www.pwc.com/realestate

Key Tax Issues at Year End for Real Estate Investors 2023/2024

An overview of year-end tax considerations and important issues in real estate taxation in 31 tax systems worldwide

pwc

Introduction

Tax regimes are diverse, complex and subject to regular changes. Close to year end it is important to consider tax related deadlines expiring at year end and anticipate potential changes in tax laws as per the start of the new year.

This publication gives investors and fund managers an overview of year-end tax considerations and important issues in real estate taxation in 31 tax systems worldwide.

Please note that the list of year-end tax considerations is not exhaustive. This content is for general information purposes only and should not be used as a substitute for consultation with professional advisors.

We hope that you will find Key Tax Issues at Year End for Real Estate Investors 2023/2024 a useful reference and source of information. We would be pleased to assist you with any further requests relating to your specific circumstances.

November 2023

Jeroen Elink Schuurman
Partner PwC Netherlands
Global Real Estate Tax Leader

Dr Michael A. Müller
Partner PwC Germany

Contents

List of abbreviations

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
BAT	business activity tax
BCRA	Banco Central de la República Argentina (Argentine Central Bank)
BCT	business continuity test
BEAT	base erosion anti-abuse tax
BEPS	base erosion and profit shifting
BIR	bureau of International revenue
BMT	book minimum tax
CbCR	country-by-country reporting
CET	contribution économique territoriale
CFC	controlled foreign company
CFE	cotisation foncière des entreprises
CGT	capital gains tax
CIR	Corporate interest restriction
CIT	corporate income tax
CMN	Conselho Monetário Nacional (National Monetary Council)
CRA	Canada Revenue Agency
CVAE	cotisation sur la valeur ajoutée des entreprises

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
EIA	energy investment allowance
ESG	environmental, social and governance
FAIA	Fichier d'Audit Informatisé de l'Administration de l'enregistrement et des domaines (computerized tax audit file from the Luxembourg VAT authorities)
FATCA	foreign account tax compliance act
FBI	fiscale beleggingsinstellingen
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
GHS	general healthcare system
GIFT	Gujarat international finance tec-city
GST	goods and services tax
GVBF	gespecialiseerd vastgoedbeleggingsfonds (Dutch for FIIS)
GVV	gereglementeerde vastgoed vennootschap (Dutch for SIR)
IBTA	income basic tax act
IFSC	international financial services centre

IFSCA	international financial services centres authority
IIT	individual income tax
IFRS	International Financial Reporting Standards
IMI	imposto municipal sobre imòveis (Portugues real estate municipal tax)
IMU	ipmposte municipale unica (Italian local property tax)
IOF	imposto sobre operacoes financeiras (financial transaction tax)
IPO	initial public offering
IRAP	Italian regional production tax
IREF	Irish real estate fund
IRES	imposta sul reddito delle socità (Italien corporate income tax)
IRS	internal revenue services
ITA	income tax act
ITC	input tax credit
JDA	joint development agreement
LVIT	land value incremental tax
MDR	mandatory disclosure rules
MIA	milieu-investeringsaftrek (Dutch environmental investment allowance)
MIT	managed investment trust
MLI	multilateral convention to implement tax treaty measures and prevent base erosion and profit shifting (multilateral instrument)
MNE	multinational enterprise
MoF	ministry of finance
NCST	list of non-cooperative states and jurisdictions
NFE	net financial expenses
No	number
NOL	net operating loss
NRCGT	non-resident capital gains tax
NWT	net wealth tax

OECD	organisation for economic co-operation and development
PAIF	property authorised investment fund
PCG	practical compliance guidelines
PE	permanent establishment
PIT	personal income tax
PSE	Philippine stock exchange
PTC	premium tax credit
Q	quarter
QIPs	quarterly instalment payments in UK
RAIF	reserved alternative investment funds
RERA	real estate (regulation and development) act
RE	real estate
REIT	real estate investment trust
RET	real estate tax
RETT	real estate transfer tax
RPT	real property transfer tax
ROS	revenue online service
RR	revenue regulations
RUSF	resource utilisation support fund
SDC	special defence contribution
SEBI	securities and exchange board of India
SEC	securities and exchange commission
SEZ	special economic zones
SIF	specialized investment funds
SIR	societé immobiliere reglementee (Belgian regulated real estate company)
SOCIMI	sociedades anónimas cotizadas de inversión en el mercado inmobiliario (Spanish REIT)
SPV	special purpose vehicle

STT	securities transaction tax, stock transaction tax
TIVUL	tax on the increase in value of urban land
TP	transfer pricing
UBO	ultimate beneficial owner
UBTI	unrelated business taxable income
VAT	value-added tax
VAMIL	willekeurige afschrijving voor milieu-investeringen (Dutch random depreciation of environmental investments scheme)
WHT	withholding tax
YA	year of assessment

Europe

1 Austria

Income tax rates

Generally, the corporate income tax rate in Austria amounts to 24% (until 2022 this rate was 25%; it was reduced to 24% in 2023 and will further decrease to 23% in 2024). 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 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. A three-tiered documentation approach applies, 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 not deductible for tax purposes 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 usually lower than 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.

Structuring alternatives should be assessed before the transfer of Austrian real estate or shares in a real estate owning company or partnership.

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.

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 currently 24%.

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.

