘new minimum tax’ paid is to be potentially set-off against CIT payable within 3 subsequent tax years.

Certain exclusions from the ‘new minimum tax’ are available – e.g. for new companies (within first 3 years of activity) or for companies recognising at least a 30% decrease of revenue.

Alongside with introduction of the ‘new minimum tax’ it is planned to eliminate current rules limiting the deductibility of intra-group services above the threshold of 5% tax EBITDA plus PLN 3m.

Other changes

Other proposed changes include e.g.:
- changes regarding the taxation of mergers and demergers (to be considered in case any group restructurings are planned);
- obligation to provide the Polish tax authorities with the accounting books along with the annual CIT return itself;
- changes in the area of transfer pricing (‘TP’) – aimed at simplifying/clarifying some provisions, shifting some deadlines, regulating penal fiscal responsibility for preparation of certain TP-related documents etc.;
- obligation for some taxpayers to provide the tax authorities with the accounting books/fixed assets registers in electronic format (as of 2023).

As the proposed draft bill is still within the legislative process, the final shape of the changes should be closely monitored.

Upcoming changes to protocol to PL-NL DTT

On 29 October 2020 the representatives of Poland and the Netherlands signed a new protocol to the double tax treaty between these two countries.

Ratification of the protocol will result in major changes to the DTT, including in particular:
- Introduction of the so-called ‘real estate-rich company clause’ to the DTT.
- General anti-abuse rule in the form of the so-called Principal Purpose Test.
- Clarification regarding dividend-like income (income from shares) for WHT purposes – aimed at including liquidation proceeds, income from purchase of own shares as income from transfer of investment certificates.

The parts of the protocol which are of great importance for real estate investors could potentially become binding as of 2022 – provided that the ratification procedures are completed in both countries until the end of September 2021. This is however unlikely – thus we expect that these changes will become binding as of 2023. Further developments in this respect should be monitored.

Investors using Dutch holding companies should consider the impact of the above-mentioned changes. Dutch investors considering the sale of the Polish real estate companies will need to verify if such sale will trigger capital gain taxation in Poland.

Changes regarding statements on election of VAT taxation on real estate transactions

As of 1 October 2021, there will be a simplification for the taxpayers executing certain real estate transactions, in case of which the VAT taxation was possible only if the taxpayers file the joint statement to the tax office prior to the transaction – where they state that they chose to have the transaction taxed with VAT (instead of applying VAT exemption).

Namely, according to the new regulations, it will be sufficient that the information on election of VAT taxation will be included in the notarial deed documenting the transfer of real property – i.e. the parties to the transaction willing to choose VAT-able transaction will not be obliged to file a separate statement in this respect (as it is now).

The simplification mentioned above may result in less administrative burdens for the investors executing 'asset deal' real estate transactions on the Polish market. As there is yet no practice in this respect, this matter should be analysed by parties' advisors prior to the transactions, on case-by-case basis – so that it is made sure, whether (i.) the new simplification may be applied, or (ii.) the statement on election of VAT taxation will still be required in order to ensure the VAT taxation of the transaction.

Reporting on payment deadlines – obligation for 'real estate companies'

Under the Act on Countering Payment Gridlocks, 'real estate companies' have been obliged to submit annual reports on the payment dates used in the previous calendar year for commercial transactions. The report for 2021 should be filed via a digital system by 31 January 2021 (in case of the companies having the tax year corresponding to the calendar year).

'Real estate company' should be understood here in line with the new definition included in the CIT Act as of 2021. Accordingly, this should cover entities – other than natural persons – obliged to prepare balance sheet based on accounting provisions, in which:

a. As of first day of the tax year, at least 50% of market value of assets consisted directly or indirectly of market value of real estate located in Poland or rights to such real estate – in case of entities commencing their activity.
b. As of the last day of the year preceding their current tax year at least 50% of balance sheet total value of assets consisted directly or indirectly of balance sheet value of real estate located in Poland or rights to such real estate - in case of entities other than mentioned above.

On the top of the above, in order to qualify as 'real estate company':

(i.) The respective fair market/book value of the real estate must exceed PLN 10m; and

(ii.) in case of entities mentioned in the point (b.) above, in the previous tax year the company obtained at least 60% of tax revenues from (sub)lease of real estate and agreements of similar nature or from ownership rights relating to real estate/other real property companies.

Entities qualifying as real estate companies should ensure that the reporting is timely made.

National System of e-Invoices (KSeF)

The Ministry of Finance has published a draft act providing for the introduction of structured invoices and the National System of e-Invoices ('KSeF'). Based on these provisions, the invoices will be issued and received through the Ministry's platform, hence the ability to provide and receive data in a structured form will be required.

The new provisions are planned to enter into force on 1st January 2022. The use of the system in the initial phase is to be voluntary [with some benefits applicable to the entities deciding to use the system – such as e.g. possibility to receive the VAT refund within the shorter period than the standard one; lack of obligation to provide the so-called JPK files (i.e. the Standard Audit Files) to the tax authorities; etc.]. It is planned that starting 2023, use of the system will become mandatory.

The final shape for the provisions should be analysed in order to be updated on the obligations imposed when the new law comes into force.

17 Portugal

Losses carried forward

Tax losses can be used to offset taxable profits arising in the following 5 years. No carry back is allowed. Deduction of tax losses is limited to 70% of the taxable profit of the year, with the possibility of carrying forward the remaining 30% within the carry forward period.

Special rules apply for tax losses generated in 2020 and 2021 (deadline for reporting of 12 years; deduction limit of 80%; and the 2020 and 2021 years must be disregarded when calculating the deadline for tax loss reporting for the 2020 tax year). No tax losses carry forward is allowed for the purpose of assessing the local and state surtaxes.

Any direct transfer of more than 50% of the share capital or of the majority of voting rights of a company in Portugal may lead to the loss of the tax losses carry forward generated prior to the acquisition year of that same company. Exemptions apply in the case of intra-group corporate restructurings.

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.

Dividends distribution

Dividends can be exempt from WHT under the application of the domestic participation exemption regime, if the following conditions are met:

- The Portuguese company is subject and not exempt from CIT and it is not subject to the tax transparency regime;
- The beneficial owner of the income is an entity resident
  - (i.) in other EU member country,
  - (ii.) in other EEA member country (provided such EEA member country is bound by an agreement for tax cooperation within the scope agreed within the EU), or
  - (iii.) in a country that has a DTT concluded with Portugal that foresees the exchange of information;
- The beneficial owner is subject to and not exempt from a tax mentioned in the EU Parent-Subsidiary Directive, or a tax of a similar or identical nature to Portuguese CIT (for non-EU cases) and it cannot be 60% lower of the Portuguese CIT rate, i.e. currently, 12.6%;
- The entity that pays the dividends cannot be resident in a blacklisted jurisdiction;
- Minimum shareholding held for a consecutive period of one year; and
- Shareholding threshold of at least 10%.

This regime is applicable to both EU and non-EU residents. It is recommended to verify if all the above-mentioned conditions are met before approving a dividends distribution.

Despite the above, the WHT exemption on dividends is not applicable in case of structures or constructions that are mainly or exclusively tax driven, i.e. aimed to reduce, defer or avoid taxation which would be due otherwise and do not have a business purpose or economic rationale.

Transfer pricing

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

Companies with net sales and other income of EUR 3m or more (with reference to the previous fiscal year) should prepare the transfer pricing documentation file by the 15th day of the 7th month upon the end of the tax year concerned.

The arm's length principle should be duly followed and documented. Taxpayers are only required to deliver the transfer pricing documentation upon request of the Portuguese Tax Authorities (exceptions apply to large taxpayers and taxpayers under the special tax regime of group taxation).

Interest capping rules

Net financial expenses (NFE)'s deduction is capped to the higher of EUR 1m or 30% of the sum of the tax result (either profit or loss) plus NFE and allowed depreciation and amortisation of the year. The concept of NFE includes, among others, the depreciation or amortisation charge related to interest capitalised in the acquisition or construction cost of the assets.

The part of the NFE that is not deductible can be carried forward over a period of five tax years, as long as the capping is complied with.

When the amount of the NFE considered CIT deductible is lower than the 30% cap, the immediate and successive carry forward of the unused limit is allowed to be added for the calculation of the 30% cap for the following five tax years, until the total amount is used.

In case of fiscal unities, the parent company can elect for this rule to be applicable on a group basis, that should be kept for a period of three tax years.

There should be in place a control of the amounts of non-deductible NFE and unused 30% that can be carry forward for five years.

Cross-border financing

As a general rule, interest due to non-resident entities is subject to WHT in Portugal. Reduced WHT may be available when the beneficiary can apply a DTT and WHT full exemption may be available under the Interest and Royalty Directive provisions, provided that all the requirements foreseen in the Directive are met.

Financing 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 transfer taxes (IMT)

Until 2020, the direct acquisition of at least 75% of the share capital of a private limited company, general partnership or limited partnership (e.g. Portuguese Lda) which owns immovable property located in Portugal, is deemed to be an acquisition of the underlying immovable property. The following changes have been introduced in 2021:

- It also applies to the acquisition of joint-stock companies (Portuguese SA), with the exception of SA companies having their shares listed in a regulated market or exchange.
- It only applies to the acquisition of companies which assets are, directly or indirectly, comprised in more than 50% of Portuguese real estate.
- The rule will not apply if the real estate is allocated to a commercial, industrial or farming activity (except real estate buy-sell activity).

This rule will only apply to companies owning properties that is not allocated to a commercial, industrial or farming activity and the ones allocated to the buy-sell activity.

The IMT code already foreseen that direct acquisition of property located in Portugal by companies resident or domiciled in a tax haven is (i.) subject to a 10% rate, and (ii) not entitled to any applicable IMT exemption. Since 1 January 2021, this rule also applies where the entity acquiring the immovable Portuguese property is directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant 'black-list'.

This rule may have an impact on already established investment structures, as well as in new direct or indirect acquisitions of immovable properties located in Portugal.

Real estate municipal taxes (IMI)

IMI rate for real estate held by entities resident in blacklisted is 7.5%. Based on the 2021 State Budget Law, this rule has been extended to all immovable properties located in Portugal that are indirectly controlled by a company resident or domiciled in a tax haven, according to the Portuguese 'black-list'.

Municipalities can increase the IMI rate applicable to urban real estate properties, vacant for more than two years, degraded buildings and land for construction intended for residential purposes, when located in designated areas of urban pressure. In this situation, the IMI rate can be increased six times. An additional increase of 10% in each of the following years is also possible. However, it is capped at 12 times of the applicable IMI rate.

In case a direct investment is completed before the end of 2021, 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 31 December 2021.

Real estate taxes

Additional to the IMI (AIMI) is due on residential property and plots of land for construction. The owners, usufructuaries, surface rights or undivided inheritances of residential property and plots of land for construction as at 1 January of each year, are liable to the payment of AIMI.

For companies, the AIMI rate is of 0.4%. AIMI rate for real estate held by entities resident in blacklisted jurisdictions is 7.5%. Properties that benefited from IMI exemption in the previous year are excluded from AIMI taxable basis.

Taxpayers have the option of deduct the AIMI paid, limited to the fraction of the tax corresponding to the income generated by properties subject to AIMI, in the scope of lease or accommodation activities.

AIMI is due in case of owing residential property and plots of land for construction. The tax basis is the same as per IMI, i.e. the tax registration value.

Value-added tax (VAT) claw-back rules

In the case of recovery of input VAT related to the 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).

Under the VAT claw-back rules, it is also required to pay VAT back to the Revenue whenever real estate is vacant for a period of more than five years. However, in February 2018 the ECJ ruled that this rule is against the VAT Directives to the extent the taxpayer is able to demonstrate its intention to lease the property. Although the Portuguese legislation has not been changed to reflect this decision, companies can consider following such court decision.

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.

Capital gains

Capital gains realised by non-resident entities with the sale of shares in a Portuguese company whose assets are comprised in more than 50% by real estate located in Portugal, are subject to tax at 25% therein.

Are also liable to tax at 25% in Portugal the capital gains, whenever they result from the transfer of share capital or similar rights in any entity (non-resident in Portuguese territory) when, in any given time in the past 365 days, the value of those shares or rights result, directly or indirectly, in more than 50% of immovable property or rights in rem over immovable properties located in Portugal, excluding agricultural, industrial and commercial activities but not buy-sell of real estate.

It is recommended to explore structuring alternatives where you intend to sell shares in real estate companies or to reorganise your corporate structure.

Real estate investment trusts (SIGIs)

SIGIs, with tax residence and place of effective management in Portugal, are joint-stock companies (‘sociedades anónimas’) with the minimum share capital of EUR 5m.

It is possible to convert already existing real estate companies into SIGI. The conversion produces effect on the first day of tax year following the one in which the conversion occurred.

SIGIs shares must be listed on a regulated market in Portugal, in another EU member country or in an EEA member country (which as committed to administrative cooperation in tax matters similar to those in the EU), within one year following its incorporation date. In case of conversion, SIGIs shares must be listed within one year following the beginning of the year in which the conversion took place.

SIGIs have a free float requirement of 20% from the end of the 3rd year after their admission and from the 5th year onwards, this requirement increases to 25%.

SIGIs must have as main activity:
(i.) Acquisition of real estate, surface rights and/or other real estate rights for letting;
(ii.) Acquisition of shares in the capital of other SIGIs or companies resident in Portugal or in another EU member country, EEA member country, under certain conditions;
(iii.) Acquisition of units or shares in CIV, specialised in residential letting, governed by Portuguese law having similar profit distribution rules.

SIGI's portfolio must be comprised by real estate and investments in real estate entities representing at least 80% of the total assets and by real estate let or allocated to other atypical contractual forms related to the granting of the use of space in properties, which may include the provision of services, representing at least 75% of the total assets.

Both real estate assets and shareholdings above-mentioned must be held for at least 3 years from their acquisition date. Additionally, SIGI's indebtedness cannot exceed, at any time, 60% of their total assets.

SIGIs must distribute 75% of their annual profits and 90% of their annual profits that derive from dividends and other income from shares held in real estate entities.

SIGIs are subject to the same tax regime as the one applicable to regulated real estate investment vehicles (i.e. CIVs) as follows:
- Subject to CIT at 21% (no local and state surtaxes apply) and exempt on investment income, rental income and capital gains tax. Additionally, expenses related to these income categories are not deductible.
- Income from profit distributions is subject to WHT at a final 10% rate for non-resident investors and 25% and 28%, as payment on account, for resident entities and resident individuals respectively.
- Income or gains arising from distributions, share redemption and sale and purchase of shares are deemed to derive from immovable property located in Portugal, so Portugal may retain its taxing rights under DTT.

As SIGIs are subject to the tax regime applicable CIVs means that there will be no tax differentiation in the choice between these investment vehicles.
The fact that this regime allows, under certain conditions, existing joint-stock companies and certain types of real estate investment companies to convert into SIGI broadens out the opportunities for their use.

18 Romania

Exceeding borrowing cost capping rules

Interest limitation rules apply, with a cap at EUR 1m plus 30% of adjusted tax profits irrespective of whether there is a negative/positive computation base.

Moreover, the computation base (adjusted fiscal profits) is determined as revenues minus expenses recognised as per accounting rules, minus non-taxable revenues, plus the corporate income tax (CIT) expense, exceeding borrowing costs and deductible tax depreciation.

Holding legislation

Although there is no Romanian holding legislation but, specific holding tax incentives (i.e. participation exemption rules) apply in Romania.

Dividend income obtained by a Romanian holding company from a Romanian subsidiary is non-taxable (no condition). The same incentive applies if the dividend income is obtained by the same Romanian holding company from a non-resident subsidiary situated in an EU/ non-EU member country based on a Double Tax Treaty (DTT) if some holding conditions are met (e.g. minimum 10% stake held directly for at least one year).

Capital income or liquidation income derived by a Romanian holding company from the disposal of shares in a Romanian/DTT state-based subsidiary, as well as, in the case of the capital income, by a non-resident located in a state Romania has a DTT with, are also non-taxable if the above participation exemption criteria is met.

Withholding tax exemption

External payments (e.g. interest, royalties, commission fees for services rendered in Romania or for specific services irrespective of the rendering place, etc.) performed to non-resident companies are generally subject to the 16% standard withholding tax (WHT) rate, while dividends paid to non-residents are taxed at a rate of 5%.

The domestic rate (16%/5%) can be reduced based on the provisions of the EU Directives implemented into the Romanian tax legislation or the ones of DDT concluded between Romania and the residency country of the beneficiaries of the payments.

In order to apply the more favourable provision of a DTT, the non-resident deriving the income (e.g. dividend, capital gains etc.) should provide a valid tax residency certificate for the period when the income was obtained or a statement of own responsibility in the case of applying the EU law indicating that it is the beneficial owner of the income which certified that certain specific conditions are fulfilled.

The provisions of a DTT or of the EU law generally prevail over the domestic legislation, if more favourable.

General anti-abuse rule (GAAR)

There are general anti-abuse rules consisting in the substance over form principle, anti-base erosion, transfer pricing aspects, as well as mandatory exchange of information.

The substance over form rule implies that the tax authorities may disregard a transaction which does not have an economic purpose, by adjusting its tax effects, or they may reclassify the form of a transaction/activity in order to reflect its economic content. The principle also includes the definition of cross-border artificial transactions, which are excluded from the application of DTT.

The reporting obligation of DAC 6 Directive has been implemented into Romanian legislation. Intermediaries are obliged to maintain professional secrecy may only report cross-border arrangements with the relevant taxpayer's prior written consent-in the absence of this consent, they have to notify any other intermediaries/taxpayers.

The Multilateral Instrument (MLI) was developed further to Action 15 of BEPS Action Plan which supplements and 'modifies' existing bilateral or multilateral tax conventions (not override nor substitute for them). Romanian has signed the MLI and may produce effects for most DTTs concluded by Romania.

Losses carried forward

Fiscal losses accumulated starting with the fiscal year 2009 can be carried forward for seven consecutive years even in the case of company reorganisations (spin offs, mergers).

The recovery of the annual fiscal losses is made in order of their registration, at each payment term of profit tax.

Tax credits/avoidance of double taxation

Romanian taxpayers (e.g. Romanian tax residents and/or Romanian permanent establishments) that are subject to CIT both on the territory of Romania and in the foreign state with which Romania concluded a DTT (e.g. via a permanent establishment, or WHT) have the right to deduct from CIT due in Romania the CIT and/or the WHT paid abroad, if the DTT agreement provides as a method of avoidance double taxation the credit method. Specific conditions shall be met.

Tax prepayments

CIT is generally declared and paid on a quarterly basis, with annual reconciliation. The current CIT rate is 16%, but for certain businesses, such as gambling activities, nightclubs and casinos, the tax due is 5%.

Taxpayers who apply the tax prepayments system determine the quarterly advance payments in the amount of a quarter of the CIT due for the previous year updated with the consumer price index.

Accounting and fiscal period

The standard accounting and fiscal period is the calendar year. However, companies may opt for a fiscal year that is different from the calendar year, if the parent has a different year by communicating to the territorial fiscal authorities the change in the fiscal year at least 15 calendar days after the start of the amended fiscal year.

Tax incentives

Deductibility of CIT

As a result of the COVID-19 pandemic, Romania has implemented certain incentives. CIT payers, micro-enterprise income taxpayers, as well as specific taxpayers shall benefit during FY20 from a deduction of 10% applied to the quarterly payments or prepayments of the CIT if the taxpayers pay the tax at the due dates for the second and third quarters of FY20.

Deductibility related to the acquisition cost of the electronic cash register

The acquisition cost of the fiscal electronic cash register represents non-deductible expenses, but with a possibility to deduct the acquisition cost from the CIT due.

The amounts that are not deducted from the CIT, are carried forward for the next 7 consecutive years.

CIT Group

The fiscal consolidation system for CIT has been established starting 1 January 2021. A tax group may consist only of Romanian legal entities and/or persons which must be CIT payers with their registered office in Romania.

The system is optional and the ownership condition requirement to hold, directly or indirectly represents at least 75% of the value/number of participation titles or voting rights for an uninterrupted period of at least one year prior to the beginning of the consolidation. If applied, it is mandatory to be kept for at least 5 years.

One of the members is designated as the responsible legal entity that will calculate, declare, and pay the CIT for the group, with the tax determined by summing the individual calculations of each member.

Tax reductions for maintained or increased equity

Romanian entities that are CIT payers, subject of micro-company tax regime or subject to specific tax shall benefit from certain tax reductions (2%, 3% or between 5% and 10%) if a minimum level of equity is maintained or if equity is increased with a certain percentage. Thus, the taxpayers can apply the tax reduction starting with tax year 2021, until tax year 2025 and for the taxpayers having the tax year different from the calendar year until the fiscal year that ends in 2026. The implementation norms have not been yet published.

Tax incentives introduced for the real estate sector

Entities in the real estate sector with expressly mentioned NACE codes (e.g. developers, constructors, architects, etc.) and acting as employers may benefit during 1 January 2019 – 31 December 2028, from 10% income tax exemption and partial social security charges exemption in respect to minimum gross wage of RON 3,000.

Reinvested profits in certain assets (i.e. new technological equipment, computers and peripheral equipment, software etc.) that are used for business purposes is CIT exempt by following specific conditions.

Reduction of the annual tax on buildings

Taxpayers has the possibility to benefit from the reduction of the annual tax on buildings with a rate of up to 50% in respect to the non-residential buildings if during the state of emergency due to the COVID-19, the owners or users of the buildings were obliged, according to the law, to interrupt their economic activity totally or partly.