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 implemented the interest limitation rule required by Article 4 of the Anti-Tax-Avoidance Directive (ATAD). 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 carry-forward options for interest expenses and unused EBITDA and numerous exceptions (e.g. EUR 3m de minimis, stand-alone entities, loans prior to 17 June 2016, equity test based on consolidated accounting). Within a tax group, it is important to note that the interest limitation rule as well as exceptions only apply on group level.

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

2 Belgium

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

Belgian tax authorities continue to conduct a significant number of tax audits on 'passive income' payments such as dividends and interest and related WHT exemptions. In any case, formalities will need to be properly and timely fulfilled as always.

Companies should therefore 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).

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, i.e., 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 and subject-to-tax conditions should be met at the level of the distributing company. The same conditions apply in order to exempt a capital gain on shares in the hands of a Belgian company.

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 – 30 % EBITDA rule

The Belgian 30% EBITDA rule applies to both intragroup loans and bank loans (certain loans are however specifically excluded by Belgian tax legislation). 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). Disallowing exceeding borrowing costs can be carried forward without a time limit. It is possible to transfer 'deduction capacity' to another Belgian group entity.

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 rule needs to be monitored in detail and should be kept in mind 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 group contribution regime (see below).

Anti-Hybrid Mismatch

Since the 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.

Group contribution

Under certain conditions and subject to formalities (incl. 90% direct shareholding between the companies (or via EEA parent), affiliation for at least five successive calendar years) Belgian companies can, since 2019, offset their profits against tax losses of another Belgian affiliated company. Only the consolidated tax base is then subject to corporate income tax.

Note that SIR/GVV and FIIS/GVBF are excluded from this possibility.

Tax losses carried forward

Based on current Belgian tax law, tax losses can be carried forward indefinitely if 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.

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.

From assessment year 2024, the total amount of tax deductions is limited to one EUR 1m plus 40% (compared to 70% previously). This, pending the entry into force of the rules relating to Pillar 2. This measure is expected to be temporary since it is provided for a return to the 70% rate from 1 January 2024 (with the assumption that, after this date, the law transposing Pillar 2 in Belgian law will have come into force.

Transfer pricing

Generally, all related-party cross-border payments 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.

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

In relation to the reporting requirements for cross-border tax arrangements, 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 Belgian parliament adopted a new law dd. 20 November 2022 amending the procedural rules on income taxes and VAT items. The following important tax measures from a real estate perspective have been taken:

- VAT deduction methodology
  As from 1 January 2023 all companies deducting input VAT based on the real use methodology have to notify the VAT authorities. The notification obligation also applies to mixed taxpayers that already apply the real use methodology, these latter had until June 2023 to fulfill this obligation. This concerns actors in many industries (financial services, real estate, holdings and private equity).

- Procedural elements
  These rules find their origin within the broader framework of measures against tax fraud and have a great impact on the assessment and examination deadlines in the area of income taxes (fiscal year 2023). Namely, the latter have been significantly prolonged (i.e., from three to, notably, (i) four years for late tax returns, (ii) six years for so called ‘semi-complex’ tax returns (e.g., tax returns notifying payments to tax havens, withholding tax returns (wherein an exemption/reduction is requested), etc.) and even (ii) ten years for ‘complex’ tax returns (e.g., tax returns containing a hybrid-mismatch,). Other periods have also been extended (e.g., investigation by the Belgian tax authorities, claim period for Belgian taxpayers).

Belgian tax law changes should be constantly monitored.

3 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 2023)	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 20% on 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 31.

Contributions to the General Health System (GHS)

In addition to income tax and SDC as from 1 March 2019 a contribution to the General Healthcare 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 2021

A Cyprus tax resident company is deemed to distribute 70% of its accounting profits of 2021 two years from the end of the tax year in which the profits were generated (i.e. by 31 December 2023), otherwise it will be subject to the deemed dividend distribution (DDD) provisions of special defence contribution at 17%, and pay the relevant SDC by 31 January 2024. 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 2024.

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, assignment of rights deriving from an agreement of sale of property, 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.

Levy 0,4% for the Central Agency for Equal Distribution of Burdens (CAEDB)

As from 22 February 2021, a Property Transfer Levy of 0,4% applies on disposals of immovable properties or shares of a company owning immovable property in Cyprus. On 18 November 2022 an amended law was entered into force. The provisions of the laws apply as follows:

Disposal of immovable property from 22/02/2021 to 17/11/2022	Disposal of immovable property from 18/11/2022 onwards
The property should be within the control of the Republic of Cyprus, irrespective whether a general valuation has been undertaken by the Department of Land and Surveys (DLS).	Applies for property for which a general valuation has been undertaken by the DLS
Disposal of shares of a company owning immovable property from 22/02/2021 to 17/11/2022	**Disposal of shares of a company owning immovable property from 18/11/2022 onwards**
Direct ownership of immovable property by the company	Direct and indirect ownership of immovable property by the company
Property within the control of Republic of Cyprus, irrespective whether a general valuation has been taken by the DLS	Property for which a general valuation has been taken by the DLS
The buyer assumes control of the company	No need to assume control of the company

Note in Scope of the levy:

- Contracts that were filed with the Land Registry office prior to the enactment of the law.
- Contracts that were duly stamped prior 22 February 2021.
- Sale of shares that the notification for the transfer of the shares was filed with the Registrar of Companies prior 22 February 2021.

Exemptions:
- Sale of shares of listed companies (owning immovable property in Cyprus).
- Transfer of immovable property under debt for asset restructuring provisions.
- Transfer of immovable property under the reorganisation provisions.

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. As from 31 December 2022 payments of dividends to companies in Jurisdictions in the EU blacklist, are subject to withholding tax at the rate of 17% to shareholders with an over 50% holding.

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 based on market values 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

Up to 10 November 2022, the supply of new buildings (before their first use as well as the land on which they are built) was subject to VAT at the standard rate of 19%.

The supply of secondhand buildings (after their first use) is exempt from VAT.

As from 11 November 2022, the supply of building is subject to VAT when supplied before its first delivery and under any subsequent deliveries within a period of five (5) from its completion, provided that no actual use has occurred by an unrelated person for a period of at least twentyfour (24) months. Otherwise, the supply will be 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.

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

Old Rules – prior to the amendment in Law (up to 16 June 2023)
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 meters whereas for the remaining square meters 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.

New Rules – Amended Law (as from 16 June 2023)
The reduced VAT rate (5%) will be applicable on the first 130 sqm of the building coefficient, up to a value of EUR 350,000, provided that the total buildable area of the property does not exceed 190 sqm and the total value does not exceed EUR 475,000. For the reduced 5% VAT rate to apply, under the amended VAT Law, all the specified criteria should be met, otherwise the Taxpayer does not have the right to apply for the reduced VAT rate.

The Tax Authorities have also made an exception for persons with disabilities to be eligible for the reduced VAT rate for the first 190 sqm without imposing a cap on the maximum building coefficient.

Transitional Rules
The Tax Authorities have also announced a transitional period during which the new provisions will not apply for properties for which:

a. A planning permit has been obtained or duly completed planning permit application has been submitted until 31/10/2023 and,
b. A duly completed application for the reduced VAT rate of 5% is submitted within 3 years from the legislation enactment date.

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.

4 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 effective 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 'administration 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 consist of real estate.

Stamp duty

A real estate transfer tax of 0.6% of the sales price or the public valuation (whichever is the highest) is payable on the transfer of title to real property located in Denmark. A fixed registration fee of DKK 1,850 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 1,825. 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%).

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.

Payment of interest

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.

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%).

Interest limitation rules

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

If the Danish company is thinly capitalized, 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 capitalization 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 2.7% (2023), which will be adjusted once a year and the base amount is DKK 21,300,000. Under the EBITDA rule, the taxable income before net financing costs and depreciation and amortization 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 finalized 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 general rule, properties acquired before 1 January 2023 can be depreciated for tax purposes in Denmark at a rate of up to 4% annually using the straight-line method. The same rule applies to technical installations. For properties and technical installations acquired on or after 1 January 2023, the maximum depreciation rate is 3% annually.

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 (VAT)

The standard VAT rate in Denmark is 25%, which is applicable when selling goods and services in Denmark. Various types of goods and services are, however, VAT exempt.

Sale of immovable property is as a starting point exempt for VAT. However, sale of new properties and building plots situated in Denmark is subject to 25% VAT with few certain exceptions.

A property is considered as 'new' in terms of VAT up to five years after completion of construction or if it has been significantly rebuilt within the five past year prior to the sale. It is also new after 5 years after completion if it has not been taken into use after completion.

VAT practice concerning the definition of a building plot versus an old property to be demolished after the sale has taken place, has changed significantly in the past and VAT practice has become less restrictive in this regard.

Sale of immovable property including existing lease agreement to be continued by the buyer does as a starting point qualify as a transfer of going concern not subject to VAT. Further, sale of immovable property that solely has been used for VAT exempt purposes, e.g. let out for residential purposes, is VAT exempt even though the immovable property is not older than 5 years.

5 Finland

The Finnish Budget Proposal for 2024 and tax law updates

The Finnish Government has given a proposal to increase the lower limit of real estate tax for land plots from 0.93% to 1.3% as of 2024. Therefore, many municipalities may be required to increase their real estate tax rate for land plots. The proposed amendment would not affect real estate taxation of buildings.
Recent changes in Finnish tax law include:

1. A new provision to extend the capital gains taxation of non-resident companies investing in Finnish real estate came into effect on 1 March 2023 and applies to all indirect real estate disposals by non-residents. According to the new provision, the profit realised on the transfer of shares, or similar rights, of an entity will be subject to capital gains tax in Finland if more than 50% of the total assets consist directly or indirectly of Finnish real estate. The provision covers transfers of Finnish and foreign real estate holding companies and transfers of shares in a limited partnership or special investment fund that invests in Finnish real estate. Transfers of publicly listed companies are excluded from the scope of the provision. Furthermore, the provision does not affect taxation of foreign investment funds that are considered comparable to Finnish tax-exempt investment funds. Applicable double tax treaties may provide protection against the provision.
2. The Finnish Tax Administration's guidance on the taxation of investment funds under the Income Tax Act ("ITA") § 20a was updated in August 2023 in order to correspond to recent case law by the Court of Justice of the European Union's ("CJEU") judgment (C-342/20). According to the CJEU, the requirement stated in ITA § 20a that investment funds need to be contractual in order to qualify for tax-exempt status restricts the free movement of capital, due to that the criterion likely results in Finnish investment funds fulfilling the criterion while foreign investment funds may fail to fulfil it. Furthermore, the CJEU stated that a foreign investment fund should qualify for tax-exempt status if it is objectively comparable to a Finnish tax-exempt investment fund. Recent rulings of the Finnish Supreme Administrative Court seem to indicate that the requirement of comparability in the wording of the ITA § 20a should be interpreted in line with the requirement of objective comparability as used in CJEU doctrine.