Depreciation methods for movable fixed assets

Buildings can only be depreciated using the straight-line method. Their useful lives usually vary between 40 and 60 years (i.e. depreciation rates between 2.5% and 1.66%).

Machinery can be depreciated using mainly the straight-line method, but also the reducing balance method or the accelerated method may be used. Under the accelerated method (modelled for our purposes) the depreciation in the first year is up to 50% of the acquisition costs. The straight-line method is used for the remaining 50% of the remaining useful life of the asset.

Revaluation of real estate property

Revaluations are recognised for tax purposes, unless they generate value decreases below initial recognition value Companies are required to treat part of the revaluation reserve built by revaluations as a taxable item together with each depreciation of revaluation surpluses (quarterly) or with the asset expense (if the asset is sold or written off).

Property taxes

Building tax will follow property status (residential vs. non-residential properties or mix purpose building based on specific percentages that shall be applied. For non-residential buildings, the taxpayer may revalue the property every five years by commissioning an interdependent authorised valuator. Not exercising the right to revalue the assets will result in higher taxation percentage, i.e. 5%.

Land tax is a fixed value per square meters, which is set by the local council depending on various factors (e.g. surface, type of settlement, rank, location, etc.).

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 or common control) 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.

Transfer of business	Domestic mergers, total or partial spin-offs, transfer of assets and exchange of shares are 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 CIT purposes only if a transfer of a going concern takes place, the transferor maintains at least one line of activity and shares are issued in exchange; certain specific conditions apply and must be observed.
Micro-company tax regime	The micro-enterprises tax regime is applicable if a company had a turnover of less than EUR 1m per year. Thus, the tax rate on turnover is different, depending on the number of employees (i.) 1% for companies with at least one full-time employee; and (ii.) 3% for companies with no employees. Companies may opt out of the micro-company and switch to the corporate income tax regime by increasing the share capital to at least RON 45,000 and having at least two full-time employees.
Net rental income	At an individual level, starting with 1 January 2016, the deductible expenses percentage applicable when determining the net rental income, as well as the net income from the lease of agricultural assets was increased to 40%.
VAT treatment on immovable property	Under the current Romanian VAT legislation, rental/leasing of real estate property is deemed as a VAT exempt operation without deduction right. However, the landlord/lessor has the option to apply VAT for any such operations, by way of submitting a notification for taxation to the tax authorities. The Romanian VAT legislation provides, as a rule, that the sales of plots of non-buildable land, based on the town planning certificate and of buildings qualifying as old from a VAT perspective are subject to the VAT exemption without deduction right. Thus, the VAT exemption is not applicable for building land and new buildings. Depending on their nature of the immovable and the status of the buyer, the VAT treatment applicable for the sale of immovable assets shall be exempt from VAT, taxable under the reverse charge mechanism, subject to reduced VAT rate of 5% or standard VAT rate of 19%. Real estate investors should assess the correct VAT treatment related to the supply/rental of real estate properties in order to mitigate any potential VAT issues.
VAT deduction right	Any taxable person registered for VAT purposes in Romania has the right to deduct the VAT related to its acquisitions of immovable properties, if such acquisitions are performed for the purposes of performing taxable transactions.

Input VAT adjustment for capital goods

Where the landlord/lessor does not opt to tax the rental fees/lease instalments, or to tax the sale of the immovables while the input VAT was deducted on acquisition/construction of the real estate property, VAT should be adjusted accordingly within the adjustment period of 20 years.

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

VAT transfer of business

The partial or total transfer of assets performed during a spin-off or merger is outside the scope of VAT if the beneficiary is a taxable person established in Romania. Moreover, under certain conditions, also the partial or total transfer of assets performed to a Romanian established company through a sale or contribution in kind qualifies as a VAT neutral transfer of business.

Real estate investors should review if the 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 refund

Established businesses in Romania

Although, based on the Romanian legislation VAT recovery should be made within 45 days of the date of filing the VAT return or 90 days from their submission (in case the resolution of the application requires a tax inspection), in practice the VAT refund process is a lengthy procedure (especially in Bucharest), subject to a prior tax inspection. The company can benefit from a fast VAT refund, if it achieves a low score in the risk analysis performed by the tax authorities.

Non-Romanian businesses

A company established in another EU member state could claim a refund from the Romanian tax authorities of the VAT paid for goods/services acquired in Romania, based on the 9th EU Directive (VAT refund for taxable persons established in the EU). In addition, a non-EU business will be entitled to benefit from a VAT refund, under the 13th EU Directive, for the VAT paid on goods/services purchased in Romania, provided that a reciprocity agreement would be put in place between states. The VAT refund is granted under certain conditions and if the operations performed by the company in Romania do not entail a VAT registration requirement or a fixed establishment of the company in Romania.

19 Russian Federation

Taxation of rental income

Profits earned from renting out real estate by a resident company or via a non-resident's PE are taxable at the standard corporate income tax (CIT) rate of 20% on an accrual basis.

Deductible expenses

Expenses are deducted on an accrual basis. The main criteria for deductibility of expenses is that the expense is properly documented, aimed at generating income, and not specified in the Russian Tax Code (RTC) as non-deductible for tax purposes.

Application of thin capitalisation rules to loans from foreign affiliated companies

Loans from foreign-related companies and loans guaranteed by foreign-related companies are subject to thin capitalisation rules. According to these rules, interests are deductible if the debt does not exceed the amount of equity by three times (12.5 times for banks and leasing companies).

If the debt amount exceeds this limit, excess interest will be reclassified for taxation purposes as dividends paid to foreign shareholders. Such dividends are not deductible for CIT purposes and are subject to WHT at the rate of 15% (treaty benefits may apply to reduce the rate).

At the same time, interest on loans from independent banks are exempted from the rules (provided the debt (both principal and interest) was not repaid by a foreign shareholder or its affiliates as a result of execution of a guarantee to the bank).

Depreciation

Immovable property is subject to depreciation. According to the RTC two methods of depreciation are allowed: the straight-line method and the declining-balance method. The useful life of assets for tax purposes is established in the Classification of Fixed Assets approved by the Russian Government. The useful life of real estate depends on different criteria (e.g. constructional features, materials used, functional profile of the building, etc.).

The RTC also envisages an accelerated depreciation and upfront premium for specific classes of assets.

The value of land is normally not subject to depreciation.

Capital gains

Capital gains from the sale of a real estate are subject to the same 20% CIT rate.

Capital gains of a resident company (or a PE) received from a sale of shares of Russian and/or foreign companies whose assets are represented directly or indirectly by immovable property by more than 50% is also subject to CIT at 20%.

Gains from the sale of fixed assets are equal to the difference between the sale price and their net book value for tax purposes.

Withholding tax on rent

Rental payments made by a lessee to a non-resident landlord are subject to a withholding tax at 20% unless the relevant double tax treaty (DTT) provides otherwise.

Withholding tax on interest payments	Withholding tax on interest payable by a resident borrower to a non-resident creditor is levied at the rate of 20%, unless the relevant DTT provides otherwise.
Withholding tax on dividends	Distributions of dividends made by a Russian resident company to a non-resident shareholder are generally subject to withholding tax at a rate of 15% unless the relevant DTT provides otherwise.
Interest capping rules	In Russia there are no special interest capping rules. However, deductibility of interested expenses may be limited by the application of thin capitalisation rules (as discussed above) or transfer pricing rules (as discussed below). In addition, deductibility of interest expenses may be denied by the Russian tax authorities if they find that the loan attracted is not used n income generating activity of the borrower.
Withholding tax on capital gains from direct and indirect sale of immovable property	Capital gains on sale of immovable property located in Russia is subject to WHT at 20%. Capital gains on sale of shares of Russian and foreign companies whose assets are represented directly or indirectly by Russian immovable property by more than 50% are also subject to WHT at 20%. Abovementioned tax rates can be reduced under a relevant DTT. However, the law does not provide a specific mechanism for paying this tax in Russia when all parties of a transaction are Russian non-residents. 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 Russian tax legislation does not contain an explicit obligation of self- assessing and paying the tax in such situation, however in a recent discussion with the tax authorities a view was expressed that the foreign legal entity that is a seller could tax register under a procedure established for opening bank accounts and pay the tax. The tax authorities become aware of indirect owners of Russian immovable property.
Beneficial ownership concept	The concept of beneficial ownership has been introduced in the Russian Tax Code starting from 1 January 2015. The ability to apply lower tax rates under a DTT depends on whether an entity receiving income is a beneficial owner of such income (i.e. whether it has the right to determine its economic future). To answer this question, the entity’s functions, powers, assumed risks and fact of transfer of income (fully or in part) to third entities should be considered. According to the law, a tax agent has to request a confirmation that a foreign entity is the beneficial owner of income. If the actual beneficial owner is known, the tax agent may apply the ‘look through’ approach (to use a treaty with the country where this beneficial owner resides). If the beneficial owner is located in Russia or a non-treaty country, the income paid is taxed under the RTC rules.

There is no clear test on beneficial ownership in the Russian tax legislation to be applied by tax agents, which means that Russian tax agents cannot be entirely comfortable applying reduced tax rates on income paid abroad. In making any payments, they need to consider the risk of additional tax and penalties to be paid at their own expense.

On 30 April 2020, Russia notified the on Organisation for Economic Co-operation and Development (OECD) that it had completed its national procedures for implementing the MLI for 27 DTTs, and Russia notified about completing national procedures with 7 more jurisdictions on 26 November 2020. Consequently, the MLI may become effective as early as 1 January 2021 for 27 DTTs applying to all taxes and for 7 DTTs applying only to WHT. The MLI will be applied to these 7 DTTs for all taxes from 1 January 2022.

Transfer pricing

Russian transfer pricing legislation is essentially based OECD principles, with certain important deviations. This legislation establishes criteria for related parties and controlled transactions, transfer pricing methods for determining arm's length prices/profitability, a list of permitted information sources, and compliance requirements.

Generally, the following transactions will be controlled if the income earned exceeds RUB 60m per year:

- Transactions between related parties.
- Foreign trade transactions dealing with commodities traded on global exchanges.
- Transactions with parties that are residents of 'blacklist' countries.

Transfer pricing audits will be performed by a special unit of the Federal Tax Service. Local authorities are entitled to check notification forms correctness and notify the Federal Tax Service if additional controllable transactions are identified. The penalty rate for additional transfer pricing charges is 40%.

Property tax

The maximum property tax rate is 2.2%, and regional legislative bodies have the right to reduce it. Starting from 2014 some objects of property are taxed based on a cadastral value of property in accordance with Art. 378.2 of the RTC.

Starting from 2020, the tax is calculated as follows:

- Immovable property accounted for as fixed assets is taxed based on the annual average cost in accordance with Russian GAAP.
- Certain items are taxed based on the cadastral value (the balance sheet line does not matter). The list of such items include: trade and business centres, offices (the list of properties is approved by the relevant Russian region), residential premises, construction-in-progress assets, garages, parking spaces, as well as residential buildings, garden houses, household buildings (structures) located on land plots that have been provided for personal subsidiary farming, vegetable and fruit gardening, or individual residential housing construction (if the Russian region where the property is located establishes so in its statute). The tax rate for such properties may not exceed 2%.

As a result of the state cadastral assessment of property, the cadastral value of the property objects may significantly exceed the annual average book value of such object according to the balance sheet, which might lead to significant increase of the property tax paid by the companies.

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

VAT

VAT usually applies to the value of goods, work, services, or property rights supplied in Russia. The standard VAT rate is 20%.

Provided that transfer of a real estate is subject to VAT and sale of shares is VAT exempt, there is a practice when the Russian Tax Authorities reclassified the sale of shares of a property rich company to the sale of the real estate and charged 20% VAT. In order to determine whether there are any reclassification risks for VAT purposes the details of the transaction (e.g. business purpose, duration of ownership, etc.) should be considered.

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

Corporate income tax return and tax payments

Corporate income tax (CIT) returns must be filed by the general filing deadline of three calendar months from the end of the taxable period (e.g. the calendar year).

This deadline may be extended by a further three (in specific cases by six) calendar months, based on a timely notification to the tax authority.

The tax charge due for a fiscal year is payable by the general or extended tax return filing deadline.

A company must also pay corporate income tax advances if its last known tax liability for the taxable period exceeded EUR 5,000.

We understand the challenges your company faces in its quest to meet local compliance requirements.

Tax rates

The basic CIT rate for 2021 is 21%.

A lower CIT rate of 15% may be applied for legal entities and individual entrepreneurs with taxable income (revenues) less than EUR 49,790 for taxable period.

Tax losses carried forward

A company may currently carry forward and utilise:

(i.) tax losses reported for periods starting before 1 January 2020 – equally over a period of four years following the year in which the loss arose (25% per year max), and

(ii.) tax losses reported for periods starting from 1 January 2020 – over five consecutive tax periods, up to 50% of the tax base declared in the respective tax period (specific rules applies for micro taxpayers).

If a taxpayer is not able to utilise the full portion of the tax loss available for deduction in that respective period, such unutilised part of the loss is lost for deduction permanently.

Carry back of losses is not available in the Slovak Republic.

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

Thin capitalisation

The limit for the maximum amount of tax-deductible interest and related fees on credits and loans between related parties is established as 25% of the adjusted earnings before interest costs, tax, depreciation and amortisation (EBITDA).

In general, thin capitalisation provisions do not apply to financial institutions, some real estate companies, collective investment schemes, and leasing companies. Other exceptions or restrictions may apply.

Financing structure should be properly analysed in order to avoid negative tax implications or trapped cash.

Transfer pricing (TP)	Slovakia generally follows the Transfer Pricing Guidelines from the Organisation for Economic Co-operation and Development (OECD). The Slovak TP rules apply to foreign as well as domestic related parties' transactions. For Slovak tax purposes, prices applied in the transactions between related parties should be at arm's length, i.e. at rates similar to those that would be charged between unrelated parties for the same or similar transactions under comparable conditions. Taxpayers must retain transfer pricing documentation in a specified scope. Proper transfer pricing review and planning is crucial.
Hybrid mismatches rules	Slovakia applies rules that prevent tax base reductions by using hybrid elements due to different tax treatment of, for example, financial instruments and taxable entities, particularly in a cross-border context etc. The rules apply to situations arising between a corporate taxpayer and its related parties, e.g. between a taxpayer and a subsidiary abroad, or between the permanent establishments of a taxpayer etc. Furthermore, these rules are applicable also to unrelated parties that create a structured arrangement leading to hybrid mismatches. Application of anti-hybrid rules limits tax deductibility of expenses related to hybrid mismatches (subject to certain exemption) or makes taxable previously tax exempted income. As of 1 January 2022, a regulation on the taxation of a reverse hybrid entity becomes effective. Slovak anti-hybrid rules are more complex compare to the rules established by Anti-Tax Avoidance Directive (ATAD), therefore proper analysis is crucial.
General anti-abuse rule (GAAR)	According to the Slovak tax law, the tax authorities have the right to reclassify the transaction based on its substance and not the formal view, in cases where the transaction does not have economic justification and where at least one of the reasons was to avoid tax payments, to reduce the tax base or to obtain tax advantages, which the taxpayer would otherwise not be able to obtain. The new and existing structures should be reviewed in order to assess the impact of Slovak hybrid mismatches and GAAR rules. The changes in the legislation should be monitored in order to assess the impact on the business.

Slovak source income

Slovak tax non-residents are only subject to Slovak tax on income generated in Slovakia. This may include, e.g. dividend and interest income, the rental income from, gain from disposal of real estate located in Slovakia, gain from transfer of shares in a Slovak company, fees for services provided in Slovakia or for certain services (e.g. business, technical and other advisory services, and intermediary activities), even provided without physical presence in Slovakia.

Such payments made by a Slovak entity to a foreign entity are in general subject to withholding tax (tax securement) of 19%, unless reduced under the Slovak Law/EU Directives or the applicable double tax treaty (DTT). 21%/15% CIT applies in case of non-resident capital gains from sale of Slovak company shares, unless DTT protection is available. Specific rules apply for dividends.

Payments to non-Slovak tax residents from country (i.) with which Slovakia has not concluded a DTT or tax information exchange agreement; (ii.) that is listed on the EU list of non-cooperative tax jurisdictions; (iii.) that does not apply corporate income tax; (iv.) that applies zero corporate income tax rate; or (v.) where the beneficial owner of the income cannot be proved are subject to withholding tax at 35%.

Taxpayers need to consider the complexity of legislative norms on their investment structures, including Slovakia.

Business combinations

There are following alternatives for the business combinations:
- sale of business as a going concern;
- contribution of the business going concern to share capital;
- sale of individual assets and liabilities; contribution of individual assets to share capital; Mergers and demergers.

The tax related impact would depend on the actual facts or circumstances.

The effectiveness of each option depends on the situations in hands. Therefore, a detailed analysis is required to choose the best option.

Exit

The exit tax applies to income when taxpayers (Slovak tax residents and non-residents with a permanent establishment (PE) in Slovakia) transfer outside of Slovakia:
- individual property (transfer carried out by a tax resident from their headquarters in Slovakia to a PE in another country, or by a tax non-resident from their PE in Slovakia to their headquarters of a PE in another country);
- business activities (transfer carried out by a tax resident to another country or by a tax non-resident from their PE in Slovakia to another country);
- tax residence (tax resident is no longer Slovak tax resident).

The tax is calculated by applying a 21% tax rate to a specific positive tax base calculated based on Slovak tax law.

The impact of the future exit options in the light of the exit tax should be considered in respect with the long-term planning.

DAC 6

Slovakia has implemented provisions of the EU Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 6) into its local law, imposing reporting obligation on intermediaries or clients (e.g. in case intermediaries are subject to professional privilege) in respect to the cross-border reportable arrangement – i.e. arrangements involving more than one member country or a member country and a third country.

The cross-border arrangement is to be reportable, provided at least one of the hallmarks (generic or specific) from the list set by the act is met. Some of the hallmarks are also subject to the main benefit test (i.e. where tax benefit was the main or one of the main aims of cross-border arrangement).

The specific conditions set by the law should be checked on case by case basis to confirm the related reporting obligations.

Real estate related taxes/levies

Slovakia levies a real estate tax on companies and individuals owning land, buildings, flats or apartments, and non-residential premises in residential buildings, such as blocks of flats or apartments.

In addition, the municipality may establish in its territory or part of cadastral area a local one-off development fee. The development fee may vary from EUR 3 to EUR 35 per each square meter of ground space occupied by the finished building.

Budget for additional payments in relation to real estate should be considered.

VAT considerations

Various specifics apply in relation to transactions with immovable properties (real estate) located in Slovakia – these could be either subject to VAT at a 20% rate or VAT exempt, without recovery of input VAT on acquisition or with an obligation to proportionally return claimed input VAT on acquisition.

Conditions are very complex and vary based on specifics information related to each asset, a detailed analysis is recommended.

21 Spain

Corporate income tax (CIT)

According to the Spanish CIT Act the standard tax rate is 25%.

Other rules such as the disallowance of real estate impairments, the definition of mere holding entities, the domestic-participation exemption regime, the restrictions on the utilisation of carry-forward tax losses, financial expenses capping-rule, etc. may be relevant for real estate investors.

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

To be noted that the Spanish 2021 State Budget Law has shifted from a full domestic participation exemption regime to a 95% cap on domestic participation exemption for dividends and capital gains derived from the transfer of shares (foreign and domestic, including a Spanish tax group) for fiscal years starting after 1 January 2021. This would result in 1.25% effective tax for companies subject to the standard 25% CIT rate.

As well, new anti-hybrid rules have come into force with effects from FY21 onwards.

It is recommended to analyse the impact that these rules may have in the investors' structures as well as the guidelines provided by the tax authorities.

CIT payments on account

According to CIT payments on account rules, the rate for payments on account for companies with a turnover of EUR 10m or over is 24% and a minimum payment on account rate of 23% of accounting profits is applicable for companies which exceed this threshold.

We highly recommend planning when to carry out operations which generate tax-exempt income (distributions of dividends, sales of shares, etc.) as payments on account are made over these types of income.

Domestic withholding tax rate

Domestic withholding taxes applicable is 19%. It 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, the following general restrictions to the use of tax losses must be considered:
- Companies with a turnover below EUR 20m during the previous 12 months should be entitled to offset 70% of the taxable profits.
- Companies with a turnover of EUR 20m or more but below EUR 60m during the previous 12 months should only be entitled to offset 50% of the taxable profits.
- Companies with a turnover of at least EUR 60m during the previous 12 months should only be entitled to offset 25% of the taxable profits.
- EUR 1m of losses will be compensated in any event.

These limits would not be applicable in the period in which the company is wound up.

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.

In addition, it must be noted that tax form No 232 must be filed to declare transactions carried out between related parties.

This tax form must be filed during the month following the ten months after the end of the tax period which the information to be provided refers to. That is, for fiscal years ending 31 December 2020 the tax return should be filed between 1 November and 30 November 2021.

Prepare a transfer pricing study covering the relevant transactions carried out with related parties in the period in accordance with the applicable regulations. File the tax form No 232 in November.

Country-by-country report (CbCR)

From 2016 certain entities are required to file a country-by-country report (CbCR). The report should be filed electronically and must contain aggregate information in euros relating to the tax year of the controlling company of the group and with respect to each country or jurisdiction in which the group operated.

This CbCR must be filed electronically through the tax form No 231 within 12 months of the end of every tax period. Note that, unlike the master file and local file that will need to be 'at the disposal' of the tax administration, the CbCR has to be filed every year.

We recommend analysing if the CbCR obligation is applicable and prepare the relevant report, if necessary, 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, dividends and management fees.

On the other hand, withholding tax exemptions based on the EU residence of the payment's recipients should be reviewed from a beneficial owner perspective, considering the most recent EU and Spanish case law at this respect.

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 three-year ban to be imposed.

To be noted that the SOCIMI regime has been recently amended. From 2021 onwards, profits obtained in the year that are not distributed will be subject to 15% special tax, insofar as they derive from income that has been taxed at 0% rate.

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

Value-added tax (VAT)

Large companies (whose turnover for the prior year will have exceeded EUR 6m) and any other companies which file monthly VAT returns are required to provide their invoicing records and VAT books for issued and received invoices to the Spanish tax authorities in real time.

It must be noted that this obligation, which implies that companies will need to adapt their accounting and invoicing systems, accordingly, has multiplied the information, which the Spanish tax authorities have access to.

Tax on the increase in value of urban land

The sale of urban lands is subject to the Tax on the increase in value of urban land (TIVUL). The taxable income is the deemed increase of value of urban land generated during the years of possession of the urban land. The taxpayer will be the seller.

The taxable quota is calculated on the cadastral value of the land applying the coefficients and rates applicable in the municipality where the asset is located. This tax is deductible for CIT purposes.

The Spanish Constitutional Court, in a judgement dated 11 May 2017, ruled the unconstitutionality of the TIVUL tax base calculation method. Thus, no IVULT should arise in case of a loss-making disposal.

Based on the latest judgement from the Spanish Supreme Court, dated 9 July 2018, the IVULT would be due unless the taxpayer is able to prove that the disposal has been done in a loss position. The reason behind this argument is that the Spanish Supreme Court understands that the unconstitutional character of the Law regulating the IVULT is only partial, thus, it would be unconstitutional only if the IVULT is levied on transfers or disposals in which there are no actual increase of the land's value.

Similarly, the Spanish Constitutional Court ruled on 31 October 2019 that it is unconstitutional the law regulating the IVULT not only in the afore scenario, but as well in those cases in which, even existing a profit, the IVULT due by the taxpayer absorbs almost all of the profit or even exceed it. Moreover, the Spanish Constitutional Court determines that taxpayers may claim a refund in those cases previous to the referred ruling provided that the refund claimed is not res judicata.

New measures approved in 2021

Business Activity Tax (BAT):
Is an annual tax payable depending on the specific business activity carried out. The turnover of the company may be relevant for exemption purposes. Indeed, entities with a turnover of less than one million euros are exempted from BAT purposes. As per an amendment of the Spanish regulation, as of 2022, it would be considered the turnover of the group companies regardless of the accounting consolidation obligation.

Real Estate Transfer Tax (RETT) and Stamp Duty:
A new value to be determined by the Tax Administration will be considered for the calculation of the taxable base in real estate transactions for RETT and Stamp Duty purposes (so-called 'reference value'). In this regard, as of 2022, said value will be considered as the minimum value for tax purposes in case that the price agreed in the transaction would be lower.

Review of the BAT position for Spanish companies belonging to a corporate group is advisable. Likewise, we recommend to monitor the future assignment of the reference value for the properties located in Spain.

22 Sweden

Changes to the corporate tax rate

The corporate tax rate has been decreased from 21.4% to 20.6% with effect from 1 January 2021.

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 on real property are to be deducted, ensure that capital gains on real property exist in the same fiscal year. Carry forward possibilities do exist.

Group taxation

To benefit from Swedish group consolidation for tax purposes, the companies giving and receiving the group contribution must have been part 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 contributions 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. As group contributions need to be recognised in the accounts, make sure to discuss the possibilities before closing the accounts.

Tax losses carried forward

Mergers and acquisitions which imply a change of control (even if the indirect ownership does not change) over a company can limit the possibility to utilise tax losses carried forward in the following years. Tax losses from the year before the change of control may be forfeited and/or restricted in time. Exemptions may apply in case the companies were part of the same group before as well as after the acquisition or reorganisation. There is legislative proposal suggesting an implementation of a tax evasion regulation to have effect from 11 June 2021 in relation to the acquisition of a company with tax losses carried forward, i.e. if it is acquired for the tax losses the tax losses carried forward should be forfeited.

Verify if any limitations are applicable in the specific case and be cautious in cases where tax losses carried forward are utilised against group contributions received.

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 (government bond yield) is normally between 2% and 5%, but since 2014 the governmental bond yield has been below 1%. However, for financial years starting after 31 December 2016, the government bond yield can never be lower than 0.5% for the purpose of this calculation. Lastly, because of the corporate tax rate being lowered in two stages (to 21.4% in FY 2019 and 20.6% in FY 2021), a tax allocation reserve reversed in a year with a lower tax rate than when it was offset, must be increased in order to have a tax impact correlating to the tax rate when it was offset.

Cash flow models and profit forecasts should be checked to assess the situation. As tax allocation reserves must be recognised in the accounts, make sure to discuss the possibilities before closing the accounts. Any reversals in FY 2020, attributable to reserves made before FY 2019, must be increased to 103% of the nominal amount.

Capitalisation of investments

Investments made on a property can be allocated to either e.g. building, building equipment or land improvements. Depending on the classification, the depreciation rate varies quite significantly. In addition to this, there is a possibility to in some cases deduct the entire investment cost directly for tax purposes should the investment be considered as a tenant improvement for tax purposes. Given this, there is often an opportunity to identify what the investment cost relates to in order to obtain a correct and faster depreciation plan than what would have been the case should investments only be capitalised as building. Part of this area does not need to comply with the accounting why it can be very beneficial to analyse the possibility to directly deduct the cost for tax purposes when the investments are capitalised in the accounts.

A so-called primary deduction has been implemented for all rental buildings (residential and commercial) for costs incurred in new construction, in making additions to existing buildings and in the reconstruction of buildings. For these costs, depreciations can be made with an additional 12% in total during the first six years from the time the construction work was completed. If a rental building is acquired by way of an asset deal within six years from completion, the purchaser shall make a primary deduction for the remaining part of the six-year period, which is then calculated based on the acquisition cost. However, it will only be possible to acquire the right to primary deduction for cost incurred in new constructions and not cost attributable to additions or reconstructions of existing rental buildings.

The Government is expected to adopt a new bill allowing for a tax reduction for investments in equipment acquired during the calendar year 2021. The reduction corresponds to 3.9% of the acquisition value of the acquired and/or finalised equipment. Thus, it is recommended to carefully evaluate any investments made/finalised as per 31 December 2021 to be able to benefit from the tax reduction.

Consider carefully what kind of investments that have been made and what asset types the investment should relate to and corresponding depreciation and deductions that are made available.

Limitation of interest deduction

Sweden has two interest deduction limitation rules:
(i.) A strict deductibility limitation on interest expenses on loans to affiliated companies but with explicit exemption (the 'Targeted Rule').
(ii.) A general rule for so-called negative net interest (the 'General Rule').

According to the Targeted Rule interest expenses to a group company are only deductible under certain circumstances relating to the final recipient of the interest. The general interest deduction limitation rule is applicable on both internal and external loans and the right to deduct any negative net interest will be based on a so-called EBITDA rule or a simplification ('Safe Harbour') rule.

The EBITDA rule means that a company's negative net interest is deductible up to 30% of the tax adjusted EBITDA result. The negative net interest exceeding 30% of the taxable EBITDA is reversed and taxed with a flat tax rate of 21.4%. The Safe Harbour rule, states that it will be possible to deduct negative net interest up to a maximum of SEK 5m. For affiliated companies the total deductions for negative net interest may not exceed SEK 5m if any of the companies makes use of this rule.

To be able to optimise the interest deductions, the company's interest deduction situation should be reviewed before the closing of the accounts. The tax optimisation should be coordinated together with the review of tax losses carried forward, depreciation etc.

Anti-Tax Avoidance Directive II (ATAD II)

Sweden has implemented ATAD II as 1 January 2020, however the implementation of reversed hybrid mismatches was implemented from 1 July 2021. The rules apply to interest deductions as well as deductions of other expenditures. In general, the rules are to cover situations/transactions between affiliated parties, but the rules may also under certain conditions be applicable in other cases where a tax benefit arises. The rules take aim on the following situations:
- Hybrid financial instrument rule
- Hybrid payer rule
- Reverse hybrid rule.

Apart from the above, there are new rules regarding the following areas:
- Disregarded branch structure rule, diverted branch payment rule, deemed branch payment rule
- Imported mismatch rule
- Rules regarding double deductions
- Reversed hybrid mismatches

It should be noted that Sweden has in principle did not extend the scope of the directive in its implementation of ATAD II.

Before the end of the year, carefully assess whether ATAD II are applicable on situations/transactions.

23 The Netherlands

Statutory corporate income tax (CIT) rates

The (highest bracket) CIT rate is to be increased to 25.8% per 1 January 2022. The threshold for the lower bracket is increased from EUR 245,000 to EUR 395,000. The rate for profits up to this threshold remains 15%.

Landlord levy tax rate

Currently, landlords renting out more than 50 residential properties in the "regulated" sector (sociale huur) are subject to the "landlord levy". This levy amounts to a percentage of the value of the residential properties, the value of which is determined annually by the municipality where the residential property is situated (WOZ value). The landlord levy is reduced by 0.042% to 0.485%.

Losses carried forward to be limited in amount

The rules for carry forward and carry back of (tax) losses are amended for the financial years starting on or after 1 January 2022. Under the new rules, the use of carryforwards will no longer be limited in time (currently six years), but will be limited in any given year to:
- EUR 1m; and
- 50% of the taxable profits exceeding EUR 1m.

Introduction of CIT liability for reverse hybrid entities

As of 1 January 2022, a CIT liability is proposed to be introduced for reverse hybrid entities. The introduction of this measure stems from the EU Anti-Tax Avoidance Directive (ATAD II). This Directive prescribes that member states must introduce a tax liability for certain tax-transparent partnerships. The measure aims to further prevent hybrid mismatches that are the result of a difference in the qualification of partnerships that are transparent from a Dutch, but non-transparent from a foreign tax perspective (such as limited partnerships in the so-called CV-BV schemes).

The proposed measure applies to CIT, dividend withholding tax, conditional withholding tax on interest and royalty payments, income tax (foreign tax liability) and the Dutch General Law on Taxation (AWR). The date of entry into force of the proposed measure is 1 January 2022. There is no grandfathering rule.

Preventing mismatches when applying the arm's length principle

On 21 September 2021, the Dutch Government published the previously announced bill preventing mismatches when applying the arm's length principle. This principle must ensure that taxable profits are at arm's length. The purpose of the bill is to eliminate mismatches in taxation that arise due to the application of the at arm's length principle, for instance in the case of informal capital structures or deemed profit distributions. Since not all countries apply the arm's length principle (in the same way), this can lead to a part of the profits of a multinational company remaining untaxed.

Amendment earning stripping measure

Currently, interest deduction is limited where the net interest amount exceeds 30% of the tax EBITDA of the entity or a threshold of €1 million, whichever is highest.

Per 1 January 2022, this rule will be tightened by lowering the 30% to 20% of the EBITDA. The current threshold of EUR 1m is maintained, but under discussion. Developments are to be monitored.

Conditional withholding tax on interest and royalties to be expanded to (passive) Dutch real estate held by non-resident entities

Last year, a conditional withholding tax on interest and royalty payments was introduced to affiliated entities in:
- countries that do not tax profits or tax profits at a statutory rate of less than 9%;
- countries on the EU list of non-cooperative jurisdictions; or
- in tax abuse situations (including detailed anti-hybrid rules).

The withholding tax rate is equal to the highest CIT rate, i.e. 25.8% per 1 January 2022.

A proposal has been announced to include non-resident entities with Dutch real estate in the scope of the conditional withholding on interest and royalty payments as of 1 January 2022 with respect to interest and fees on loans attributable to Dutch real estate. This means that also if a non-resident entity (such as a Luxembourg S.à r.l.) holding (passively) leased out Dutch real estate may fall within the scope of the withholding tax. Interest payments to the affiliated entities in designated low-tax jurisdictions or in cases of abuse fall under the conditional withholding tax.

Adjustment for offsetting withholding taxes with CIT

As of 1 January 2022, the offsetting of dividend withholding tax and gambling tax against CIT due is limited. Under current rules, dividend withholding tax and gambling tax exceeding the amount of CIT due is refunded to Dutch taxpayers. Under the proposed rules, there will be no longer such refund. However. Excess amounts of dividend withholding tax and gambling tax may be carried forward for offsetting in subsequent years without any time limit. Detailed rules are to be proposed for specific circumstances, such as when an entity with such excess refund enters or leaves a fiscal unity.

Environmental Investment deduction

There are three categories within the Environmental Investment deduction, each having a specific percentage for deduction. These percentages will be increased from 13,5%, 27% and 36% to 27%, 36% and 45%.

This results in a maximum net benefit of 14%. The highest percentage is applied to investments in assets that contribute most to the priorities set in the relevant policy, such a circular economy and electrification.

Dividend exit tax for companies

Last year, a tax bill was proposed to counter the loss of a Dutch dividend withholding claim, which may occur when companies/head offices are relocated from the Netherlands to certain other jurisdictions. This bill aims to discourage companies that are considering relocating their headquarters to jurisdictions that provide for a step up on arrival, such that the latent WHT claim does not remain present.

Initially, the bill included a retroactive effect, however, the proposal has now been amended and such retroactive effect has been excluded.

Note that the bill will become law provided that both the House of Parliament and the Senate agree to it. During the parliamentary process, adjustments to the bill may be made. Developments therefore should be closely monitored.

Ongoing developments

The described measures are part of a set of proposals published on Budget Day (21 September 2021), which are currently being discussed in parliament and may, as a result, be amended or expanded.

24 Turkey

Corporate tax

Resident companies in Turkey are subject to corporation tax on their worldwide income. The standard corporate tax rate is 20%. However, the corporate income tax rate is 25% for FY21 and 23% for FY22. Corporate income tax law 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, 50% of capital gains derived from the sale of property or 75% of 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 such tax-exemptions, and that corporate income tax law 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 international and/or domestic related-party transactions. Furthermore, OECD's Base Erosion and Profit Shifting Action Plan ('BEPS Action Plan') documentation requirements are introduced with the new Decree on 25 February 2020. The recommended three-layered documentation model outlined in BEPS Action 13 is being integrated to the Turkish transfer pricing regulations. Accordingly, master file preparation, annual transfer pricing report preparation and country-by-country report (CbCR) filing, which is to be submitted electronically, are applicable for entities operating in Turkey, along with notification submissions to the tax authorities.

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. For loans received from related party banks or financial institutions that provide lending also to third parties, the debt/equity ratio will be considered 1/6 instead of 1/3. The shareholders' equity represents the total shareholders' equity at the beginning of the given fiscal year.

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

Controlled foreign company (CFC)	Corporations that are established abroad and are at least 50% controlled directly or indirectly by tax resident companies are considered controlled foreign companies when certain requirements are met, such as 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. 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.
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.
Bad debts	Account receivable whose collection is no longer possible, based either upon a judicial decision or upon other substantiated documents can be considered as bad debt. The bad debt amount can be regarded as an expense item in the related period. Furthermore, the legislation provides for VAT relief for uncollectable receivables that become worthless in accordance with the above-mentioned regulation. It should be determined whether bad debt amounts, and VAT claim meet the conditions for the application of the above-mentioned regulations.

Value-added tax (VAT) rate for the residential units

The determination of the VAT rate to be applied (1%, 8% 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, sqm of the house, etc.

Furthermore, the VAT Law provides VAT exemptions for deliveries to non-resident individuals with valid work and residence permits, as well as Turkish citizens who work abroad for more than six months. This exemption is applicable for the first sale of new buildings built as residences or workplaces. Additionally, foreign currency should be brought to Turkey for this purpose. Please also note that there are other certain conditions to be fulfilled for the application of the exemption.

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

Title deed fee

Title deed fee is calculated according to the 'Fee Law' for the transactions concluded at the title deed registry such as property buying/selling, registration of rental contract, annotations of any transaction made at registry etc. At the time of acquisition, title deed fee at the rate of 2% is applicable over the sales price for buyer and seller separately.

Fee has to be paid to the tax office before the transaction made at the registrar.

Stamp tax

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Agreement that states a monetary value is subject to stamp tax at a general rate of 0.948%. Lease contracts are subject to stamp tax at a rate of 0.189% of the rental amount.

Stamp duty rate to be applied on several agreements, which are specifically related to the real estate industry, has been reduced to 0% (zero) in 2017; such as officially drafted construction agreements on flat for land basis or revenue sharing, construction and contracting agreements drafted among building contractors and sub-contractors within the scope of officially drafted construction agreements on flat for land basis or revenue sharing etc.

Stamp tax is capped at TRY 3,534,679.90 (approximately EUR 358,910 under the current foreign exchange rate, subject to annual revaluation) for the year 2021. All signatory parties are jointly held liable for the stamp tax payment.

Resource utilisation support fund (RUSF) rates

RUSF rates are 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.
- 1% on the interest amount if the average maturity period of the foreign loan denominated in Turkish Liras does not exceed one year.
- 0% on the interest amount if the average maturity period of the foreign loan denominated in Turkish Liras which is over one year.

Deductibility of finance expenses

As per the concerned rule the limitation on financial expenses applies only in situations where the amount of external financing of the taxpayer exceeds the taxpayer's equity. The non-deductible portion of the financial expenses is capped at 10%. Credit institutions, financial institutions, financial leasing companies, factoring companies and financing companies are excluded from the application of financial expense restriction. Restrictions shall not apply to interest rates and similar payments added to investment costs.

The concerned 10% portion will be treated as a non-deductible expense starting from 1 January 2021.

Deemed interest deduction on cash injection as capital

According to the arrangement (effective on 1 July 2015) 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% (re-determined between 0% – 100% for various situations) 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.

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.

Tax reduction for compliant taxpayers

Income Tax Law numbered 193 had been re-arranged to provide 5% discount for eligible taxpayers who are consistent in filing their tax returns on time and have no outstanding tax liability. The discount will be 5% of corporate income tax (income tax for individuals) liability declared on the annual tax return (the discount cannot exceed TRY 1,5m for FY 2021).

Taxpayers should pay attention to the utilisation of this tax reduction opportunity during the CIT declaration process.

Revaluation of immovable properties and other depreciable assets

The revaluation option is intended to address and partially correct distortions in taxpayers' financial statements caused by inflation. Under this new provision, Turkish taxpayers are given the option to update the tax base of their immovable property and other depreciable assets and to enjoy a higher amortisation deduction for the remaining useful life of the asset. In addition, revaluation reduces the capital gains tax when revalued assets are sold.

The revaluation program leads companies to bring the value of their assets to real value by paying 2% tax over the increased amount. The deadline for the program is 31 December 2021.

Declaration of Ultimate Beneficial Ownership (UBO)

The availability of beneficial owner information, i.e. the natural person behind a legal entity or arrangement, is a key requirement of tax transparency and the fight against tax evasion and other financial crimes.

As per the legislation the ultimate beneficial owner for legal entities:
- Individuals owning more than 25% of the legal entity.
- Individuals who have ultimate control of the legal entity, if the individuals holding more than 25% of the legal entity are suspected of not being the beneficial owner or if there is no individual holding 25% of the legal entity.
- Individuals with the highest level of executive power (i.e. the general manager), if the beneficial owner cannot be determined as above.

For entities without legal status:
- Individuals with ultimate control.
- Individuals with the highest level of executive power if the beneficial owner cannot be determined.

For trusts:
- Founders, trustees and those who have the title of directors, auditors or beneficiaries or those who have influence over these institutions.

Corporate taxpayers will declare their UBO information in their advance tax returns and annual corporate tax returns. The first UBO declarations should have been made by the end of August 2021.

25 Ukraine

General

In general, the ownership of real estate is governed by Ukraine Civil Code, Ukraine Land Code, Ukraine Commercial Code, Law of Ukraine on the State Registry of Property Rights, etc.

Ownership rights to real estate are subject to state registration. The long-term (more than three years) lease of real estate, other than land, is subject to notarisation and state registration.

The legal effect of land transfer (ownership, lease) occurs only after such transfer and state registration.

Under Ukrainian law, no special permits or licences are generally required for a foreign investor to purchase buildings (premises) located in Ukraine.

Real estate (other than land) ownership

Special procedures, however, can be applied to certain categories of real estate (i.e. cultural heritage objects, integral property complexes, etc.).

A foreign corporate or individual investor may acquire real estate either directly or via a local company.

Non-agricultural land ownership

Real estate (land) ownership

The Ukrainian Government recently adopted a new land reform law effective 1 July 2021, easing the ban on the sale of certain types of agricultural land, although with certain limitations (for more information please see below).

Foreign individuals and companies may acquire only non-agricultural land within the territory of settlements or outside the territory of settlements where the land is attached to real estate.

Non-residents can lease the land for up to 50 years (including agricultural lands).

Ukrainian companies with 100% foreign ownership may not purchase land in Ukraine.