Year-end tax accounting and reporting

At year-end, real estate investors should generally take the following aspects into account: (i) levelling taxable profits at portfolio level and (ii) the interest deduction limitation rules.

i) Levelling taxable profits at portfolio level

Tax position of real estate portfolio may be optimised by adjusting the maintenance fees paid to a mutual real estate company ("MREC"), provision of group contributions, adjusting depreciations to be made in both taxation and accounting as well as utilising carry-forward tax losses. These aspects should be carefully considered at year-end.

Typically, Finnish real estate is owned via MRECs. An MREC collects taxable maintenance fees from the shareholder, corresponding to the tax-deductible maintenance expenses. Additionally, an MREC can collect taxable financial consideration from shareholders, which typically corresponds to annual depreciation of the real property and interest expenses at the MREC level. As a result, the MREC itself does not usually make any profit or loss. The maintenance fees collected by the MREC from the shareholder are generally tax-deductible for the shareholder. The financial consideration is also tax-deductible for the shareholder under certain conditions.

Furthermore, companies within the same group can level their income by giving and receiving group contributions (provided that certain conditions are met). As of 2020, it is possible to give group contributions between e.g. holding companies. The group contribution is considered as a deductible cost for income tax purposes of the distributing company and taxable income for the recipient company.

Depreciations should also be considered at year-end, as it is possible to adjust taxable profit by adjusting the depreciations (within the limits set in tax legislation) either through making lower or higher deprecations in taxation than in accounting, i.e. by creating postponed depreciations or depreciation differences.

Carry-forward tax losses can be utilised against future taxable profits for ten fiscal years following the fiscal year in which the losses have arisen. Tax losses may not be carried back. However, tax losses carried forward are forfeited if more than 50% of the shares in a company changes owner directly or indirectly, although there is possibility to apply for a special permit to retain tax losses if certain conditions are met.

ii) Interest deduction limitation rules

The Finnish interest deduction limitation rules should be considered at year-end. The limitations are applied on a company-by-company basis by typically applying one of the below rules:

- If total net financing expenses of a company are less than EUR 500,000, all financing expenses are deductible.
- If total net financing expenses of a company exceed EUR 500,000, the deductibility of a company's net financing expenses in Finland 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) and the amount exceeding 25% of EBITD is non-tax deductible.
- However, external net financing expenses are always deductible up to EUR 3m. 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.

Tax accounting and reporting processes of real estate portfolios should be carefully managed in order to optimise the tax position at portfolio level and to ensure robust documentation is in place to support the decisions made.

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 MRECs can be deducted under certain conditions (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. Non-deducted transaction costs for the year 2020 can still be recovered until the end of 2023.

Change of VAT taxable use of premises

In case the VAT taxable use of premises has changed compared to the situation when the real estate investment (new building or fundamental improvement) was taken into use, VAT included in the real estate investment might be subject to adjustment at year-end.

It should be verified whether there has been changes to the VAT taxable 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 taxable use has increased or decreased.

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).

6 France

Beneficial ownership

Benefits of double tax treaties is generally subject to a beneficial ownership condition which has been increasingly subject of the attention of the French tax authorities.

An important decision rendered by the French Supreme Administrative Court on 22 May 2022 (Planet, n° 444451) could reduce the adverse tax consequences of tax reassessments made by the French tax authorities based on the beneficial owner requirement. In the Planet case law, the Court ruled that the "true" beneficial owner of a royalty payment can rely on the tax treaty between its country of residence and France to benefit from a reduced rate of (or an exemption from) withholding tax.

In practice, the French tax authorities scrutinize the following criteria to assess whether a recipient is the beneficial owner of a payment: (a) existence of a legal or a contractual obligation to repay the passive income it received; (b) immediate repayment of the entire amount of the passive income it received or at least partial reinvestment; (c) carrying out of another activity (even ancillary) rather than mere conduct of flow of passive income; (d) negligeable level of taxable income; (e) receipt of income from countries other than France; (f) staffing with qualified professionals and benefit of material resources, in particular in case of royalty income; (g) identity of directors between the recipient and the company to which it repays the passive income it received.

VAT deduction in relation to buy-and-sell real estate transactions

In a buy-and-sell transaction and in respect of a French real estate achieved for more than five years, the property dealer acquiring the asset could not deduct the French VAT incurred on the acquisition of such asset as well as the VAT regularizations reinvoiced by the seller to the property dealer. Such deduction was deferred until the resale of the asset by the property dealer, subject that it would elect for VAT on such resale.

In such case, the French regulations provide that the real estate asset, booked as a stock by the property dealer, is assimilated to a fixed asset for VAT purposes, as of the 31 December of the second year following the completion of the real estate asset subject to the real estate asset having been leased and subject to VAT for at least one year. The French tax authorities considered that this had no effect for the deduction of VAT in the situation described in the paragraph above.

A 2023 ministerial response (Rep. Louwagie JO AN 27/06/2023, n° 5633) indicated that, contrary to the French tax authorities' position, VAT incurred on the acquisition of such asset as well as the VAT regularizations reinvoiced by the seller to the property dealer may be deducted when the real estate asset is assimilated to a fixed asset for VAT purposes. This significantly improves the cash position of property dealers.