Generally, a foreign legal entity may purchase state non-agricultural land subject to a resolution of the Cabinet of Ministers of Ukraine and consent of the Ukrainian Parliament. A foreign legal entity may also purchase municipal non-agricultural land from a relevant municipal council, subject to the consent of the Cabinet of Ministers of Ukraine. To purchase state or municipal non-agricultural land, the foreign entity must set up a commercial representative office in the Ukraine.

As a general rule, state and municipal non-agricultural land should be sold or leased via a public land auction. There are certain exceptions to the mandatory land auction rule: The acquisition of land plots under objects of immovable property owned by companies and individuals, as well as the acquisition of land plots for the construction and maintenance of transport and energy infrastructure (e.g. roads, airports), the construction of social housing, objects that serve the municipality (e.g. waste processing plants, heating stations, etc.), the comprehensive reconstruction of old residential districts and some other cases.

These restrictions apply to foreign individuals and foreign companies.

Agricultural land ownership

According to the effective Ukrainian law, foreigners (foreign citizens, stateless persons, foreign companies, or foreign states) may not own agricultural land in Ukraine.

According to the Law of Ukraine 'On making amendments to some legislative acts of Ukraine concerning the market of agricultural land' the land market opened on 1 July 2021.

The key points of this law, inter alia, are as follows:
- Ukrainian citizens can purchase land plots of no more than 100 hectares starting from 1 July 2021.
- Legal entities can purchase land plots of no more than 10,000 hectares starting from 1 January 2024.
- Ukrainian legal entities with foreign owners will get the right to purchase land plots in Ukraine if the relevant decision is adopted by a nationwide referendum.
- Banks (including foreign banks) can purchase agricultural land plots only in case of a foreclosure on them as collateral.
- Such land plots must be sold by banks in public bids within two years.
- The sale of state and municipal lands is prohibited.
- Payment for the acquisition of land can be made only in non-cash form.

Leasing out of real estate

According to the provisions of the Ukrainian tax legislation, a foreign individual should appoint a Ukrainian legal entity or a private entrepreneur to act as its tax agent in order to be able to lease out real estate.

Though, there are no similar restrictions for foreign corporate investors, but the tax authorities expressed the view that non-resident entities may lease out the real property only through their permanent establishment (PE) or an authorised property manager.

Taking real estate on lease

There are no restrictions for foreigners (both individuals and companies) to take buildings (structures) on lease.

Taxation of rental income

Where the foreign resident receives rental income from a Ukrainian resident or a PE of a non-resident, the lessee is obliged to withhold from the rental fee and remit to the state 15% WHT, unless the relevant double tax treaty (DTT) provides otherwise.

Profits earned from renting out real estate by a resident company or a PE of a non-resident are taxable at the standard CIT rate of 18%.

Deductible expenses

The Tax Code determines taxable profits as net profits before tax (NPBT) as per accounting records, either Ukrainian statutory or IFRS, and adjusted for 'tax differences'. Some of these 'tax differences' make certain expenses non-deductible or partially deductible.

Taxpayers whose prior year annual income equals to or less than 40m Ukrainian hryvnia (UAH), approx. USD 1.4m, may opt out of making the adjustments, i.e. all their expenses remain deductible.

Interest

Generally, interest is a deductible expense under accounting rules, either Ukrainian statutory or IFRS. However, in certain cases, interest deductibility may be limited due to thin capitalisation rules (see section 'Thin capitalisation' below).

15% WHT on interest payable by a domestic borrower to a non-resident creditor is applied, unless the relevant DTT provides otherwise.

To claim the decreased WHT rate, the recipient of interest should be proved to be a beneficial ownership of such income and the transaction should comply principal purpose test.

Also, look-through approach could be applied, i.e. if the direct recipient of Ukrainian-sourced income is not the beneficial owner, the reduced rate under the DTT with the jurisdiction of the beneficial owner may be applied.

Thin capitalisation

Ukrainian thin capitalisation rules apply to companies whose debts to non-residents exceed equity by 3.5 times. The deduction of interest expense on loans from non-residents is limited to 30% of the corporate income tax base (excluding tax losses carried-forward from previous periods) increased for the amount of financial expenses under accounting rules and tax depreciation.

The 'thin capitalisation' rules do not apply to financial institutions, companies engaged exclusively in leasing activities and loans from foreign banks.

Depreciation

According to the Tax Code, tax depreciation rules are aligned to financial accounting rules with some modifications. In particular, the Tax Code sets a minimum period for the useful life per class of the fixed assets for tax purposes (e.g. for the buildings – 20 years).

Loss carry forward

Ukrainian tax legislation provides for tax losses to be carried forward indefinitely with no limitations.

Withholding tax on dividends

The payment of dividends to non-resident shareholders is subject to a WHT at the rate of 15%, unless the relevant DTT provides otherwise.

Value-added tax (VAT)

The supply of buildings or premises is subject to 20% VAT. A VAT exemption applies to second and subsequent supplies of housing. The supply of land is exempt from VAT except where the value of the land is included in the value of the real estate.

The lease of privately owned buildings, premises and land is subject to 20% VAT. The lease of state-owned land & premises of state-owned enterprises is exempt from VAT, if the lease payments are paid to state or local budgets.

Capital gains on the sale of property

Profits from the sale of the real estate should be recognised according to financial accounting rules, either Ukrainian statutory or IFRS, and taxed at the standard CIT rate of 18%.

Capital gains of a non-resident company from the sale of real estate located in Ukraine is subject to 15% WHT. Some DTT concluded by Ukraine limit Ukraine's taxing rights to capital gains in such transactions.

The direct and indirect sale of shares of a Ukrainian entity owning the real estate is subject to 15% WHT under certain conditions and most of the DTT do not provide any exemption from WHT for such a case. The WHT is applicable if:

- The shares of a foreign company, at any time in the 365 days preceding the alienation of shares, derive more than 50% of their value from shares in a Ukrainian company, which is owned directly or indirectly by such a foreign company.
- The shares of an Ukrainian company, at any time in the 365 days preceding the alienation of shares, derive more than 50% of their value from immovable property, which is owned or used by an Ukrainian company under the long-term lease, financial lease, etc.

Personal income tax (PIT)

The income received from the disposal of a house, a flat, a cottage (including attached land), or a plot of land within the limits set by Ukraine's Land Code, if it is the first disposal for a year and the asset was in the individual's possession for more than three years, is non-taxable for both Ukrainian tax residents and (arguably) tax non-residents.

Income received from the second and consecutive sales of the above objects, or any sale of a different asset is taxed at 5% PIT plus 1.5% military tax for Ukrainian tax residents and at 18% PIT plus 1.5% military tax for Ukrainian tax non-residents. The above tax rates apply only to property located in Ukraine.

Rental income received by an individual is subject to PIT at the standard 18% tax rate plus 1.5% military tax. The taxable income is determined, based on contractual fee, but should not be lower than the specific minimum rental fee. Deduction of expenses is not allowed.

The income received by Ukrainian tax residents from sales of immovable property located abroad is subject to a standard 18% rate plus 1.5% military tax. For personal income tax purposes, income from disposal of immovable property cannot be lower than the 'valuation price. The valuation certificate must be provided to the notary.

Real estate transfer tax (RETT)

The transfer of real estate is subject to stamp duty at the rate of 1% of the contract value. For the buyer the purchase of real estate (except for land plots) is subject to a state pension fund charge at the rate of 1% of the real estate value.

Land payments

The Civil Code requires the mandatory notarisation of contracts for the lease of buildings/premises for a period longer than three years. The contract for the lease of land should be notarised.

The sale of shares in a Ukrainian company is not subject to stamp duty or any other transfer taxes.

The land tax is paid by either owners or lessees of land plots. In case of lessees, the land payment is levied in the form of rental payments for land use and land tax.

In all other cases, the rate of a land tax is up to 5% of normative monetary valuation of the land plot adjusted by an indexation rate. If there is no normative valuation of the land plot the taxpayer should apply the normative valuation of the square meter of land in the respective region.

The rate of land payment for landowners is set by local councils and it may vary from 0.3% to 12%. If the lessee is selected on competitive grounds, the tax (rent) rate may exceed 12%.

Real estate tax (RET)

All owners of real property in Ukraine are subject to local real estate tax (RET). The tax base is determined based on the total area of the real estate asset. Some types of property are exempt from RET. The RET rate is set by the local council, but generally cannot exceed 1.5% of the minimal salary per sqm. For 2021, the maximum is UAH 90 per sqm (approximately USD 3.3 per sqm). RET paid by legal entities is a tax-deductible expense for CIT purposes.

If the taxpayer owns one or more residential property objects with a total area of an asset more than 300 sqm (for an apartment) or 500 sqm (for a house), the tax amount increases by UAH 25,000 (approximately USD 925) per year for each such asset.

26 United Kingdom

Due to the system of taxation in the UK that has applied to non-resident landlords holding UK property as investment, there has not historically been a specific focus on the accounting year end as a key time to consider tax issues.

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

Since 6 April 2020 however, non-UK resident companies have been within the charge to corporation tax on UK property rental income, and the period of assessment under corporation tax will usually be the same as the company's accounting period.

For accounting periods straddling 6 April 2020, the first period of assessment for corporation tax commenced on 6 April 2020. Consequently, it is important that the following issues are considered in relation to existing investments in UK real estate on at least an annual basis.

The main rate of corporation tax is currently 19%, but it was announced in March 2021 that the rate will increase to 25% on profits over GBP 250,000 from 19 April 2023.

Taxation of rental income

Non-residents who receive rental income from direct investments in UK real estate have previously been subject to UK tax under the income tax regime at basic rate UK income tax at 20% on net income from the rental business (either through withholding or by direct assessment).

Since 6 April 2020 however, non-UK resident companies have been within the charge to corporation tax on UK property rental income although withholding at the basic rate of income tax may still apply.

Apart from the differences in the tax rates which apply (19% corporation tax from April 2020 rather than 20% income tax), there are differences in the way taxable profits are calculated depending on whether the profits are subject to corporation tax or income tax. As a consequence of bringing non-UK tax resident companies within the charge to corporation tax there are, amongst other things, additional restrictions on the deductibility of interest, deductions related to hybrid mismatches and restrictions on the amount of losses brought forward from earlier periods that can be offset.

The hybrid mismatch rules which implement the OECD BEPS Action 2 proposals can deny relief for any payments to hybrid entities, and to payments in respect of hybrid instruments.

The loss restriction limits to 50% the amount of profit against which brought forward losses in excess of GBP 5m can be offset. However, the loss restriction only applies to losses accruing from April 2020. Income tax losses arising before April 2020 are available for carry forward in full against future UK property business profits of the non-UK resident company.

For property investors, there is no ability to carry back property business losses and offset these against taxable income in earlier accounting periods.

The announcement in March 2021 that the trading loss carry-back rule would be temporarily extended from the existing one year to three years is therefore not relevant to property investors.

The non-UK corporate landlord is will be subject to UK corporation tax filing and payment rules, which will include (except for the first corporation tax accounting period), the quarterly payment regime. Also, the group relief provisions are extended to include profits/losses of such non-UK tax resident companies that will fall within the charge to corporation tax.

Non-residents which are non-corporates will continue to be subject to income tax on rental income. For individuals income tax rates are up to 45%.

The impact of the provisions which apply as a result of corporate non-resident landlords coming within the corporation tax regime should be considered.

Financing costs

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 in order to be fully tax deductible.

In addition, non-UK corporate landlords within the charge to corporation tax in respect of rental income from 6 April 2020 are subject to a number of corporation tax restrictions in respect of financing costs.

Firstly, there are the 'corporate interest restriction' rules introduced in accordance with the OECD's BEPS project. The starting point is to restrict finance cost deductions to 30% of tax EBITDA. There is also a GBP 2m de minimis and the option of using an alternative group ratio or a public infrastructure exemption if this will provide a better result. In the latter case an election would need to be made before the end of the first accounting period affected.

Other potential restrictions include:
- The hybrid mismatch rules which implement the OECD BEPS Action 2 proposals can deny interest relief (and potentially other payments) where there are hybrid instruments and/or hybrid entities;
- Reclassification of interest as a distribution where the debt has certain equity characteristics; and
- Denial of relief where a loan relationship of a company has an 'unallowable' purpose (broadly, a purpose that is not within the business or commercial purposes of the company).

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. In addition, for companies, the impact of the corporate interest restriction and the other corporation tax financing cost restrictions should be considered.

Capital allowances

Capital allowances provide tax relief for capital expenditure on plant and machinery in UK properties, and, since 29 October 2018 providing certain requirements are met, also the cost of the construction, conversion and renovation of certain buildings ('Structural Buildings Allowances').

From 1 April 2021 until 31 March 2023, companies investing in qualifying new plant and machinery assets will benefit from a 130% first-year capital allowance. This upfront 'super-deduction' will result in a tax-saving of up to P 25 GBp for every GBP 1 spent. Investing companies will also benefit from a 50% first-year allowance for qualifying special rate (including long life) assets.

Each UK property investment should be reviewed to ensure the maximum entitlement to capital allowances, in particular, the temporary super-deduction, is being claimed.

Disposals by non-residents

Prior to 6 April 2019, only certain direct disposals of UK residential property were subject to UK tax for non-UK residents. However, from 6 April 2019, UK tax is charged on capital gains made by non-residents on direct and certain indirect disposals of all types of UK immovable property.

The indirect disposal rules apply where a person makes a disposal of an entity in which it has at least a 25% interest (or any interest in certain collective investment vehicles which includes certain holdings in UK REITs and PAIFs) where that entity derives 75% or more of its gross asset value from UK land. The 25% ownership test applies where the person holds at the date of disposal, or has held within two years prior to disposal, a 25% or more interest in the property-rich company. This holding may be directly, or through a series of other entities, or via connected persons.

The 75% 'property richness' test looks at the gross assets of the entity being disposed of. Where a number of entities are disposed of in one arrangement, their assets will be aggregated to establish whether the 75% test is met.

There is a trading exemption, so that disposals of interests in property-rich entities where the property is used in a trade are excluded from the charge, and existing reliefs and exemptions available for capital gains continue to be available to non-UK residents, with modifications where necessary. Those who are exempt from capital gains for reasons other than being non-UK resident continue to be exempt (for example, overseas pension schemes and certain charities).

In addition, the provisions of any relevant double tax treaty need to be considered.

All non-UK resident companies (including deemed companies) are charged to corporation tax rather than capital gains tax applicable to individuals and certain trusts on their gains. The provisions relating to annual tax on enveloped dwellings (ATED)-related CGT on UK residential property have been abolished.

Losses arising to non-UK residents under the new rules are available. However, from April 2020, the offset by companies of carried forward capital losses are limited to 50% only of the capital gains arising in a later accounting period, subject to a de minimis applied on a group basis (which includes income losses).

The gain or loss is calculated using the market value of the asset but there is an option to calculate the gain or loss on a disposal using the original acquisition cost of the asset. However, where the original acquisition cost is used in the case of an indirect disposal, and this results in a loss, this will not be an allowable loss.

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 already prepare accounts under UK GAAP or IFRS. Otherwise it is the company's UK GAAP/IFRS accounts which are used to calculate the profits of the UK property rental business. It is necessary therefore to keep up with any changes in UK GAAP and investors should consider the implications for their UK tax liability.

Residential property

Non-resident owners of residential property in the UK are potentially subject to an annual tax in relation to their ownership (Annual Tax on Enveloped Dwellings or ATED). Prior to April 2019, a specific UK capital gains tax charge applied to non-UK resident investors in UK residential property. However, from 6 April 2019, gains on residential property fall within the UK capital gains provisions applying to non-UK resident investors generally (see above).

Individual non-resident owners of residential property in the UK have from April 2017 been subject to restrictions in relief for finance costs against their higher (40%) and additional rate (45%) income tax liabilities. Between 2017 and 2020, current reliefs have been phased out and replaced with a basic rate (20%) tax reduction.

Landlords of fully furnished residential properties were historically able to claim an annual 'wear and tear' allowance of 10% of the rental income. From April 2016, the wear and tear allowance was replaced by relief for the actual cost of replacement furniture, furnishings, appliances and kitchenware provided for the tenant's use.

Asia Pacific

1 China

Preferential Deed Tax policies for corporate transformation and restructuring are extended for three years

The Ministry of Finance (MOF) and the State Taxation Administration (STA) issued the public notice on extending the Deed Tax Policy to further support transformation and restructuring by enterprises and public institutions (PN [2021] No 17) on 26 April 2021, extending the reduction/exemption treatment of Deed Tax for the following types of corporate transformation and restructuring in Circular [2018] No 17, including: transformation of enterprises and public institutions, merger, spin-off, bankruptcy, asset assignment, debt-to-equity swap, equity (share) transfer.

PN [2021] No17 also provides a legal basis for taxpayer that qualified for the preferential policy but have settled Deed tax during the period from the expiration of Circular [2018] No17 to the issuance of PN [2021] No 17, to apply for tax refund.

The valid period of PN [2021] No17 is from 1 January 2021 to 31 December 2023.

Preferential Land Appreciation Tax policies for corporate transformation and restructuring are extended for three years

The MOF and the STA issued the public notice on extending the Land Appreciation Tax (LAT) Policy for Corporate Transformation and Restructuring (PN [2021] No 21) on 31 May 2021, extending the provisional LAT exemption policy on corporate transformation as a whole, merger, spin-off, and investment with real property and continues to adhere to the non-applicability of this exemption policy to real property transfer transactions where either party to the transactions is a real property development enterprise. In addition, the requirements for 'investors of the original enterprise to remain unchanged', 'investors to be the same as those of the original enterprise' and 'investors of the original enterprise to continue to exist' remain unchanged.

Meanwhile, PN [2021] No 21 also clarifies the issue of LAT deductible amount of the transferee of the real property under three scenarios in corporate transformation and restructuring:

- Scenario 1: For the 'amount paid for acquiring land use rights', the deductible amount is determined based on the price paid for acquiring the state-owned land use rights before the transformation and restructuring and the fees paid in accordance with the state-level unified regulation.
- Scenario 2: For state-owned land use rights received as a capital contribution by an enterprise upon approval, the deductible amount is the valuation value approved by the country-level and above natural resources authorities at the time of the capital contribution.
- Scenario 3: For the deductible amount determined based on the housing purchase invoice. The amount of the deductible item shall be calculated at an additional 5% of the amount indicated in the housing purchase invoice before the transformation and restructuring for each year from the year of the purchase to the year of transfer, i.e. the amount indicated in the invoice x (1 + the number of years after purchase x 5%).

The valid period of PN [2021] No 21 is from 1 January 2021 to 31 December 2023.

Key Tax Considerations of Publicly Offered REITs

In June 2021, the first batch of 9 publicly offered infrastructure REITs were officially listed on the Shanghai and Shenzhen Stock Exchange, mainly invested in toll roads, warehousing and logistics, industrial parks and eco-environmental protection. It marked the official launch of mainland China's publicly offered REITs.

The tax burden on REITs products often directly impacts the return on investment. At present, the fiscal and tax departments have not yet issued a set of complete and systematic tax policies for publicly offered REITs. The practically tax treatments for publicly offered REITs should be analysed and discussed case by case with in-charge authorities.

The key tax considerations of publicly offered REITs are as follow:

- From the original equity holder perspective, the original equity holder should sell the underlying assets, it holds to the REITs, and then indirectly holds part of the underlying assets by subscribing to REITs. The restructure of the underlying assets may trigger potential comprehensive tax burden including, LAT, Deed Tax, Corporate Income Tax (CIT), VAT and Stamp Duty.
- From the investor perspective, if the publicly offered REITs do not promise principal protection, the investors can theoretically exempt from VAT on the income obtained from REITs. However, the prevailing tax regime does not have specific rules on how is the tax treatment for Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII) invest the China publicly offered REITs, which shall be carefully analysed on a case-by-case basis.

Annual CIT Adjustments for Investment Real Estate

From the perspective of accounting, there are two methods that could be used to calculate the investment real estate, i.e. the cost method and the fair value method.

Especially, if the company adopted fair value accounting method, special year-end CIT adjustments for investment real estate shall be taken into account, including:

- Any depreciation related to the investment real estate adopting fair value method should not be deductible for CIT purpose.
- According to prevailing tax laws and regulation, any fair value change of investment real estate during the fiscal year shall be recorded in the accounting book. However, such fair value change should also be subject to year-end tax adjustment from a China tax perspective.

2 India

Foreign investment framework in real estate sector in India

Non-residents are not permitted to acquire immovable property directly in India. Foreign investments are permitted in securities of Indian companies engaged in construction and development and other real estate related activities (subject to conditions).

Foreign investments (other than from countries sharing land border with India) are permitted without prior Government approval – subject to adherence of pricing guidelines and other sectoral conditions. A brief summary of the key regulatory conditions is provided below:

Foreign investment in construction/ development projects	Foreign investment in completed assets[1]
Investments are subject to lock-in period of three years from date of receipt of each installment/tranche of investment. Lock-in shall not apply on completion of the project or after development of trunk infrastructure.	Investments are subject to lock-in period[2] of three years from date of receipt of each installment/tranche of investment.
While there are no minimum area requirements, each phase would be regarded as a separate project.	Project completion shall be determined as per the local byelaws/rules and other regulations of State Governments.
Indian Investee company not permitted to sell undeveloped land.	Transfer of asset or part thereof is not permitted within three years of the investment. Permitted activities – Operating and managing Townships, Malls, Shopping Complexes and Business Centre, including leasing of properties.

1 An asset for which completion certificate has been received from the relevant authorities.
2 Condition of lock-in period shall not apply to Hotels and Tourist Resorts, Hospitals, SEZs, Educational Institutions, Old Age Homes and investment by Non-resident Indians or Overseas Citizens of India.

Investment in the real estate sector can also be made by Foreign Portfolio Investors (FPI) by way of non-convertible debentures (subject to conditions) through following routes:

General investment route	Voluntary retention route
Investments are subject to minimum residual maturity of one year and short-term investments are capped at 30% of the total investment of such FPI in corporate bonds.	No requirement for minimum residual maturity but investment to be retained for minimum period of three years or as committed during auction process by FPI.
Single FPI (including related FPIs) cannot subscribe more than 50% of any issue of corporate bonds, subject to certain exceptions.	Concentration limits does not apply i.e. single FPI can subscribe to full issue.

Corporate tax

Indian companies engaged in real estate related activities are chargeable to tax either at 25.17% (if special incentives are not claimed) or 29.12%/34.94% (incentive claim and certain turnover criteria). Further increase where the incentives are claimed, it would also be liable to Minimum Alternate Tax at the rate of 17.48% if the accounting profits are higher than tax profits.

Real estate investment trusts (REITs)

REIT is an investment vehicle formed as a trust duly registered with the Securities and Exchange Board of India (SEBI). REITs are required to be listed on the stock exchange and hold completed and rent-generating properties in India either directly or through holding company (Hold Co) or special purpose vehicle (SPVs) in India. Properties could inter alia include office buildings, shopping malls, industrial parks, warehouses, etc.

REITs are also subject to conditions, inter alia, including the condition that at least 80% of the value is invested in completed and rent/income generating real estate with a lock-in period of three years from the purchase date. REITs are prohibited from investing in vacant land or agricultural land or mortgages (with certain exceptions).

REITs have been accorded effective tax pass through status whereby interest, dividend (subject to conditions) from SPVs and rental income from property held directly (though direct holding not commercially attractive) is exempt in the hands of the trust. Other incomes, including capital gains on disposal of REIT assets are taxable in the hands of the REIT.

Income distributed by the REIT to its unitholders (which is exempt in the hands of the REIT) are taxable in the hands of the unitholders at applicable rates.

Sale of units of the REIT is subject to a preferential tax regime (subject to payment of securities transaction tax on the sale transaction) as under:

a. Short-term capital gains – Effective tax rate could be in the range of 15.6% to 17.9%[1].
b. Long-term capital gains – Effective tax rate could be in the range of 10.4% to 12%.

International Financial Services Centre (IFSC)

The International Financial Services Centres Authority (IFSCA), has permitted global REITs (or InvITs) incorporated in FATF compliant jurisdictions to list on the recognised stock exchanges in Gujarat International Finance Tec-City (GIFT) IFSC, subject to certain rules.

The REITs registered in the IFSC have been permitted to invest in real estate assets in IFSC, India and other foreign jurisdictions, which is in line with the framework provided in the global financial centres.

[1] Depending upon the category of investors.

Additionally, the REITs that are already listed in India (outside IFSC) or in any of the permissible jurisdictions (currently USA, Japan, South Korea, United Kingdom excluding British Overseas Territories, France, Germany, Canada and India) are permitted to list and trade on the recognised stock exchanges in the IFSC, subject to compliance with their respective laws of home jurisdiction.

From an income-tax perspective, it is relevant to note that transfer by a non-resident of units of an InvIT/REIT on a recognised stock exchange in an IFSC in India shall not be chargeable to tax where the consideration for such transfer is paid in foreign currency.

Income characterisation (business income vs house property income)

The income of Indian companies engaged in 'construct and sell' model 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.

The characterisation of income of Indian companies engaged in 'construct, purchase and lease' model would largely depend on the facts and business objectives of the company. In a case where the primary objective of the 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 'construct and sell' model.

In case, the company earns rental income only from leasing (without provision of related facilities/amenities), such rental income is characterised as income from house property. In computing taxable income from house property, only standard deduction of 30% of rental income (net of property tax) and interest expense on borrowings is allowed as expenses.

Investment linked tax deduction

Tax incentives

Investment linked tax deduction (i.e. 100% deduction for capital expenditure) is available for certain asset classes (such as certain slum redevelopment or rehabilitation projects, affordable housing projects, certain category of hotels and hospitals etc. which meet the requisite certain criteria).

Profit linked tax incentives

Profit linked tax incentives are provided, amongst others, to companies:

a. developing and building affordable housing projects subject to conditions, if such housing project is approved by the competent authority before 31 March 2022.
b. developing and building rental housing projects subject to conditions if such project notified by the Central Government in the Official Gazette on or before 31 March 2022.

Quasi thin capitalisation rules

In summary, they limit interest deductibility to 30% of EBIDTA. These rules apply to interest deduction claimed on debt raised from non-resident associated enterprise or a debt raised from non-residents is guaranteed by an associated enterprise.

Anti-abuse provision

Sale of properties for an inadequate or NIL consideration is subject to taxation at a deemed value (determined based on the values imputed for stamp duty purposes). However, no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than 10%. Further, from 1 April 2021, variation of 20% is allowed in case of transfer of specified residential unit (held as stock-in-trade).

Transfer pricing

The Income-tax Act 1961 provides that the price of any international transaction between associated enterprises (AE) is to be computed with regard to the arm's length principle. Further, the provisions relating to domestic transactions have been rationalised so as to reduce compliance burden and ensure effective reporting.

Losses carried forward

Losses of a particular financial year (FY) are typically allowed to be carried forward for the next eight financial years, subject to fulfilment of certain conditions. There are no time limits for carrying forward unabsorbed depreciation. Where there is a change in shareholding of closely held companies beyond 49%, unexpired losses (but not unabsorbed depreciation) should lapse (claim of losses is subject to timely tax return filing).

Taxability under GST law

Indirect taxes

Prior to 1 April 2019, GST was applicable on sale of under-construction of residential and commercial properties at 18% (12% in case of specified affordable housing projects or slum rehabilitation projects) with input tax credits (ITC) and a flat 33% abatement for value of the land; the effective rate of GST was 12% and 8%. To boost the residential real estate segment, a new rate scheme was introduced by the government effective from 1 April 2019 and several concepts were aligned with Real Estate (Regulation and Development) Act, 2016 (RERA). The GST rates applicable to new projects are summarised below:

Segment	GST rates with effect from 1 April 2019
Affordable housing	1%[1] (without ITC)
Other residential housing	5% (without ITC)
Commercial property located within a residential property	5% (without ITC)
Commercial property not located in a residential property	12% (with ITC)

[1] Effective GST rate after 1/3rd land deduction.

Additionally, the concept of 'affordable housing' under the GST law was amended to mean units sold with:

a. carpet area not exceeding 60 square metres (in metropolitan cities) and 90 square metres (in non-metropolitan cities); and
b. value not exceeding INR 4.5m.

It may be noted that litigation at various levels is currently underway on whether GST can be imposed on long term lease of land/building.

ITC	While the GST law allows utilisation of ITC against taxes payable from 1 April 2019, there is an express restriction of availment of ITC by a developer of residential property operating under the revised GST framework. The restriction of ITC for construction of commercial property for leasing/renting out is being debated by the industry in light of a recent favourable judicial decision by the Orissa High Court allowing ITC to the developer of a mall. Post this ruling, similar petitions have been filed before various other High Courts in India. Currently, an appeal filed by the revenue authorities is pending before the Supreme Court.
Joint development agreement (JDA)	Effective 1 April 2019, the supply of development rights by a landowner to a developer for residential projects has been exempted with the condition that the under-construction flats are sold on payment of GST paid. As a result, the liability to pay GST on development rights now arises only to the extent of unsold inventory as on the date of the project. However, for commercial projects, GST is required to be discharged on full value of development rights.
Supplies to Special Economic Zone (SEZ) developers and units	Goods and/or services provided to SEZ developers and SEZ units are zero rated under the GST law. Thus, goods and services can be supplied without payment of GST and supplier would be entitled to seek a refund of GST paid on items used for supply to the SEZ/SEZ unit. Property rental services provided by a SEZ developer continues to be GST free.

3 Indonesia

Rental income

Rental income on property owned either by a corporation or an individual is subject to final income tax at the rate of 10% from the gross rental fees (excluding VAT). This is withheld by a company tenant, but for individual and foreign tenants, the landlord is obliged to pay the 10% final tax due on the rental income through self-assessment mechanism. This 10% tax constitutes the final settlement of the income tax for that particular income.

Gross rental value is the total amount paid or payable by the tenant in whatever name or form with respect to land and/or buildings rented. The gross rental value includes repair costs, maintenance expenses, security expenses and service charges, regardless of whether these exist in a separate agreement or are included in the rental agreement. As the rental income is subject to final tax, all expenses related to the property rental business are non-deductible. Other income (after allowable deductions) of a real estate company, for example consultancy services, will be subject to the normal corporate income tax (CIT).

Under recent tax law changes[2], the CIT rate will be reduced from the current rate of 22% to 20% starting with the fiscal year 2022.

Meanwhile the CIT rate for publicly listed companies will be reduced by an additional 3% (i.e. the current CIT rate is 19% and 17% starting with the fiscal year 2022) that satisfies all of the following conditions:

1. Minimum 40% of required listed shares must be owned by a minimum of 300 shareholders.
2. Each of those shareholders may only own less than 5% of the entire issued and fully paid-up shares.
3. The provisions as intended above must be met for at least 183 calendar days within one fiscal year.
4. The fulfilment of these requirements is to be confirmed by submitting a report to the Directorate General of Taxes (DGT).

Transfer of land and building

A transfer of rights to land and building will give rise to income tax on the deemed gain on the transfer/sale to be charged to the transferor (seller). The tax is set at 2.5% of the gross transfer value (tax base). However, for transfers of simple houses and simple apartments conducted by taxpayers engaged in a property development business, the tax rate is 1%. Furthermore, the income from transfers of rights to land and building involving sale and purchase binding agreement on land and building rights (Perjanjian Pengikatan Jual Beli or PPJB) are also included in the final tax object. This tax must be paid by the time the rights to the land and building are transferred to the transferee. The tax paid constitutes a final settlement of the income tax for that particular income.

In general, the tax base is the higher of the transaction values stated in the relevant land and building right transfer deed and PPJB based on actual transaction value or amount that should have been received in the case of a related party transaction. However, in a transfer to the government, the tax base is the amount officially stipulated by the government officer in question in the relevant document. In a government organised auction, the gross transfer value is the value stipulated in the relevant deed of auction. A notary is prohibited from signing a transfer of rights deed until the income tax has been paid in full.

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[2] The new regulation also sets out some new provisions which regulate how to apply the numerical fulfilment of the requirements mentioned under 1. and 2. above.

Duty on the acquisition of land and building rights	A transfer of land and building rights will typically also give rise to BPHTP duty on the acquisition of land and building rights liability for the party receiving or obtaining the rights. BPHTB is a part of regional taxes. Qualifying land and building rights transfers include sale-purchase and trade-in transactions, grants, inheritances, contributions to a corporation, rights separation, buyer designation in an auction, the execution of a court decision with full legal force, business mergers, consolidations, expansions, and prize deliveries. BPHTB is based on the tax object acquisition value (Nilai Perolehan Objek Pajak or NPOP), which in most cases is the higher of the market (transaction) value or the NJOP of the land and building rights concerned. The tax due on a particular event is determined by applying the applicable duty rate of 5% to the relevant NPOP, minus an allowable non-taxable threshold. The non-taxable threshold amount varies by region: the minimum is IDR 60m, except in the case of an inheritance, for which starts from IDR 300m. The government may change the non-taxable threshold via a regulation. BPHTB is typically due on the date that the relevant deed of land and building rights transfer is signed before a notary public. In a business merger, consolidation, or expansion, the duty is due on the date of signing of the merger, consolidation or expansion deed. In an auction, the duty is due on the date of signing of the Auction Deed by the authorised officer. A notary is prohibited from signing a deed transferring the rights until the BPHTB due is paid.
Fiscal depreciation	For tax purposes, permanent buildings are depreciable in 20 years and non-permanent buildings are depreciable in ten years using the straight-line method. Considered that non-permanent are temporary buildings which materials are not durable, while land is not depreciable.
Other expenses and income	Taxable business profits are calculated on the basis of normal accounting principles as modified by certain tax adjustments. Where a final tax applies, expenses relating to rental and/or sales/transfers of property, including interest, depreciation, and other costs, are not deductible for corporate income tax purposes.
Withholding tax on sales of very luxury residences	A corporate taxpayer who sells the following luxury goods must withhold/collect (Article 22) income tax at 1% (this has been reduced from the previous 5%) of the selling price excluding VAT and Luxury Sales Tax: • Landed houses priced at more than IDR 30b or building area of more than 400 sqm. • Apartments, condominiums, and similar types of building selling for more than IDR 30b or having building area of more than 150 sqm. • Income tax collected is creditable for the purchasers of goods.
Tax loss carry forward balance and statutory of limitation for issuing a tax assessment	Tax losses may be carried forward for a maximum of five years. A carry back of the tax losses is not permitted. Where a final tax applies, tax losses cannot be carried forward. A company is engaged in the property business (rental or sales of land and buildings) can no longer carry forward its tax loss. Under the current Tax Administration Law, the DGT can issue an underpaid tax assessment letter within five years after the incurrence of a tax liability, the end of a tax period (month), or the end of (part of) a tax year.

Real estate investment fund

The income that is received or obtained from the transfer of real estate assets to a special purpose company (SPC) or collective investment contracts in the form of a real estate investment fund (kontrak investasi kolektif – dana investasi real estate, or KIK-DIRE) is subject to a 0.5% final tax on the gross value of the assets transferred. If the transfer is made to a related party, the gross value of the assets transferred is the amount that should have been received or obtained on the transfer. If the transfer is made to a third party, the gross value of the assets transferred is the amount that is actually received or obtained on the transfer.

The procedures for this final tax payment and reporting, which is similar to the general procedures in the event of land and building transfer. Further KIK-DIRE is considered to be a low-risk VAT-able entrepreneur, which is eligible to request for preliminary VAT refund.

VAT

VAT applies to real estate transactions at a rate of 10%. For these purposes, real estate transactions include rental and sales of real estate properties. Charges for common services for office buildings and the like are subject to VAT at 10% of the service charges.

VAT on the sale price of land and buildings, as part of a real estate or industrial estate price, is levied at the rate of 10% of the invoice value. VAT on any self-construction work on the following buildings is levied at 2% of total costs incurred or paid, exclusive of the acquisition price of land:
- Residential house or place of business; and
- building space which is equal to or bigger than 200 sqm.

Excluded from the VAT is the delivery of a basic house, very basic house, basic apartment, rented cottage, student dormitory, and other housing as defined by the Minister of Finance upon hearing the consideration of the Minister of Settlement and Regional Infrastructures (e.g. religious and social buildings). In addition to the exemption, services provided by the building contractors for the construction of places which are merely intended for worship purposes are also excluded from VAT.

Under the new Omnibus Law effective 2 November 2020, Input VAT on land acquisition during a pre-production stage can be credited, regardless of whether the land is a capital good or non-capital good, as long as it is related to a VAT-able delivery.

Luxury sales tax (LST)

LST is levied at 20% on apartments, condominiums, luxury house and town houses of the type of strata and/or non-strata title (disregarding the type of title), and those of similar type with a sale price of IDR 30b or more.

Land and building tax

Land and building tax (Pajak Bumi dan Bangunan, or PBB) is a type of property tax chargeable on all land and/or buildings, unless exempted. PBB is a part of regional taxes which are governed under Regional Taxes and Retribution (Law in which each regional government has to issue a regulation to regulate PBB in its territory.

PBB is payable annually following a tax due notification letter (Surat Pemberitahuan Pajak Terhutang, or SPPT) issued by the regional government.

An individual or an organisation that owns a right to a piece of land, and/or takes benefits there from, and/or owns, controls, and/or takes benefits from a building can by law be regarded as the PBB taxpayer for that piece of land and/ or building.

The PBB rate is maximum 0.3% and the tax due is calculated by applying the tax rate on the sale value of the tax object (Nilai Jual Objek Pajak, or NJOP) deducted by non-taxable NJOP. The non-taxable NJOP is set at IDR 10m at the minimum. Any changes are to be made by issuing a regional regulation.

Profit distributions

Under the new Omnibus Law, profit distributions in the form of dividends are subject to tax as follows:

- Domestic dividends received by an Indonesian corporate tax resident are exempted.
- Domestic dividends received by an Indonesian individual tax resident can be exempted if the dividends are reinvested in Indonesia within certain period (subject to certain reinvestment criteria and requirements).
- Dividends received from abroad (outside Indonesia jurisdiction) can be exempted if the dividends are reinvested in Indonesia within certain period (subject to certain reinvestment criteria and requirements).
- As for non-resident shareholders, the dividends are subject to withholding tax of 20% (or the applicable reduced treaty rate).

Other matters

The government issued several tax regulations that intended to response and help secure national economic stability during the COVID-19 pandemic. Real estate company with certain business classification is one of the lists of eligible taxpayers to take advantage of the following tax incentives:

- Article 21 employee income tax for employees earning annual regular income not exceeding IDR 200m will be borne by the government.
- Article 22 Income Tax on imports will be exempt
- 50% reduction of Article 25 monthly income tax instalment
- Preliminary VAT refund will be available for eligible taxpayers requesting a refund for a maximum IDR 5b
- VAT incentive (i.e. borne by the government) for eligible landed houses and residential units, subject to certain requirements

As at the writing date, the eligible tax incentive periods are until December 2021. We need to monitor for the development on the covered period.

4 Japan

Limitation on the net operating loss deduction and extension of the applicable period

Large corporations can offset up to 50% of their taxable income by tax loss carry forwards for tax years beginning on or after 1 April 2018. The tax loss carry-forward-period is ten years for losses incurred in tax years beginning on or after 1 April 2018. For small and medium sized enterprises (and tokutei mokuteki kaishas [TMKs]), the loss-limitation percentage does not apply.

Consumption tax

The current consumption tax rate is 10%. Some items, e.g. fresh food, remain subject to consumption tax at 8%. To cope with the multiple consumption tax rates, an invoicing method will be introduced, though not until 1 October 2023, with transitional measures in place for the interim period.

Under a recent change, input consumption tax paid on the acquisition of a building to be rented for residential purposes can no longer be included when claiming an input consumption tax credit. This change applies to acquisitions on or after 1 October 2020.

Amendments to the definition of permanent establishment (PE)

As part of a wider OECD blueprint for reforming the principles of international taxation, the definition of a permanent establishment (PE) was modified to align domestic Japanese tax law with the OECD's BEPS Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) and related discussion papers.

The reforms broaden the incidence of when an agent PE arises while at the same time narrowing the scope of when the independent agent exception can apply.

Under the 2018 tax reform, the scope of what falls within an agent PE was expanded by including an additional classification. An agent PE may arise through the activities of a person in Japan who habitually acts in the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the foreign taxpayer, and these contracts are for the transfer of the ownership of assets owned by that foreign taxpayer, etc.

Under the 2018 tax reform, notwithstanding the existing criteria, a person is excluded from qualifying under the independent agent exception where that person acts exclusively or almost exclusively for one or more foreign taxpayer(s) to which it is closely related.

For individual income tax purposes, these amendments have taken effect on 1 January 2019. For corporate tax purposes, the amendments apply to tax years beginning on or after 1 January 2019.

Share sales of real estate holding companies

Capital gains derived by a non-resident, without a PE in Japan, from the transfer of shares in either a listed or unlisted corporation (including certain defined trusts) are subject to tax in Japan where the corporation predominantly holds real estate in Japan, and the non-resident (including, by aggregation, any special related persons) owns more than 5% of the shares (if the corporation is listed) or more than 2% of the shares (if a private corporation) at the prior fiscal year end in which the shares are sold, unless relief is available under a double tax treaty.

Under current law, a corporation is treated as predominantly holding real estate if 50% or more of its assets consist of real estate in Japan (inclusive of land, buildings, shares in other corporations or specified trusts that predominantly hold real estate, etc.).

Tax administration procedures – e-filing requirement

Large corporations need to file their corporate, consumption, and local tax returns electronically from fiscal years beginning on or after 1 April 2020.

A TMK is required to file tax returns electronically from fiscal years beginning on or after 1 April 2020, regardless of whether it is a large corporation or not.

Restrictions on interest deductions ('earnings stripping rule')

The current earnings stripping rule has been revised to align with BEPS Action 4 including:

(i.) Expansion of the scope of interest expense, to include interest paid to third parties, but exclude interest that is subject to Japanese income tax in the hands of the recipient.
(ii.) Lowering of the benchmark fixed ratio from 50% to 20%.
(iii.) Modification of the calculation of 'adjusted income', based on which non-deductible interest is calculated, as well as the calculation of the non-deductible interest amount.
(iv.) Lowering the threshold amount of interest expense for the application of the new rules.

The above amendments have become applicable to fiscal years beginning on or after 1 April 2020.

Tax measures for businesses to mitigate the economic impact of the COVID-19 pandemic

In order to support companies affected by the COVID-19 pandemic, several special tax measures have been introduced.

Notably, in addition to small and medium-sized companies, companies with paid-in capital over JPY 100m but not exceeding JPY 1b will be able to carry back losses incurred in fiscal periods ending between 1 February 2020 and 31 January 2022.