Standard corporate income tax rate

For fiscal years beginning on or after 1 January 2022, the standard CIT rate is set at 25% (i.e. effective CIT rate of 25.825% 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).

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 42,500.

Domestic withholding (WHT) rate on dividends

Dividends paid by a French corporation to a non-resident shareholder are subject to a 25% 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.

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.

The FTA published their guidelines in December 2021.

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 (this rate would amount to 1.531% for 2024, to 1.438% for 2025, to 1.344% for 2026 and to 1.25% from 2027), 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). CVAE was initially contemplated to be abolished by 2024, however, pursuant to the 2024 finance bill, it would be completely abolished only as from 2027. The rate would in the meantime be reduced to 0.28% in 2024, to 0.19% in 2025, to 0.09% in 2026 and the additional CVAE tax rate would be increased to 9.23% for 2024, to 13.84% for 2025 and to 27.68% for 2026.

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' (EE0 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.

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.

List of states or territories defined as NCST

The French list of non-cooperative states and territories (NCST) was amended on 3 February 2023 and includes: (i) based on the French criterion: British Virgin Islands, Anguilla, Seychelles, Panama, Vanuatu, Turks and Caicos Islands, Bahamas; and (ii) based on the EU list: Fiji, Guam, American Virgin Islands, Palau, American Samoa, Samoa and Trinidad and Tobago.

Unfavorable French tax treatment applies to certain transactions in NCST or with entities located in NCST, based on their classification above (i or ii). In respect of NCST listed in (i) in the paragraph above, the French regulations provide inter alia that interest and dividends from French entities paid to entities located in a NCST or paid in a bank account located in a NCST are subject to a withholding tax of 75%; and capital gains on shares in a French non-real estate company derived by an entity located in a NCST are subject to a withholding tax of 75%.

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.

7 Germany

Tax rates

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 thus ranges 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 inter alia holds at least 10% of the nominal capital of the distributing corporation at the beginning of the calendar year.

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 selling 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 twelfth month following the end of the fiscal year in which the share capital repayment has been received.

Apply for equity qualification of share capital repayments received in 2022 before 31 December 2023 (if the fiscal year equals the calendar year).

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 replacement premises. 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 in the fiscal year in which the land or building has been sold.

Apply for tax deferral on capital gains for EU land and buildings sold in the fiscal year 2023 in the tax return for the fiscal year 2023.

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 2024 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 of 31 December 2023. 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 2024.
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 fiscal 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 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 2024 onwards (if the fiscal year equals the calendar year) in order to mitigate trade tax on income derived in 2024.
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.

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 2023 in order to become effective for the fiscal year 2023 (if the fiscal year equals the calendar year). 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 2023 refund before 1 April 2024.

Land tax reform

In the course of the land tax reform the tax base will be aligned to the fair market value as of 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%. Only in Bavaria the rate of 3.5% applies. The other federal states have increased their RETT rate up to 6.5 %. Thuringia as first federal state ever will decrease its RETT rate from 6.5 % to 5 % for RETTable transactions after 31 December 2023.

Monitor and consider potential changes of RETT rates in federal states.

From 1 January 2024 onwards RETT exemptions for transfers between partnerships are no longer applicable.

Execute planned transfers of real properties between partnerships before 1 January 2024. Furthermore, it is strongly recommended to explore structuring alternatives where you intend to transfer shares in your investment structure.

DAC 6

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. Currently, there are a number of tax amendment acts in the legislative process which impact taxation of real estate investments (inter alia an increased renewable energy threshold for the extended trade tax deduction, extension of the tax loss carryback option from the previous two to three assessment periods, introduction of a declining balance depreciation of 6 % for new residential buildings. tightening of the interest capping rules and introduction of an interest rate cap, obligatory electronic B2B invoices, reporting requirements for domestic tax arrangements).

8 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 as amended by Decision A. 1089/2023 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. Among the key amendments introduced, the Decision A. 1089/2023 clarified the necessary documents required for the exemption in case all or part of the shares are owned by foreign foundation or trust (provided it is not established in a state characterized as non-cooperative), thus providing a solution for these cases that have raised doubts in the past.

Moreover, to be noted that the SRET is assessed annually on 1 January of the tax year and the SRET return (even if zero in case of an exemption) is by 20 May (unless an explicit exemption is announced). To be noted that all the exemption supporting documentation shall be issued, collected and in place by the time of the submission of the SRET return.

VAT – Suspension of VAT on real estate sales until 31 December 2024

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. To be noted that the term occupation refers to the use of the real estate in any possible way (e.g. self-use, leasing of the property etc.) 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 2024 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.

To be noted that as per the recent public announcements of the government, there is an intention to launch the imposition of VAT on short-term rental income for those who operate three (3) or more properties. At the same time, all fees applicable to hotels and rooms for rent will be imposed. It is noted that the VAT on the tourist package currently amounts to 6%. The above plans, however, remain in the context of the announcements and have not yet been enacted.

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. To be noted that the tax-free amount on donations and parental grants has been previously increased to EUR 800.000.

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.

Special regime for angel investors

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

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.