5 Korea

Securities transaction tax rate cut

Securities transaction tax

Real estate transaction in Korea can be made through asset sale or share sale of a real estate holding company. In the case of a share sale, securities transaction tax is currently imposed at the rate of 0.43% for unlisted shares and will be lowered to 0.35% from 1 January 2023.

For listed shares, securities transaction tax is currently imposed at 0.23% and will be lowered to 0.15% from 1 January 2023.

Clarification of beneficial ownership requirements for overseas investment vehicle

Overseas Investment Vehicle

Under the current Korean tax law, where Korean source income is paid to a foreign corporation through an 'overseas investment vehicle' (OIV) defined in the tax law, generally, the foreign corporation would be regarded as the beneficial owner of Korean source income. However, the OIV rather than the foreign corporation shall be treated as the beneficial owner of the Korean source income if any of the following requirements are met:

1. The OIV is liable to pay tax in the country where it is a resident and the OIV is not established with a view to unfairly reduce Korean corporate or individual income tax on the Korean source income.
2. The OIV is the beneficial owner of income under the relevant tax treaty; or
3. The OIV fails to substantiate its investors.

The proposal clarifies and prescribes the requirements for treating the OIV as the beneficial owner of the Korean source income that:

1. The OIV must be a resident of the country it is established under the relevant treaty and it should be entitled to treaty benefits with respect to the Korean source income under the relevant treaty.
2. Where it does not meet the requirements in 1., the OIV must be deemed as the owner of income under a separate provision of the relevant treaty, and it should be entitled to treaty benefits with respect to the Korean source income under the relevant treaty; or
3. The OIV fails to substantiate its investors (the same as the existing requirement).

The proposed change will apply to Korean source income paid on or after 1 January 2022.

6 Malaysia

Taxation of real estate investment trusts (REIT)

Business tax deductions can include management fees, interest and property taxes and the REIT manager's remuneration. However, trustee's fees do not qualify for tax deduction since it is not seen to be wholly and exclusively incurred in the production of gross income.

Expenses incurred to set up an entity are generally not allowed as a tax deduction as these expenses are regarded as pre-commencement expenses. However, as a tax incentive, the Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust or Property Trust Fund) Rules 2006 provide that the legal, valuation and consultancy fees incurred for establishing a REIT, which is subsequently approved by the Securities Commission Malaysia (SC), will be allowed as a tax deduction when the business of the REIT commences.

Generally, the income of a REIT consisting of rental income, interest (other than interest which is exempt from income tax) and other investment income derived from or accruing in Malaysia will be taxable at the corporate tax rate currently at 24%.

Where a listed REIT distributes at least 90% of its income, the tax transparency rules will apply so that tax will not be levied at the REIT level. Unlisted REITs will not enjoy the above tax transparency treatment.

Where a REIT, listed on Bursa Malaysia, intends to distribute 90% or more of its total income but has fallen short of 90% at the end of the basis period, the listed REIT is given a grace period of two months from the closing of its accounts to distribute the balance so that the tax exemption can still be applied at the REIT level.

If less than 90% of its total taxable income is distributed in a year of assessment (YA), the tax transparency system would not apply, and total taxable income of the REIT would continue to be taxed at the current prevailing rate of 24%.

Income, which has been taxed at the REIT level, will have tax credits attached when subsequently distributed to unitholders.

Exempt income

All dividend income received by the REIT from a Malaysian resident company are not subject to income tax in Malaysia.

Since REITs are unit trusts, certain income is exempt from tax, including interest or discount from the following investments:
- Any savings certificates issued by the government.
- Securities or bonds issued or guaranteed by the Government.
- Sukuk or debentures issued in Ringgit, other than convertible loan stocks, approved or authorised by or lodged with the SC.
- Bon Simpanan Malaysia issued by Bank Negara Malaysia;
- Bonds and securities issued by Pengurusan Danaharta Nasional Berhad.
- Licensed bank under the Financial Services Act 2013 or Islamic Financial Services Act 2013 or a development financial institution prescribed under the Development Financial Institution Act 2002.

Income received by the REIT from overseas investment is also tax exempt. The income exempted at the REIT level is also exempt from tax upon distribution to unitholders.

Losses and capital allowances carried forward

Any unabsorbed tax losses and unabsorbed capital allowance for a year of assessment cannot be carried forward to set off against future rental income.

Cost of obtaining finance

Costs of obtaining finance (other than interest), including legal costs and stamp duty on new loan transactions, are generally not tax deductible. However, specific tax deduction is allowed for financing costs incurred in relation to the issuance of certain Islamic securities.

Tax transparency applies

Taxation of REIT unitholders

Where 90% or more of the listed REIT's total taxable income is distributed by the listed REIT, distributions to unitholders will be subject to tax based on a withholding tax (WHT) mechanism at the following rates:

Unitholders	**WHT rate**
Individuals and all other non-corporate investors such as institutional investors (resident and non-resident)	10% (up to YA 2025)
Non-resident corporate investors	24%
Resident corporate investors	0%

The WHT is a final tax and resident individuals and non-corporate investors will not be required to declare the income received from the listed REIT in their Malaysian tax returns.

No WHT is applicable on distributions to resident corporate investors. Resident corporate investors are required to report the distributions from the listed REITs in their normal corporate tax return and bring the taxable listed REIT distributions at the corporate tax rate, currently at 24%.

Distribution by unlisted REITs is not subject to WHT since an unlisted REIT has already paid income tax at 24%.

Tax transparency does not apply

Where less than 90% of the total taxable income is distributed, the listed REIT is not entitled to the exemption. The listed REIT would have paid taxes on the taxable income for the year. The distributions made by the REIT of such taxed income will have tax credits attached.

Resident individuals will be subject to tax at their own marginal rates on the distributions and be entitled to tax credits representing tax already paid by the REIT.

Resident corporate investors are required to report the distributions from REITs in their corporate tax return and bring such income to tax at the corporate tax rate, currently 24%. Where tax has been levied at the REIT level, the resident corporate investors are entitled to tax credits.

No further taxes or WHT would be applicable to foreign unitholders. Foreign unitholders may be subject to tax in their respective jurisdictions depending on the provisions of their country's tax legislation and the entitlement to any tax credits would be dependent on their home country's tax legislation.

Distributions representing specific exempt income or gains on disposal of investments at the REIT level will not be subject to further income tax when distributed to all unitholders.

Transfer pricing

The Director General of Inland Revenue is empowered to make adjustments to transactions of goods and services between associated persons, including related companies. The transfer pricing audit framework has been issued by the tax authorities to ensure that controlled transactions comply with the arm's length principle, the Malaysian tax laws as well as administrative requirements. If any understatement or omission of income is discovered during the transfer pricing audit, a penalty will be imposed. However, a concessionary penalty rate may be imposed in a case where a voluntary disclosure was made. Taxpayers have to prepare contemporaneous transfer pricing documentation, (i.e. either at the point of developing the inter-company transaction or prior to the submission of the company's tax return).

Withholding tax (WHT)

Payments made to non-residents that are deemed to be derived in Malaysia are subject to WHT in Malaysia at the following prescribed rates:

a. Interest – 15%.
b. Royalty – 10%.
c. Contract Payments – 10% + 3%.
d. Rental – 10%
e. Services – 10%
f. Other gains or profit – 10%

The rates may be reduced under specific double tax treaties.

Stamp duty

Stamp duty is imposed on a wide range of documents and transactions. The rates vary with the type of document and amount involved. The stamp duty payable for transfer instruments for real property is 1% to 3% of the market value of the property. The stamp duty payable for transfer instruments for shares is 0.3% of the consideration.

Generally, the purchase and sale of units in a listed REIT are not subject to stamp duty since the units are traded scripless on the Malaysian Stock Exchange.

Sales and service tax

Effective 1 September 2018, Goods and Services Tax (GST) has been repealed and replaced by the Sales and Services Tax (SST). Income received by REITs (i.e. rental, interest and dividend income) will not be subject to service tax while expenses incurred by the REIT such as management fees, trustee fees and other administrative and operating expenses will be subject to 6% service tax.

Digital service tax

Effective 1 January 2020, service tax at 6% will be imposed on digital services provided by both local and foreign service providers. Digital services are defined as services which are delivered or subscribed over the internet or other electronic network and cannot be delivered without the use of IT and the delivery of the service is substantially automated. This could potentially result in certain service providers charging digital service tax to the REIT, resulting in an increase in cost.

Earning Stripping Rule (ESR)

ESR was introduced to control excessive deductibility of interest expense on loans between related parties. Key features of ESR are as set out in the table below:

Key features	Description
Commencement date	Basis period for a YA beginning on or after 1 July 2019.
Scope	Interest expense in connection with or on any cross-border financial assistance in a controlled transaction granted directly or indirectly to the person.
De minimis rules	ESR is not applicable where the interest expense is not more than RM500,000 in a basis period for a YA.
Maximum amount of interest deduction	20% of Tax-EBITDA.
Carry forward rules	Interest expense which is restricted in a YA can be carried forward and deducted against adjusted income from the business for subsequent YA(s), subject to satisfying the substantial shareholders continuity test.
Interest expense	(i.) Interest on all forms of debts; or (ii.) Payments economically equivalent to interest (excluding expenses in connection with the raising of finance).
Financial assistance	Includes loans, interest bearing trade credit, advance or debt and provision of security or guarantee.
Controlled transaction	Finance assistance between 'related persons'; i.e. between: • Persons one of whom has control over the others; or • Persons both of whom are controlled by a third person.

Capital gains on sale of property

Any gains on disposal of real properties (chargeable asset), or shares in real property companies (chargeable asset) would be subject to the following real property gains tax (RPGT) rates:

Date of disposal	Companies	Individual (citizen and permanent resident)	Individual (non-citizen)
Within 3 years from date of acquisition	30	30	30
In the 4th year	20	20	30
In the 5th year	15	15	30
In the 6th year and subsequent years	10	5	10

A real property company is a controlled company that owns or acquires real property or shares in real property companies with a market value of not less than 75% of its total tangible assets. A controlled company is a company that does not have more than 50 members and is controlled by not more than five persons.

Disposal of property to a REIT approved by the SC are exempt from RPGT and stamp duty. Where the approved REIT subsequently sells properties, the RPGT and stamp duty exemption would not apply.

7 Philippines

Ownership of real estate

Generally, foreign individuals or corporations cannot privately own land in the Philippines. However, foreign investors can acquire up to 40% of the equity in a domestic company that owns land in the Philippines. Moreover, foreign individuals or companies can own 100% of a condominium unit, although the condominium units owned by foreign investors should not exceed 40% of the total units in a particular condominium project.

A natural born citizen who is now a naturalised citizen of a foreign country may acquire land in the Philippines, but subject to the following limitations:
a) For business purposes, up to 5,000 square metres of urban land or up to 3 hectares of rural land, and
b) for residential purposes, up to 1,000 square metres of residential land or up to 1 hectare of agricultural land.

Ownership of real properties is normally represented by titles issued in the name of the owner. Registration of title in the Register of Deeds constitutes notice to the world that the property is owned by the person in whose name it is registered.

Sale/acquisition and lease of real estate property – Leasehold

Although foreigners are prohibited by the Constitution from acquiring lands in the Philippines except by hereditary succession, they can lease real property in the Philippines. If the lease is for investment purposes, the maximum period allowed for the duration of leases of private lands to (a) foreigners or, (b) foreign-owned entities not qualified to acquire private lands is 50 years, renewable once for another 25 years. For other purposes, the maximum period allowed is 25 years, renewable for another 25 years.

Every lease of real estate must be recorded in the Registry of Property for it to be binding upon third persons.

Capital gains tax (CGT)

Sale of real property shall be subject to a capital gain tax (CGT) of 6% on the gain presumed to have been realised on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business and are treated as capital assets.

Capital assets are defined as property held by the taxpayer (whether or not connected with his trade or business), but not including the following:
- Stock in trade or other property of a kind which would properly be included in the inventory, if on hand at the close of the taxable year.
- Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.
- Property used in trade or business, of a character which is subject to allowance for depreciation.
- Real property used in trade or business of the taxpayer.

Ordinary income tax/ Expanded withholding tax

The gain from sale of real property classified as ordinary assets is considered as ordinary income subject to regular corporate income tax (RCIT) of 20% or 25% based on net income effective 1 July 2021. The rate of 20% CIT shall be applicable to domestic corporations with a net taxable income not exceeding PHP 5m, and with a total asset not exceeding PHP 100m (excluding the land on which the taxpayer's office, plant and equipment are situated).

The gain is the difference between the gross selling price or the fair market value, whichever is higher, and the cost of the land. The basis of the tax shall be the gross selling price or fair market value of the land and/or building, whichever is higher.

If the real property is sold at less than fair market value, in addition to the income tax liability, the Bureau of International Revenue (BIR) may also assess a donor's tax at the rate of 6% on the supposed gift based on the excess of the fair market value over the selling price, unless the taxpayer can prove that the transaction is bona fide, free from any donative intent and made in the ordinary course of business.

Value-added tax (VAT)

Generally, sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business is subject to 12% VAT based on the gross selling price of the real property sold.

The following sales of real property are exempt from VAT:
- Sale of residential lot not exceeding PHP 1,919,500; or
- Sale of residential house and lot or other residential dwellings not exceeding PHP 3,199,200.
- VAT may be imposed on incidental sales.
- Lease of a residential unit with a monthly rental not exceeding PHP 15,000 per month

Documentary stamp tax (DST)

DST is imposed on the privilege of entering into certain transactions through the execution of specific instruments or documents as follows:
- Sale, conveyance and donation of real property (PHP 15 for each 1,000 (effectively 1.5%) is levied on the consideration paid for the real property, or its fair market value, whichever is higher)
- Leases agreements on land and other tenements (PHP 6.00 for the first PHP 2,000 + 2.00 for every 1,000 thereafter is levied for each year of the agreement)
- Mortgages, pledges and deeds of trust (PHP 40.00 for the first PHP 5,000 + 20.00 for every 5,000 thereafter is levied on the amount secured)

Sales of shares/ Capital gains tax (CGT)

The sale of shares in a real property company not listed on the Philippine Stock Exchange (PSE) by all types of taxpayers is subject to capital gains tax (CGT) of 15%. If the shares are listed and traded through the PSE, then their sale will be subject to a stock transaction tax (STT) of 0.6% on the gross selling price of the shares.

If the seller is a resident of a country with which the Philippines has a tax treaty, then the seller may be exempt from CGT under the capital gains article of that particular treaty. However, under a majority of Philippine tax treaties, the exemption will not apply if the assets of the issuing company consist principally of real property.

While case law provides that a tax treaty relief application is not required to avail of treaty benefits, it becomes a practical necessity to secure an approved tax treaty relief application ruling from the tax authorities for purposes of securing the Certificate Authorising Registration that will allow the transfer of legal title.

Documentary stamp tax (DST)

The sale of shares in a real estate company, which are not listed and traded through the PSE, is subject to DST at the rate of PHP 1.50 for each PHP 200, based on the par value of the shares (effectively 0.75%). However, if the shares are listed and traded through the PSE, the sale of said shares is exempt from DST.

Transfer pricing

In the Philippines, Section 50 of the National Internal Revenue Code (Tax Code) authorises the Commissioner of Internal Revenue to adjust, allocate, or apportion the revenues and expenses of associated enterprises to reflect their appropriate taxable income. Section 50 is exercised applying the arm's length principle as the most appropriate standard to determine transfer prices of related parties.

Revenue Regulations (RR) No 2-2013 provided guidelines in applying the arm's length principle for cross-border and domestic transactions between associated enterprises. These are largely based on the principles set out in the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines. Under the Philippine TP Guidelines, transfer pricing documents must be contemporaneous, i.e. the documents should exist or be brought into existence at the time the associated enterprises develop or implement any arrangement that might raise transfer pricing issues, such that in the event of a tax examination, those transfer pricing documents must be made available upon the BIR's request.

Revenue Audit Memorandum Order No 1-2019 (TP Audit Guidelines) introduced standardised audit procedures and techniques in the BIR's conduct of audit of taxpayers with related party and/or intra-firm transactions. It further provided guidelines on business restructuring within a multinational group, intra-group services, intangible asset transactions, cost contribution arrangements, and interest payment transactions.

RR No 19-2020 prescribed the submission of BIR Form No 1709 on related party transactions but the coverage was streamlined under RR No 34-2020 by providing safe harbors and materiality thresholds.

Real estate investment trust (REIT)

The Real Estate Investment Trust (REIT) Act of 2009 defined a REIT as a stock corporation formed for the purpose of owning income-generating real estate assets. It is a type of investment instrument that provides a return to investors derived from the rental income of the underlying real estate asset. A REIT must be registered with the SEC as a stock corporation with a minimum paid-up capital of PHP 300m.

In the first quarter of 2020, the SEC issued its revised regulations requiring a 1/3 Minimum Public Ownership of a REIT. Among others, the revised regulations also require the appointment of a REIT fund manager and property manager and the creation of a related party transactions committee.

The act extended various incentives to REITs as long as the qualifying conditions are complied with. A REIT that owns land in the Philippines must comply with foreign ownership limitations imposed under Philippine laws. A REIT may also own foreign real estate property, provided that such investment does not exceed 40% of the REIT's deposited property and only upon special authorisation from the SEC.

REITs enjoy the following tax incentives among others:
- Dividends distributed that can be claimed as tax deductions.
- Not being subject to minimum CIT.
- A reduced CWT of 1% on income payment to REITs.
- An exemption from stock transaction tax (STT) on any initial public offering and secondary offering of shares (STT rate from 1% to 4%).
- 10% final tax on dividends unless a lower treaty rate is applicable.
- Transfers of properties to a REIT are exempt from the 12% VAT, provided that it is in exchange for the shares of the transferee and the transaction would result in an acquisition by the transferor of at least 51% of the outstanding capital stocks of the transferee.

Real Property Taxes

Provinces and cities, as well as municipalities within Metropolitan Manila, are primarily responsible for the levy and collection of real property tax (RPT).

All owners of real property are required to file with the provincial, city, or municipal assessor a sworn declaration of the current and fair market value of their real property once every three years. Where any owner fails or refuses to make such a declaration, the assessor concerned shall do so in the name of the defaulting owner.

The basis of the RPT shall be the assessed value of the property, which is computed as a certain percentage (i.e. assessment levels based on classification of the real property at rates not exceeding those prescribed under the Code) of the fair market value of the real property (as fixed by ordinances enacted by the Sanggunians of the province, city, or municipality concerned). Moreover, real property is classified, valued and assessed on the basis of its actual use, regardless of location, whoever owns it and whoever uses it.

A province, city, or a municipality shall fix a uniform rate of basic RET, applicable to their respective localities, as follows:
- In the case of a province, at the rate not exceeding 1% of the assessed value of real property; or
- In the case of a city or a municipality, at the rate not exceeding 2% of the assessed value of real property.

In addition to the basic real property tax, a province, city, or a municipality may impose the following:
- An additional levy for the special education fund equivalent to 1% of the assessed value of real property.
- An additional ad valorem tax on idle lands in the form of an annual tax at a rate not exceeding 5% of the assessed value of the property.

Pending Bills

Currently, there are pending bills to amend the various provisions of the Tax Code particularly with reference to corporate taxes (e.g. Comprehensive Tax Reform Program). With the passage of the CREATE bill (Package 2) early this year, which reduced corporate income tax, among other amendments, there still remain Packages 3 and 4 pending at the Senate level.

Package 3 aims to promote the development of a just, equitable, and efficient real property valuation system. It also proposes, among others, to adopt internationally accepted real property valuation standards and rationalise the process of valuation through the adoption by the LGUs of a schedule of market values, establish a single valuation base for taxation, and the establishment of a Real Property Valuation Service.

8 Singapore

Imposition of surcharge for tax avoidance arrangements

To deter tax avoidance arrangements, a new section 33A has been legislated in the Singapore Income Tax Act (SITA), which introduces a surcharge equal to 50% of the amount of additional income tax imposed by the Comptroller of Income Tax as a result of the adjustments made to counteract any tax avoidance arrangements under section 33 of the SITA. The surcharge is to apply to adjustments made to the tax assessments for the year of assessment (YA) 2023 and beyond.

Investors should seek tax advice on their arrangements.

Tax exemption of sale of shares (Section 13Z)

Prior to Budget 2020, tax exemption was granted for gains derived on sale of ordinary shares (subject to meeting the relevant conditions) to the extent the gains are not in relation to disposal of unlisted shares of an investee company that is in the business of trading or holding Singapore immovable properties (other than the business of property development).

Pursuant to the Budget 2020 announcement, legislation has been issued to amend the qualifying conditions of Section 13Z to limit the scope of tax exemption. With effect from 1 June 2022, gains on disposals of shares in the following investee companies no longer qualify for the tax exemption under Section 13Z:

a. The investee company is in the business of trading immovable properties situated in Singapore or elsewhere;
b. The investee company's principal activity is that of holding immovable properties situated in Singapore or elsewhere; or
c. The investee company has undertaken property development activities in Singapore or elsewhere. An exception to this exclusion is where both of the following conditions are satisfied:
    a. The immovable property developed is used by the investee company to carry on its own business to derive trade income. Such a business includes the business of letting immovable properties; and
    b. The investee company did not undertake any property development activity in the past 60 months before the disposal of shares.

The key change to note is that the scope of exclusion has been expanded to cover investee companies that trade in or hold immovable properties overseas and to include property developers whereas the prior scope of exclusion was limited to companies holding Singapore immovable property only.

Investors with Singapore-based holding companies structures holding underlying real estate investments that were relying on income tax exemption under section 13Z should review their structures.

Proposed tax treatment for when trading stock (applicable to immovable property) is appropriated for non-trade or capital purposes, and where non-trade or capital asset becomes trading stock

The Singapore Ministry of Finance has released the Income Tax (Amendment) Bill 2021 for public consultation on 11 June 2021.

To provide clarity on the tax treatment in circumstances relating to a change of intention of use of trading stock, the draft amendment bill proposes the insertion of a new Section 10P in the SITA, which provides that as and when trading stock is appropriate for non-trade or capital purposes, the market value of the trading stock on the date of appropriation is treated as income that is subject to income tax at that juncture.

Conversely, if a non-trade or capital asset becomes a trading stock that is subsequently sold, the proposed amendments provide that the cost of the trading stock is its market value on the date the non-trade or capital asset becomes trading stock. The gains from the disposal of the trading stock are then computed accordingly and subject to tax.

If the above provisions are legislated, investors need to take into account the tax implications that may arise when there is a change of treatment/intention towards non-trade or capital assets such as immovable property as the gains which would ordinarily not be subject to tax (i.e. capital gains) could potentially be subject to tax on disposal (i.e. revenue gains/trade income).

Singapore tax residence and permanent establishment issues for businesses

Given the COVID-19 travel restrictions, IRAS has provided some guidance on Singapore tax residency and permanent establishment (PE).

In the light of certain travel restrictions imposed during the COVID-19 period, companies may not be able to hold its Board of Director's meetings in Singapore which is key to demonstrate the company's control and management is exercised in Singapore and therefore the company is considered tax resident in Singapore.

In spite of the above, the IRAS has clarified that it is prepared to consider that a company continues to be a Singapore tax resident for YA 2021 and YA 2022 if certain conditions are met. The conditions are:
- The company is a Singapore tax resident for YA 2020 and/or YA 2021;
- There are no other changes to the economic circumstances of the company, and
- The company's directors have to attend the Board of Directors meeting held outside Singapore or via electronic means due to the travel restrictions to Singapore.

Similarly, where a company is not a Singapore tax resident in YA 2020/YA 2021, the company shall also continue to be treated as a non-resident in YA 2021/ YA 2022 only if (i.) the company hold its Board of Directors meeting in Singapore due to the travel restrictions imposed and (ii.) if it has no other changes to its economic circumstances.

In addition, IRAS will consider a foreign company's unplanned presence of employees in Singapore as a result of COVID-19 travel restrictions does not create a PE in Singapore (and hence risk of Singapore tax presence) if it meets the following conditions:

- The foreign company does not have a PE in the YA 2020 and/or YA 2021.
- There are no other changes to the economic circumstances of this company.
- These employees' unplanned presence in Singapore is due to the above travel restrictions and their physical presence here up to 31 December 2021 is temporary.
- The activities performed in Singapore would not have been otherwise performed in Singapore if not for the travel restrictions.
- These employees will leave Singapore as soon as they are able to do so, following the relaxation of the travel restrictions relating to COVID-19.

Documentation should be maintained in supporting any claims.

GST rate change

In Budget 2018, the Government announced its intention to increase the goods and services tax (GST) tax from 7% to 9% sometime between 2021 and 2025. The Government subsequently decided in Budget 2020 that the GST rate increase will not take place in 2021 due to the uncertain economic outlook. While no announcement was made on the specific date for the GST rate increase in Budget 2021, the Government indicated that the GST rate increase should take place 'sooner rather than later' during 2022 to 2025.

Imposition of GST remote services

With effect from 1 January 2023, overseas service providers who provide remote services to Singapore non-GST registered persons may be liable for GST registration and may be required to charge GST to the Singapore persons. If an overseas company provides services (e.g. support services, fund management services) to a local non-GST registered company (e.g. residential property developer, investment holding company), the overseas company will need to review the detailed rules and put in place a process to monitor if it has a GST registration liability in Singapore.

9 Taiwan

Income tax

The income tax regime in Taiwan is divided into the consolidated personal income tax regime for individuals, or individual income tax (IIT), and the profit-seeking enterprise income tax regime for business enterprises, or corporate income tax (CIT).

IIT

A resident individual is subject to marginal progressive rates (ranging from 5% to 40%), with entitlement to personal exemptions and deductions. A non-resident individual is generally subject to a flat tax rate on gross income received and are not eligible for personal exemptions or deductions.

CIT

A resident company in Taiwan is subject to income tax on its worldwide income. The prevailing corporate income tax rate is 20%. Current year after-tax earnings of a resident company which are not distributed within one year after fiscal year end are subject to 5% profit retention surtax. A company is generally deemed to be a resident corporation for income tax purposes if it is incorporated or established in Taiwan. A foreign company incorporated in a foreign jurisdiction that has a permanent establishment (PE), i.e. a fixed place of business or a business agent, in Taiwan is subject to income tax on Taiwan-sourced income only. Non-resident foreign companies are generally subject to withholding tax on Taiwan-sourced income, unless where separate tax filings are required.

Please note that the Income Tax Act was amended to include anti-tax avoidance rules in Article 43-3 (Controlled Foreign Company) and Article 43-4 (Place of Effective Management) of the Income Tax Act. The effective date of the said Articles has not yet been decided – close observation of the development is recommended.

Alternative minimum tax

The alternative minimum tax (AMT) applies to both resident enterprises and resident individual taxpayers. Under the Income Basic Tax Act (IBTA), taxpayers are required to calculate and report their alternative minimum taxable income (see below) calculated under the IBTA, together with their same year regular income calculated under the ITA. If the regular tax is greater or equal to the AMT, the regular tax must be paid.

Conversely, if the regular tax is less than the AMT, the taxpayer pays the AMT instead.

AMT = (Alternative minimum taxable income./. AMT exemption) x AMT rate

	AMT rate %	AMT exemption TWD
Resident enterprises	12	500,000
Resident individuals	20	6,700,000

The AMT is designed to guarantee minimum taxes are paid. As such, income exempted from income tax assessment, such as capital gain from securities transaction etc., as regulated under the ITA or other laws, would need to be added back when calculating AMT. Notably, offshore income of resident individuals will be included in AMT calculations.

Rental income

Rental income is assessable and taxed at the CIT rate of 20% for companies. In addition, the rental income shall also be subject to a 5% value-added tax (VAT).

Respective marginal progressive income tax rates ranging from 5% to 40% are assessed on rental income received by resident individuals. The rental income of resident individuals is taxed on a deemed profit basis if the actual cost of such rental is difficult to establish.

Capital gains on sale of property

The new real property transfer tax (RPT) regime (amended on 28 April 2021, effective on 1 July 2021), which taxes actual gain realised from property transactions for both buildings and land, is applicable to all properties acquired on or after 1 January 2016 (the old real property tax regime still applies to properties purchased before 1 January 2016). See table below for details of the new RPT.

LVIT will continue to be levied with the implementation of the new RPT regime.

The following is a summary of the new real property tax regime:

Item	Description
Taxation scope	Sales of any of the following after 1 January 2016 will be subject to the new RPT regime, except certain criteria is met (see section below on 'Exclusions'): • Building; • Pre-sold building and underlying land; • Building and land where the building is situated thereon; • Land eligible for being granted a construction permit; and • Majority (over 50% shareholding) shares of directly or indirectly held foreign or domestic profit-seeking enterprises where more than 50% of value of shares or capital contribution is from building and land within Taiwan but excluding sale of listed/OTC or emerging stock. **Exclusions:** – Building or land acquired before 1 January 2016.
Tax base	Proceed from sale of building and land minus: • Costs • Expenses • The total amount of land value increment calculated based on the Land Tax Act, i.e. tax base of LVIT.
Tax rate	For Taiwanese profit-seeking enterprises: • Less than two year: 45% • More than two year but less than five years: 35% • More than five years: 20% For resident individuals, building/land held for: • Less than two year: 45% • More than two year but less than five years: 35% • More than five years but less than ten years: 20% • More than ten years: 15% For profit-seeking enterprises with foreign head-offices located outside of Taiwan, i.e. with Taiwan branch, and non-resident individuals, building/land held for: • Less than two year: 45% • More than two year: 35%

For any profit-seeking enterprise having its head office outside of Taiwan who directly or indirectly owns more than 50% of an offshore company's shares, where at least 50% of the value of such company is comprised of building and land within Taiwan, income derived from transaction of such offshore company's shares shall be deemed as real property transaction gain, and income taxes shall be calculated and paid in accordance with guidance provided under new RPT regime.

In addition, sale of shares/ownership of a Taiwan corporate with more than 50% of its value from Taiwan real estate would be deemed as sale of real estate, which would be subject to the new RPT as well.

Interest expense

Interest expense is allowed as deduction from rental income for corporate income tax purposes if interest expense incurred is related to the principal and ancillary operations of the company. The deduction of interest expense on related party loans is subject to Taiwan transfer pricing regulations.

Taiwan introduced the thin capitalisation rule, where deductible interest expense on intercompany loans is capped at a prescribed intercompany debt-to-equity ratio of 3:1.

Certain interest cost must be capitalised.

Payment of interest to resident individuals or profit-seeking enterprises is subject to withholding tax at a rate of 10%. A 20% withholding tax is applied on interest payment to non-resident individuals and profit-seeking enterprises having no fixed place of business in Taiwan, absent any tax treaty. No withholding tax is imposed on interest paid to local banks.

Depreciation

Depreciation of fixed assets is calculated based on useful lives prescribed in the Table of Service Lives of Fixed Assets.

Loss carryforward

Net operating losses can be carried forward for a maximum period of ten years.

Land value tax

Land is subject to annual land value tax based on government-assessed value. The regular progressive tax rate ranging from 1% to 5.5%. Lower rates would apply if certain criteria are met.

House tax

Buildings are subject to house tax imposed on the taxable present value announced by the government. The building tax rate for commercial properties is 3% to 5% of the taxable present value, and the rate for non-commercial properties is 1.2% to 3.6% of the taxable present value.

Deed tax

The applicable deed tax rates range from 2% to 6%, depending on the classification of each deed. Specifically, deed tax on activities in relation to acquisitions of buildings is 6% on the government-assessed value of the property.

Stamp tax

Stamp tax is imposed on contracts for the sale, transfer, or partition of real estate to be submitted to government agencies for registration. The current tax rate is 0.1% of the government-assessed present value of real estate.

LVIT	LVIT is levied on the increased published present value of land upon the transfer of legal title of land. The tax liability is calculated based on the published present value promulgated annually by the government. The applicable tax rates for LVIT are 20%, 30%, 40% depending on the increment of the land value. The present value of land is assessed and published annually, taking into consideration such factors as the development of each geographic district and inflation rate.
VAT on sale of property	VAT is exempt on the sale of land. A 5% VAT will be assessed on the sale of buildings.
Real Property Securitisation Law	Income distributed to beneficiary certificate holder of REIT or REAT shall be subject to the following withholding tax treatment: 10% withholding tax for resident companies (interest income to be consolidated in corporate tax return) and 10% final withholding tax for resident individuals. 15% final withholding tax for non-resident companies and non-resident individuals.
Tax implications of repatriation of income	Corporate dividends distributed from after-tax profits to foreign shareholders are subject to withholding tax. The standard dividend withholding tax rate is 21%. The withholding tax may be reduced under applicable tax treaties. Foreign investors that invest in Taiwanese real estate using Taiwan branch of a foreign corporation are not subject to Taiwan withholding tax on repatriation of after-tax profits to the foreign head office (i.e. there is no branch profit tax in Taiwan).

10 United Arab Emirates

Foreign investment framework in real estate sector in United Arab Emirates	Generally, there are no foreign ownership restrictions in respect of investments into UAE real estate or a UAE REIT, except where the assets are located within certain area(s) that are designated for UAE/GCC national ownership only.
REIT's regulatory framework	In the UAE, REITs are typically established under the regulatory framework of the (i.) Dubai International Financial Centre (DIFC) or (ii) Abu Dhabi Global Market (ADGM).
Corporate income tax rate	The UAE currently does not have a system of Federal corporate income taxation. Instead, most of the UAE Emirates have their own corporate income tax decrees (the 'Decrees'), which allow each Emirate government to impose corporate income tax on the income from business activities carried on in the respective Emirate at rates of up to 55%. Although the Decrees continue to apply, in practice tax is currently only enforced on foreign oil companies engaged in upstream petroleum activities. Additionally, branches of foreign banks are subject to corporate income tax at a rate of 20% under separate banking tax decrees issued by some of the Emirates.
Deductibility of interest	Not applicable for UAE companies engaged in real estate activities under the current UAE tax framework and practice.
Tax losses carried forward	Not applicable for UAE companies engaged in real estate activities under the current UAE tax framework and practice.
Advance tax payments	Not applicable for UAE companies engaged in real estate activities under the current UAE tax framework and practice.
Withholding taxes (WHT)	There are currently no withholding taxes in the UAE that would apply to payments such as dividends, interest, royalties or service fee payments made to resident or non-resident persons.
Non-resident capital gains tax (NRCGT)	There is currently no capital gains tax on gains realised by residents or non-residents.
Treaty application	From a UAE tax perspective, the granting of double tax treaty relief currently has limited practical relevance given the current corporate income tax regime in the UAE and because the UAE does not impose withholding tax on payments to non-resident.
Functional currency for tax purposes	The UAE tax legislation provides that AED should be adopted as a functional currency for tax purposes. Transactions carried out in a different currency should be translated to AED using exchange rates at the transaction date. Given the current tax environment and practice in the UAE, unrealised foreign exchange gains and/or losses are disregarded for tax purposes.

Value-added tax (VAT)

The UAE VAT regime contains specific provisions applicable to the real estate sector. Given the potential complexities that can arise, businesses should perform detailed analysis of their contracts and transactions in order to assess the correct VAT treatment.

We have provided a high-level overview of the VAT treatment of common real estate transactions below:

- Commercial property: The supply of commercial property is subject to VAT at the standard rate of 5%.
- Residential property: The 'first supply' of a residential building is subject to VAT at zero-rate and this applies in case of a supply of the building by either sale or lease. However, the first supply should be made within 3 years of the building's completion date. Any subsequent supply of a residential building after the first supply, is exempt from VAT.
- Supply of Land: The supply of a 'bare land' by way of sale or a long term lease is exempt from VAT. Where a plot of land is supplied which is not a 'bare land', it is subject to VAT at the standard rate of 5%.
- Mixed use developments: When a property is supplied that is used for mixed purposes, the VAT treatment depends on the usage of the particular part of the property. The portion supplied that is being used for commercial purposes, the supply is taxable at the standard VAT rate of 5%. With regards to the part being used for residential purposes, the VAT treatment will depend on whether the supply is the first supply or not. If it is the first supply of the property within 3 years from its date of completion, the supply will be zero rated. If the supply is a subsequent supply, it will be exempt from VAT.

In relation to input tax recovery, an input VAT apportionment calculation must be carried out for input tax incurred for goods or services used for making both taxable and exempt supplies. The recovery will be restricted to the extent of any exempt supplies made.

The standard method of apportionment to calculate input VAT recovery is the 'inputs'-based method. However, the standard method of apportionment may not be appropriate in every situation and the UAE VAT legislation stipulates special input tax apportionment methods as follows:

- Outputs based method.
- Transaction count method.
- Floorspace method.
- Sectoral method.

For the real estate sector and other businesses that sell or rent real estate on an ongoing basis, the floorspace method is likely to be the most appropriate method.

Real estate services – supplies of services that are directly connected to the real estate, or where the supply involves the grant of a right to use the real estate are subject to VAT at the standard rate of 5%. For example, a supply of services involving the preparation, coordination and performance of construction, destruction, maintenance, conversion or similar work is taxable at the standard VAT rate.

In addition to the above, common transactions between landlords and tenants, such as early lease terminations and rent-free periods may also give rise to some VAT challenges and should be reviewed on a case-by-case basis.

America

1 Argentina

Income tax rate

For fiscal periods which start in 2021, a progressive rate for the Income Tax has been established (25%, 30% or 35% considering the level of tax result). The maximum tax rate of 35% will be applicable when net tax results exceed ARS 50m

Sale of Stock by non-residents and dividend distributions

Transfer of Argentine shares between non-residents is currently subject to non-resident capital gains tax (NRCGT). Thus, foreign beneficiaries are 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.

Non-residents are exempt from NRCGT on the sale of shares of publicly-traded companies, but only to the extent that the shares are sold through the local Stock Exchange. Furthermore, non-residents are exempt from tax on capital gains from the sale of corporate bonds issued in an IPO. The yields from those bonds are also exempt from Argentine tax. In all cases, the exemption is conditioned on the foreign seller being a resident in a jurisdiction that has an exchange of information agreement with Argentina and that the funds come from these jurisdictions.

Indirect transfer of Argentine assets (including shares) are subject to indirect NRCGT provided that i) the value of the Argentine assets exceed 30% of the transaction's overall value and ii) the equity interest sold in the foreign entity exceeds 10%. The tax is due if any of these thresholds were met during the 12-month period prior to the sale. The indirect transfer of Argentine assets, however, is only subject to the tax to the extent those assets were acquired after 1 January 2018. Furthermore, indirect transfers of Argentine assets within the same economic group do not trigger taxation.

A withholding tax on dividend distributions has been established since 2018, at 7%. In addition, a 35% 'equalisation tax' applies to dividend distributions made out of earnings accumulated prior to 1 January 2018 that exceeded tax earnings as of the year-end prior to the relevant distribution.

Rollover of fixed assets

Income Tax Law establishes that in the event of disposal and replacement of fixed assets, the gain obtained from that disposal may be applied to the cost of the new fixed asset. Therefore, the result is charged in the following years, through the computation of lower amortisation and/or cost of a possible future sale of new goods. In case of real estate, this procedure only takes place when the property was affected to the obtaining of taxable income (as fixed asset or was subject to lease) at least (two) years before its disposal.

The use of real estate trust

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. Law 27,440 establishes tax reductions and reduced tax rates for trusts and investment funds constituted for real estate developments, to the extent that certain requirements are met.

The main advantages are the following: i) Revenue recognition for income tax purposes is deferred up to the moment the trust effectivity makes a profit distribution to its participants; ii) Certain real estate trusts with social-productive aims are benefited with a reduces 15% income tax rate.

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 2017 – tax reform introduced a detailed definition of a permanent establishment (PE): a building site, a construction, assembly or installation job or supervision activities in connection therewith but only if such site, project or activities last more than six months in Argentina.

Tax Treaty Network

Argentina has concluded more than 20 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. It is strongly recommended to verify substance requirements to apply double tax treaty benefits.

Tax 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, but they 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.

Thin capitalisation rule

The deduction on interest expense and foreign exchange losses with local and foreign related parties is limited to the higher amount between i) 30% of the taxpayer's taxable income before interest, foreign exchange losses and depreciation; ii) The amount fixed by the Regulatory Decree (ARS 1m). The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilised deduction capacity for three years.

Construction-incentive law

Law 27.613 determines tax benefits for new private construction sites, started after 12/03/2021. One of the main advantages is the possibility of deferring the payment of the Income tax, until a monetary compensation is received (or a non-monetary one received in the past is transferred) or the moment of the finalisation of the construction. In addition, it is established the actualisation (considering the inflation rates) of the value of the property, when this one is sold.

Foreign exchange control regulations

As from 1 September 2019, the Argentine government issued on 1 September 2019 two relevant measures: Decree 609/2019 and Communication 'A' 6770 of the Central Bank of the Argentine Republic ('BCRA'). In general terms, both regulations were aimed to restore what is known as the Foreign Exchange Control Regime, therefore allowing the administration to further restrict and control all transactions carried out in foreign currency.

If a resident company needs to invest in real estate in Argentina and for that purpose it receives a financial loan abroad, it is to be noted that the local company does not have the obligation to bring and negotiate the foreign currency of the financial loan in the FXM, but the fulfilment of this obligation will have to be demonstrated in order to access the FXM to repay the capital and interests. Besides, it must be noted that there are restrictions to repay capital of financial loans when the lender is a foreign related party. If the lender is a foreign third party, the local company may have to comply with a refinancing plan to access the FXM for the repayment of capital.

If the local company receives a capital contribution abroad from non-resident entities, there is no obligation to bring into the country the foreign currency of such contribution. However, non-residents who intend to access the FXM to purchase and or transfer abroad foreign currency (i.e. for a repatriation of direct investments) will need the prior formal approval of the BCRA.

Access to the FXM to make dividend payments requires prior authorisation from the BCRA, with certain exceptions, for instance: except in the case that the local company receives a new capital contribution through the FXM, and it seeks a dividend payment of up to 30% of such new capital contribution.

Access to the FXM for residents to pay debts and other obligations in foreign currency contracted with other residents and agreed as of 1 September 2019 onwards is prohibited, unless such obligations have been implemented through public records or deeds by 30 August 2019. In all of the cases in which the formal approval of the BCRA is requested, it is to be noted that BCRA´s authorisations are granted on a null or a very restricted basis. Consequently, in each project a careful analysis should be performed.

Corporate Law Impacts

In case the purchaser of land is a foreign company, the purchase of real estate may either be treated as either an 'isolated act' or as an act evidencing some degree of continuous presence in Argentina. Recent administrative precedents and judicial case law tend to treat the purchase of real estate property by foreign companies under the second view and, hence, a permanent representation of the company in the country (e.g. a subsidiary or a branch) may be required by the local Office of Corporations.