9 Hungary

Year-end considerations

Change of functional currency to mitigate unfavorable FX effects

Due to the volatility of the Hungarian Forint (HUF) exchange rate to the most important currencies, in the case of companies, where the functional currency of the company is HUF and there is a high exposure in a different currency (e.g. shareholder loan or rental fees denominated in EUR) a year-end revaluation should be carried out that could lead to unrealized F/X gain or loss. Losses may erode the equity of the company to an inadequate level. To mitigate this effect, companies using HU GAAP for local statutory reporting purposes can change their functional currency to EUR or to USD without any substantive conditions before the beginning of their new financial year (or to other currencies, however, in those cases subject to further conditions). This change must be documented in the accounting policy and the articles of association of the Company. In the case of such decision, the change will be effective on the first day of the new financial year.

Deferral of non-realized F/X gains

Should the company recognize non-realized gains because of the above-mentioned year-end revaluation due to F/X differences, there is a possibility to delay the taxation of such a gain. This decision should also be made at year-end by the company.

Tax group for corporate income tax purposes

A corporate income tax group could be established by at least two taxpayers. In the case of already existing taxpayers, it is possible to elect to form a group in the period from the first day of the penultimate month of the tax year to the 20th day of the penultimate month of the tax year (which is the period between November 1 and November 20 for calendar year taxpayers). In the case of newly established taxpayers, tax group could be formed simultaneously with the registration at the Hungarian Tax Authority (HTA). Some benefits of the tax group are as follows:

- The available tax loss of the members could (partially) be utilized on a group level;
- There are no transfer pricing requirements in respect of the transactions carried out within the group members;
- Tax credits of the members could partially be utilized on a group level.

The safe-harbor lump sum interest deduction amount (that is HUF 939 million, approximately EUR 2.4 million) should, however, be applied at a CIT group level, which could be a disadvantage. The 30% EBITDA threshold is also calculated at group level, which may also be a disadvantage.

VAT considerations

As a general rule, rental or sale of real estate is a VAT exempt transaction (except for building plots, undeveloped property or properties not older than two years). However, taxpayers can opt for VATable treatment of such transactions. In some cases such options can only be made at year-end, until the end of the particular calendar year. Such decisions may not be reversed for 5 years, i.e. careful planning is recommended before such decisions.

Tax deferral due to recognizing development reserve

In the case of real estate transactions where a real estate is sold as a result of an asset deal, development reserve can be created up to the amount of the pretax profits of the particular financial year. The amount of the reserve reduces the corporate tax base of the particular financial year, however, a qualifying (tangible) asset must be purchased from the reserve within 4 years. Until then the amount of the reserve decreases distributable profits. Once the new asset is acquired the reserve is released. The amount of the reserve reduces the tax bookvalue of the new asset(s), i.e. it is ultimately a brought forward tax depreciation allowed for the deferral of taxation. If the development reserve is not released within 4 years following the creation, the corporate income tax due thereon and late payment interest is to be paid.

Other topics to consider

USA – HUN tax treaty

With its notification sent on 8 July 2022, the United States Government unilaterally terminated the international double taxation treaty concluded with Hungary in 1979. As a result of the termination, the provisions of the tax treaty will not apply from 1 January 2024, which may have an impact on the cross-border activities and investments of Hungarian and American companies and individuals.

Interest deductibility

Hungary implemented the ATAD based rules. Accordingly, the threshold limiting the deductibility of debt financing costs should be understood as 30% of tax-EBITDA or HUF 939m (whichever is higher), with group figures based safe harbour threshold available. Considering the increased financial expenses due the recent and current situation on the financial markets, the HUF 939m /entity safe harbour threshold may be exceeded more easily than before. As a result, careful planning may be required to ensure that financing expenses remain deductible for corporate income tax purposes.

Real estate transfer tax (RETT)

Purchasing real estate property or real estate rich entity in Hungary is subject to RETT in the hands of the buyer. The general rate is 4% of the FMV of the real estate property up to HUF 1 billion, and 2% for the exceeding part, while the tax is capped at HUF 200 million (approx. EUR 500k) per real estate. Any company (foreign or domestic) is considered to be a real estate rich company if the Hungarian real estate properties it owns represent more than 75% of its adjusted balance sheet total, or has at least 75% direct or indirect ownership in a company qualifying under the above conditions. Accordingly, indirect transfers are also subject to RETT. For the purposes of calculating the above ratios, the latest available balance sheet should be used at the time of the transaction. Additionally, those assets (excl. cash and cash equivalents) should also be considered when calculating the real estate related ratios/thresholds which were bought or sold between the date of the transaction and the balance sheet date of the latest available balance sheet at the time of the transaction. Deferrals and exemptions are available, however, careful planning and calculations are recommended prior to share deals at any level of the ownership chain if a Hungarian real estate rich entity is involved in the transaction.

Real Estate Investment Funds (REIF)

REIFs in Hungary have been used more widely in recent years, especially by developers. Pursuant to the Hungarian legislation, real estate investment funds are collective investment vehicles with legal personality, not operating though in a corporate form. Rather, they qualify as an unincorporated asset funds where all the investment decisions are made by the fund manager in the name and on behalf of the fund. Fund managers have to operate in the form of a company limited by shares and are subject to strict regulatory requirements.