Since last 27 May 2021, the Office of Corporations General Resolution No 8/2021, establishes from which companies incorporated abroad that request their registration as 'vehicle' companies must comply with the following regime: i) The condition of 'vehicle' company must be declared at the time of its registration in the Argentine Republic; ii) The registration of more than one single 'vehicle' company per group will not be admitted; iii) The registration of 'vehicle' companies will not be admitted if their direct or indirect controlling company is registered in the Argentine Republic as a foreign company; iv) The registration of 'vehicle' companies resulting from a chain of control between successive sole proprietorships will not be accepted; v) The registration of a single-shareholder corporation whose shareholder is only a single-shareholder corporation incorporated abroad, with or without the character of a 'vehicle', will not be accepted.

Once per year, the Office of Corporations requests a sworn declaration of the final beneficiary from the companies registered. In this sense, the final beneficiary is understood to be human persons who have at least twenty percent (20%) of the shares or voting rights of company, or who by other means exercise the final, direct or indirect control of the company registered in the Argentine Republic.

Rural land ownership law

Pursuant to Law 26737, enacted in 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 unique 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 (seas, rivers, streams, lakes and glaciers). Any person acquiring frontier land (either local or foreigner) must obtain the corresponding governmental authorisation.

Decree 820/2016 introduced certain interpretation criteria in order to not over restrict foreign investment in rural land.

Surface Right in the new Civil and Commercial Code

A surface right involves a temporary property right on real property not personally owned, which allows its holder to use, enjoy and dispose the property subject to the right to build (or the right on what is built) in relation to the said real property. The maximum legal term for this surface right is 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.

Simplified Companies

Law 27349 provide different new tools for developing entrepreneurial capital, like the Simplified Companies. They have been created for providing every entrepreneur the possibility of incorporating a company, obtaining it tax code and a bank account in a short period and with a much more flexible structure than the one in force for other legal types provided by Argentine Law 19550. Also, any existing company incorporated in Argentina under any of such existing legal types is entitled to amend its by-laws to adopt the Simplified Companies legal type.

A specific General Resolution of the Office of Corporations (22/2020) established an exchange information regime between such public authority and the Real State Registry of the City of Buenos Aires, extended to any other jurisdiction in this country, to determinate the effective economic activity using such real state in this territory, when a Simplified Company is entitled. As a result of such control if an existence of activity is detected, the Office of Corporations must take judicial actions to be responsibly the shareholder/s, in a direct way, including the dissolution and wind-up process of the Simplified Company. Nowadays, the kind of figure is not recommended in the City of Buenos Aires.

Limits to the Property Right in the Civil and Commercial Code

The 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.

2 Canada

Investment structures

Foreign investors (also referred throughout as non-residents) may invest in property in Canada using a Canadian legal entity (corporation, partnership or trust) or may acquire property directly.

The Canadian government proposed new rules in its 2021 Federal Budget that would eliminate the tax benefits from hybrid mismatch arrangements, consistent with the recommendations in the base erosion and profit shifting (BEPS) Action Plan. These rules, details forthcoming, are expected to apply beginning in 2022 and 2023. These rules should be considered when structuring for Canadian investment.

Compare the various structures that can be used to invest in property in Canada.

Corporate income tax rates

The combined federal and provincial/territorial corporate income tax rates for the 2021 taxation year range from 23% 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 ten provinces and three territories.

Compare corporate income tax rates for different jurisdictions.

Capital cost allowance (tax depreciation)

Non-residents are generally subject to the same rules relating to depreciable property and capital cost allowance ('CCA') which apply to a resident of Canada. However, a non-resident person cannot claim CCA in respect of property situated outside Canada. Depreciation, as determined for accounting purposes, is not deductible.

CCA on buildings is calculated on a declining balance basis at the rate of 4% (or 6%/10% for certain Canadian non-residential buildings constructed after 19 March 2007, depending on the extent of the property used for manufacturing purposes), subject to a 50% reduction to the full tax depreciation rate in the first year in which the building becomes available for use. The costs of additions to buildings and replacements of building components that are capital in nature are added to the tax cost for depreciation purposes. Eligible property acquired after 20 November 2018 and available for use before 2024 may qualify for accelerated CCA during the year in which the property becomes available for use, to effectively allow for that year the application of 1.5 times the full CCA rate to the cost of the additions.

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 CA$ 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, or a partnership, the partners of which are all such corporations.

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 or trust (or a corporation or trust that is not resident in Canada but carries on business in Canada or has elected to pay tax on passive income from Canadian real property as if it was a resident of Canada) is a non-resident person who alone or with other related persons owns more than 25% of the Canadian corporation's shares (or has a combined beneficial interest in the trust with a fair market value that is more than 25% of the fair market value of all interests in the trust), and interest expense on the loan would otherwise be deductible to the corporation or trust. 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 to a Canadian corporation 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.

The Canadian thin capitalisation rules can also apply in respect of certain situations that involve secured guarantee arrangements in respect of third-party debts that would otherwise not be subject to the thin capitalisation limitations. In general terms, the limitations apply where a non-resident person that does not deal at arm's length i) pledges property to secure the debt, and the lender has at that time the right to use, invest or dispose of the property ii) holds limited recourse debt of the third-party lender; or iii) makes a loan to the third-party lender on condition that the loan be made to a Canadian corporation or trust.

The legislation relies on the use of various defined terms and may create significant uncertainty due to many interpretive issues. Careful consideration of all financing arrangements is required.

The Canadian government, in its 2021 Federal Budget, proposed new rules that would significantly impact interest deductibility in Canada. The proposed rules would limit the amount of net interest expense that a corporation (and a trust, partnership, or Canadian branch of a non-resident) may deduct in computing its taxable income to no more than a fixed ratio of its 'tax EBITDA'. The ratio is 40% for taxation years beginning after 2022 and before 2024, and 30% for taxation years beginning after 2023. A 'group ratio' rule will allow a taxpayer to deduct interest that exceeds the fixed ratio if certain criteria are met. Interest denied can be carried forward 20 years, or back three years. The specifics of the proposals are forthcoming, however they are consistent with the recommendations in the BEPS Action Plan. These proposals should be carefully monitored.

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 taxable Canadian property (TCP) that is held as capital property is subject to Canadian tax on any resulting taxable capital gain, i.e. 50% of the gain (proceeds of disposition less capital cost of the property). TCP generally includes real property situated in Canada. TCP also includes shares of the capital stock of an unlisted corporation, or an interest in a partnership or trust, if at any time during the previous 60-month period, more than 50% of the value of the share or interest was derived from real property situated in Canada.

In addition, to the extent that the proceeds of disposition of Canadian depreciable property (i.e. a building) exceed the property's undepreciated capital cost, the excess (up to the property's original 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.

When the disposition is on income account rather than on capital account, i.e. inventory, the non-resident will be taxed at full tax rates on the resulting profit less applicable expenses, subject to possible relief by tax treaty.

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 either 25% (in the case of sale of land that is capital property) or 50% (in the case of land that is not capital property, or of a building or other depreciable property) of the gross sales proceeds. Relief from the reporting and withholding requirements may be available in certain cases. The non-resident vendor can also be subject to a penalty of up to a maximum of CAD 2,500 (or fines and/or imprisonment in extreme cases) for failure to notify the CRA of the disposition.

In addition to the federal reporting and withholding obligations noted above, a non-resident vendor must separately report the disposition of real property to the provincial authorities where the real property is situated in the province of Quebec. If no certificate is obtained from Revenue Quebec, the purchaser is required to withhold and remit 12.875% of the gross sales proceeds. Non-residents must obtain a certificate even if the transaction results in a capital loss. Relief from the reporting and withholding requirements may be available in certain cases.

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 passive income from property earned by a non-resident. If these losses are not used in the year they are incurred, they can be carried back three years and forward 20 years. However, losses of a non-resident from a business carried on outside Canada, or from a passive interest in Canadian real property, 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

Certain amounts paid or credited by a Canadian resident entity to non-residents are subject to withholding tax of 25% of the gross amount paid or credited. These amounts 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, registration fees, and property tax

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 5% of the property value depending on the city in Canada and depending on whether the property is residential or non-residential. The tax is generally payable at the time the legal title of the property is registered or on the transfer of a beneficial interest.

To address issues of unaffordability of residential housing in certain cities in the provinces of Ontario and British Columbia, local governments have implemented additional transfer taxes where non-residents of Canada acquire residential property. Foreign entities and certain taxable trustees that purchase residential property may be subject to additional property transfer tax (in addition to the provincial and municipal land transfer tax), with rates up to 20% of the property value.

Additionally, the Government of Canada proposes to introduce an annual 1% tax and additional reporting requirements, starting in 2022, on the value of non-resident, non-Canadian owned residential real estate considered to be vacant or underused. Exemptions may be available. Certain cities, including the City of Vancouver, have already introduced vacancy taxes. These taxes should be considered when acquiring residential property in Canada.

In addition, most cities and towns impose an annual realty and/or business tax on real property. These taxes are based on the assessed value of the property at rates that are set each year by the various municipalities.

Take into account the land transfer tax and additional tax costs 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 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

Tax reform

Mexico has enacted relevant tax reforms in recent years that introduced changes in the Mexican Income Tax Law, Value-Added Tax Law and Mexican Federal Tax Code meant to incorporate fundamentals of the OECD base erosion and profit shifting (BEPS) initiative.

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.

Alternative minimum tax

There is not an alternative minimum tax in Mexico.

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. Furthermore, 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.

Non-deductibility of payments made to preferred tax regimes

As from 1 January 2020 any type of payments made by a Mexican taxpayer to a non-Mexican resident that is a) a related party or b) through a structured agreement, would not be deductible for income tax purposes if such income obtain by the non-Mexican resident is subject to a preferred tax regime (PTR) under Mexican rules. Some exemptions to this rule would apply subject to certain requirements.

A PTR would be deemed to exist when the income is not subject to taxation in a foreign jurisdiction or if the effective tax due and paid in the foreign jurisdiction is lower than the 75% of the 30% corporate income tax rate that would be due and paid under Mexican rules (lower than 22.5% under Mexican rules).

Check if payments are made to a PTR and determine the corresponding deductibility for Income Tax Purposes. Support with contemporary documentation would be relevant.

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.
Limitation on deducting interest expense	As from 1 January 2020, Mexico has incorporated an additional limitation on the deduction of interest expense will apply. Net interest arising from all financing cannot exceed 30% of an adjusted taxable income (ATI) as defined in the Mexican Income Tax Law. ATI is calculated similarl to EBITDA. Interest expense that exceeds this threshold can be carried forward in the following ten years. Review the debt position of the company and the computation to determine any non-deductible interest.
Investments in Mexico through foreign transparent vehicles and foreign transparent vehicles deemed as Mexican tax residents.	A recent provision has been introduced as from 1 January 2020 to disallow to look-through transparent entities or vehicles to determine their tax implications from its income obtained in Mexico (even if their owners consider such income as taxable on its residence jurisdictions), except otherwise is stated under a tax treaty. An exemption rule was enacted for public investment funds to the extent that certain requirements are met (some registrations and reporting will apply with the Mexican tax authorities for this purpose). Also, it has now been established that transparent entities or vehicles that its effective place of management is located in Mexican territory would be considered as Mexican residents for tax purposes. The provisions mentioned before would enter into force by 1 January 2021. Review and analyse in detail the characteristics of the investment vehicle to confirm if this provision would apply and, if applicable, confirm if there is an exemption that can apply to the relevant investment structure.
Informative returns	Taxpayers are obliged to file informative returns related to several different matters. In general, the deadline to file said informative returns is 15 February of the following year, except for the informative return of transactions with related parties, which is filed together with the annual tax return. 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.

Reportable schemes

Effective 1 January 2021, tax advisors would have the obligation to disclose to the Mexican tax authorities certain listed reportable schemes described in the Mexican Federal Tax Code that were carried out with the purpose to obtain a direct or indirect tax benefit for taxpayers. In some instances, the taxpayer will be the party obligated to report the transactions.

The reporting requirements will apply not only to transactions carried out as of 1 January 2021, but also to previously implemented transactions that continue to have tax benefits post-2020.

Prepare an inventory of transactions that may fall in the definition of reportable schemes and if any, ensure that the informative returns are duly filed.

New general anti-abuse rule (GAAR)

A general anti-abuse rule (GAAR) has been recently included in the Mexican Federal Tax Code. This new provision would be applicable for Income Tax, VAT and Excise Tax purposes where the Mexican tax authorities may reclassify the tax effects of legal acts when a) there is a lack of business purpose and b) a tax benefit is obtained (directly or indirectly). A test comparing the economic benefit versus the tax benefit must be carried out and if the latter is higher, the Mexican tax authorities would assume that there is a lack of business on the transaction. The re-classification of tax effects would be to the ones that would be obtained to the economic benefit expected to be obtained by the taxpayer.

Check if any of the transactions to be carried out by the Mexican taxpayers satisfy the GAAR requirement.

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.

In connection with BEPS Action 13 (country-by-country reporting (CbCR), local legislation aimed to comply with such reporting obligations has entered into force. In this regard, Mexican local entities with taxable income of MXN 755,898,920 (i.e. approximately USD 40m) are obliged to submit local files and master files, and country-by-country filing if worldwide consolidated revenues are equal or greater than MXN 12 b (i.e. USD 640m) on 31 December of the following year in which the obligation is triggered. Penalty for non-filing is MXN 220,400 and may lead to disqualification from entering into contracts with Mexican public sector and cancelation of the taxpayer importer registry. Note that 2018 filing obligations must be complied with at the latest on 31 December of the current year.

Prepare a transfer pricing study covering each transaction carried out with related parties, including the CbCR requirements.

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 four years 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. Moreover, documentation to support the exemptions is required so it is strongly recommended to secure it on a contemporaneous fashion.

Mexican REITs

A special tax regime is granted for publicly traded Mexican REITs providing certain advantages, such as the no obligation to file monthly advanced income tax payments (among other tax benefits). In addition, the Mexican tax rules enacted a new type of REIT for developing hydrocarbon related activities in Mexico (known as REIT-E) that also provides tax benefits.

Due to the 2020 tax reform in Mexico, income tax benefits for private REITs are no longer available and some rules have been included to regulate the taxation of deferred gains in the context of private REITs.

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 VATexempt. Therefore, VAT may be a cost for those real estate companies performing VATexempt 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.

4 United States

U.S. economy and 2021 outlook

In the first three months of 2021, gross domestic product (GDP) grew by 1.6%. The increase in GDP was spurred by two batches of government payments to most Americans – a relief package enacted before the end of 2020 and an additional payout approved by legislation in March 2021. Widespread business reopening's, rising vaccination rates and the infusion of pandemic government aid has led to increased consumer spending which has fueled the strength of the economy. Low interest rates continue, unemployment rates are declining, and home values are rising due to strong consumer demand and tight inventories. The U.S. economy continued to grow rapidly through the second quarter, but the outlook has turned cloudier due to the fast-spreading Delta coronavirus variant. It is uncertain if the Delta variant will make a major dent in the U.S. economy as businesses and consumers have learned how to adapt to the changing environment.

2021 presidential update

President Joe Biden was inaugurated as the 46th president of the United States on 20 January 2021. President Biden has made it clear that his priority is to address the pandemic and its economic fallout. The new Biden administration and Congress have begun active discussions in the recovery proposals that rely on increased taxes from corporations and high-income individuals to offset part of the cost of his plans. Such proposals will modify the provisions of the Tax Cuts and Jobs Act (TCJA) that President Trump signed into law on 22 December 2017. The TCJA was the largest overhaul of the tax code in three decades which most notably reduced corporate and individual tax rates and allowed individuals a 20% deduction on pass through income with some exceptions.

2021 tax proposals

In May 2021, U.S. Treasury released a 114-page 'Green Book' general explanation of tax proposals included in President Joe Biden's fiscal year (FY) 2022 Budget. The Green Book provides details on proposals to increase corporate and individual taxes to help offset the USD 4.1t combined cost of President Biden's previously proposed American Jobs Plan and American Families Plan. The President's Budget proposes USD 1.5t in overall FY 2022 discretionary defense and domestic spending and includes a proposal to increase IRS funding by USD 1.3b to USD 13.2b as part of efforts to collect USD 778b over 10 years from increased tax compliance measures.

On 15 September 2021, the House Ways and Means Committee approved tax increase and tax relief proposals that are to be acted on by the House of Representatives as part of 'Build Back Better' reconciliation legislation. Any differences between the House tax proposals and forthcoming Senate tax proposals that are expected to be considered in coming weeks will have to be resolved before final legislation can be put to a vote in both chambers. Congressional Democratic leaders are seeking to complete action on the legislation so it can be signed into law by President Biden before the end of this year. While the cost of any final package remains uncertain, the Ways and Means Committee-approved bill features significant business and individual tax increases. Moderate House and Senate Democrats are expected to insist on scaling back the scope of both the spending proposals and certain tax increase proposals.

The House action also calls for a House vote, without amendments, on 27 September on the bipartisan infrastructure bill recently approved by the Senate.

Key provisions that may affect high-income individuals, pass-through businesses (partnerships and S Corporations), and estates and trusts include:
- increasing the top individual tax rate from 37% to 39.6%;
- increasing the top capital gains rate and qualified dividend rate from 20% to 25%;
- expanding the net investment income tax to capture more income;

2021 tax proposals, continued

- new 3% surcharge imposed on individuals with income in excess of specified amounts;
- limiting the Section 199A deduction for qualified business income;
- limiting the excess business loss deduction for noncorporate taxpayers;
- modifying the current treatment of carried interest income by increasing the three-year holding period to a five-year holding period for an applicable partnership interest and extend Section 1061 to include all gains eligible for long-term capital gain treatment;
- reduction of gift, estate, and GST exemption;
- changes to grantor trusts, including:
  - All grantor trusts would be included in a decedent's taxable estate when the decedent is deemed the owner of the trusts for income tax purposes;
  - Sales between grantor trusts and their deemed owner would be treated as equivalent to sales between the owner and a third party and would trigger gain on appreciated assets.
- valuation discount limitations on the transfer of nonbusiness assets;
- changing the rules for losses related to worthless partnership interests;
- permitting certain S corporations to reorganise as partnerships without tax; and
- limiting qualified small business stock benefits for certain taxpayers.

Key provisions that may affect businesses include:
- increasing the top corporate tax rate from 21% to 26.5%;
- Interest deduction limitations for domestic corporations that are part of an international financial reporting group;
- modifying various inbound and outbound international provisions, including:
  - Deduction for Foreign-Derived Intangible Income (FDII);
  - deduction and inclusion of Global Intangible Low-Taxed Income (GILTI);
  - increasing the tax rate of the Base Erosion Anti-Abuse Tax (BEAT);
  - foreign tax credit limitation and related provisions;
  - subpart F pro rata share determination;
  - definition of '10% shareholder' to include ownership by value for purposes of the portfolio interest exception;
- extending of expensing of research and experimental costs under Section 174;
- expanding wash sale rules to new asset classes (including commodities, foreign currencies, and digital assets) and related-party acquisitions;
- limiting the deduction of compensation above USD 1,000,000 for publicly held companies which applies to the top 5 compensated employees;
- REIT-specific proposals, including:
  - Rent from prison facilities would be excluded from the definition of 'rents from real property' similar to related party rent or rent based on income or profits.
  - 'Double-downward' attribution would be turned off when applying the constructive ownership rules of section 856(d) (e.g. for determining related party rent) which would make it less likely that entities would be treated as related.

Impact to the real estate industry

Several provisions in the Bill are of particular importance to the real estate industry. The proposed increases in rates for both individuals and corporations that may affect after-tax returns could impact the decision to invest in real estate through an entity treated as a corporation or a partnership for tax purposes. Investors in real estate through corporations would be most impacted by increases in the corporate tax rate. If a non-US person owns real estate through a US corporation, the corporation could be subject to more tax as a result of the changes to the BEAT, and interest from loans to the corporation in which the non-US person owns a 10% economic interest could be subject to 30% withholding even if the non-US person does not have any voting interest in the corporation. On the other hand, individuals who invest through partnerships would be impacted by the changes to individual rates, and limitations on the 20% deduction under Section 199A, and individuals who qualify as real estate professionals might become subject to the 3.8% net investment income tax even though they were not subject to that tax before.

For individuals who may have a carried interest, while many real estate partnerships might not be subject to the proposed increase in the carried interest holding period from three to five years, a variety of changes would impact owners of carried interest in real estate partnerships. The gains from real estate used in a trade or business would be subject to the proposal, even though these gains are not subject to the current carried interest rules. For purposes of determining whether the requisite three- or five-year holding period for real estate is satisfied, the period may start tolling later because the proposal generally provides that the holding period would begin at the later of the time the individual receives substantially all of the partnership interest or the partnerships acquired substantially all of its assets. Currently, the period generally begins when the particular asset being sold was acquired. Property that is held only for investment – as opposed to real estate used in a trade or business – would be more likely to be subject to a five-year hold under the proposal.

Proposed effective dates

Most of the Ways and Means Committee-approved tax provisions would be effective for tax years beginning after 31 December 2021, but some key provisions have earlier effective dates. For example, the provision to increase the current top rate on capital gains and qualified dividend income from 20% to 25% is proposed to be effective for tax years ending after the date of introduction (13 September 2021). A transition rule retains the 20% tax rate for capital gains and qualified dividend income recognised on or before that date.

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