Real estate investment funds can be established either publicly or privately, for a determined or undetermined duration, and also with closed-end or open-end terms, (based on whether redemption of the investment units is possible during the fund's term). The tax treatment of real estate investment funds is as follows:

- Real estate investment funds are not liable to pay corporate income tax. Domestic investors of the funds are subject to income tax when profits of the fund are distributed to them. On the other hand, generally funds are not considered to be treaty residents.
- According to standard market practice real estate investment funds do not qualify as taxpayers for the purposes of the local business tax (the rate of which for companies is otherwise 2% of the adjusted net sales revenue).
- In the case of acquisition by real estate investment funds, the RETT rate is flat 2%, however, no cap applies.
- Real estate investment funds have to pay yearly 0.05% special tax on the basis of their net asset value.
- Per the Hungarian rules, no specific VAT legislation has been enacted in the case of real estate investment funds, thus, the general rules have to be applied. The standard headline VAT rate is 27%.
- Per Hungarian domestic legislation, there is no withholding tax on distributions / payments made to entities. Thus, foreign investors can realize the fund's proceeds withholding tax free. However, tax obligation arises in respect of domestic investors.
- There is no real estate transfer tax payment obligation during the transfer of the investment units.

Pillar 2 considerations

Global minimum tax rules will be introduced in the Hungarian legislation from 1 January 2024. Since the 9% Hungarian corporate income tax headline rate is lower than the prescribed 15% effective global minimum tax rate, additional tax payment obligation might occur at the level of the Hungarian companies.

Even though the 9% headline rate seems to be far below the required 15% effective tax rate, this may significantly increase for companies utilizing real property in Hungary. When determining the effective tax rate, the local business tax (and innovation contribution) may also be considered as a covered tax. This municipal tax is payable by companies carrying out business activities in the territory of a particular municipality. For companies utilizing real estate property, the local business tax is payable on the adjusted income from the rent, with a tax rate of up to 2,3% (including innovation contribution, which has the same basis as the local business tax). Since it is paid on a much wider basis than the corporate income tax, the effective GloBe rate may well increase above 15%. The sale of tangible assets are not subject to local business tax, which may trigger top-up tax payment liability in the case of asset deal exits.

Substance based carve-out rules may also be considered. However, under Hungarian GAAP the property is recognized in the records of the lessor, accordingly, such differences must be treated correctly when calculating the effective GloBE tax rate.

Even if the effective tax rate of the companies exceeds the prescribed 15% or safe harbor rules are applicable, proper supporting documentation should be prepared by the company. It is highly recommended to start the collection of the data for Pillar 2 purposes already in 2023.

10 Italy

Interest capping rule

For corporate income tax (IRES) purpose, interest expenses (even those capitalized on assets) are deductible within the limit of interest revenues and, subsequently, within the limit of 30% of the fiscal EBITDA. The fiscal EBITDA derives from the accounting EBITDA (as per P/L), adjusted according to the same provisions used to compute the IRES taxable base.

Interest expenses that exceed such limits can be carried forward to be deducted in the following fiscal years, without time limitations, but only up to the amount of the interest revenues and 30% fiscal EBITDA of any following year (the latter, net of the interest expenses excess of the same year). Any "unused" 30% fiscal EBITDA can be carried forward and used to increase the 30% fiscal EBITDA of the following 5 years. In case, in a year, interest revenues exceed interest expenses, such excess may be carried forward without any time limitation.

As a temporary provision adopted with the enactment of ATAD rules in the Italian income tax system, interest expenses concerning facilities executed before 17 June 2016 whose amount or duration has not varied after that date, can be deducted by using the 30% (accounting) EBITDA excesses not yet used up to 2018 and carried forward. This specific portion of the EBITDA can be carried over indefinitely (as in the previous system), but it can be used only to deduct interest expenses on the facilities stated above (contrarily, out of this circumstance, any EBITDA excess existing at 2018 year-end is definitively lost).

However, it has been confirmed that interest expenses that have been generated by loans/ debts guaranteed by mortgages on real estate up for lease are still not subject to the interest capping rule. Pursuant to law, the benefit of such exclusion is applicable only to companies which carry on "actually" and "prevalently" real estate activity. This is met if the following conditions are fulfilled:

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

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

Evaluate the impact of the interest capping rule, especially with regard to capitalized interest and carried forward EBITDA. Check if the stated asset test and revenues test are fulfilled to take benefit from full deduction of interest on mortgage loans concerning properties up for lease. In case of refinancing, check if the original financing (other than bridge loans) fulfilled the conditions to enjoy the exclusion from the EBITDA limitation.

Shareholder's debt waivers

Shareholder's debt waivers are taxable for IRES purposes in the hands of the Italian subsidiary to the extent its accounting value, as booked in the subsidiary's general ledger, exceeds its related tax value in the hands of the shareholder.

For this purpose, the shareholder has to communicate in writing to the Italian subsidiary the tax value of its credit waived. In absence of such communication, the entire accounting value of the waived debt is subject to IRES.

In case of shareholder's debt waivers, obtain the shareholder's communication to prevent (or limit) the raising of a taxable contingent income in the hands of the Italian subsidiary.

Tax loss carry-forward

For corporate income tax (IRES) purpose, tax losses can be carried forward without any time limit, as follows:

- Tax losses incurred in the first three years of activity (provided that they derive from the launching of a new activity) can be used to entirely offset future taxable income;
- Tax losses incurred in subsequent years can be used to offset only 80% of the taxable income of any following year. The remaining 20% must be taxed according to the ordinary rules (IRES rate: 24%).

It is possible to combine the use of the two kinds of tax losses to reduce/offset the taxable income as much as possible.

The tax losses carried forward may be limited in case of:

(i) transfer of shares representing the majority of voting rights in the company's general meetings ("change of control"), if also the change of the business activity from which such tax losses derived intervenes in the year of transfer or in the preceding or subsequent two years (exceptions exist); or

(ii) in case of tax neutral reorganizations (e.g., mergers, spin-offs).

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

Passive company legislation

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

For companies which are deemed as "non-operative" the IRES rate is increased by 10.5% (therefore, from 24% to 34.5%).

Other implications for "non-operative" companies may include limitations to the tax losses carry-forward and to the VAT credits refund/offset.

Check the impact of the "operative test" and of this special legislation.

Capital dotation of Italian branches of foreign entities

The Italian tax law explicitly states that an Italian permanent establishment of a foreign entity (e.g., a branch) must have a 'congruous' capital dotation (free capital) for tax purposes (it may be also a notional dotation, made by way of treating as undetectable the relevant portion of interest accrued on the financing by the head office). Such capital dotation has to be determined according to the OECD guidelines, taking into account the specific features of the branch (i.e., business activity and related risks and assets used to perform it).

The quantification capital dotation has direct impact on the calculation of the deductible interest expenses.

In case of an Italian branch, check if its capital dotation (also in the form of the head office not bearing interest financing) can be considered congruous, in light of assets and risks owned by/ attributed to the branch.

Transfer pricing documentary requirements

The setup of a transfer pricing (TP) documentation according to certain parameters allows avoidance of tax penalties in case of assessment on transfer pricing matters carried out by Italian tax authority (penalties range from 90% to 180% of the higher tax). The existence of such documentation has to be declared in the annual income tax return.

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

Deductibility of local property tax (IMU) on "instrumental" buildings

Local Property Tax (IMU) paid over "instrumental" buildings (these being buildings directly used in the company's business – therefore subject to depreciation) has become fully deductibility for IRES purpose since FY2022.

This provision is precluded to buildings for sale (inventory), which for builders and at stated conditions may be exempt from local property tax, and those held as investment that do not pertain to the company's business.

Consider IMU deductibility rules for real estate companies on the basis of the destination of the properties owned.

The new Italian NRCGT ("land rich" provisions)

The 2023 Budget Law modified the taxation of capital gains earned by foreign subjects by setting out the following two measures applicable to non-residents:

- Capital gains deriving from the disposal, for consideration, of shareholdings in non-resident companies and entities, more than half of whose value is derived, in any of the 365 days prior to the disposal, directly or indirectly, from real estate located in Italy, are deemed to be earned in the Italian territory for income tax purposes. This does not apply to the disposal of shares and similar securities listed in regulated markets.
- The domestic tax exemption for non-Italian residents in respect of capital gains deriving from the disposal of shares, securities and other financial instruments which are not "qualifying" shareholdings (i.e., those not exceeding, in terms of voting rights or capital ownership, respectively, 2% or 5% for listed shareholdings, 20% or 25% for unlisted shareholdings, computed over a 12-month period) in Italian resident companies and entities is no longer applicable if more than one-half of their value is derived, in any of the 365 days prior to the disposal, directly or indirectly, from real estate located in Italy. This new rule does not apply to the disposal of shares and similar securities listed in regulated markets.

For the purposes of the above, real estate assets for sale (inventory) and those directly used in the company's business shall not be included in the one-half value.

Furthermore, the new land rich provisions are not applicable to capital gains realized by foreign Undertakings for Collective Investments compliant with UCITS IV EU Directive or, for those not compliant, which are managed by a regulated manager under the AIFMD EU Directive, in both cases set-up in a EU or EEA country.

These new provisions apply to capital gains earned by non-residents since 1 January 2023.

In case of disposal of companies and entities belonging to real estate investment structures, consider if they may be qualified as Italian real estate "rich" (even indirectly).

11 Latvia

Matters to be aware of

As of 1 January 2023, thin capitalisation rules should be reapplied after 2 years stand by period to interest payments exceeding a specified amount. More details are provided in the paragraph Deductibility of interest payments.

Stamp duties

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. 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, but not more than EUR 50k.
- 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, but not more than EUR 50k.
- Investment of RE into the share capital of a company is 1% of the RE value invested into the share capital, but not more than EUR 50k.

Sale of real estate/rental income

The rental income received by non-resident is subject to 5% withholding tax (WHT).

The taxation principles applied to income from the sale of a real estate differs for Latvian residents and non-residents. Sale of real estate by non-residents would be subject to 3% WHT 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

The taxation of dividends is made on the company's level. The CIT rate of 20% is applicable to the taxable base. However, before applying the statutory rate, the taxable base should be divided by a coefficient of 0.8. As the taxable base is increased by the coefficient, the effective CIT rate is 25%.

CIT exemption: Flow through dividends would be exempt from CIT if they are received from CIT 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 to benefit from the current CIT regime (e.g., profits paid out of retained earnings up to 31 December 2017 are not subject to CIT. However, if the shareholder is an individual personal income tax (PIT) rate of 20% is applicable).

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 and to the real estate company's shares.

Please note there are specific rules for the sale of real estate company's shares by non-residents. More details are provided in the paragraph Sale of real estate.

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

Losses carried forward

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

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 a 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 year's end 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.

Provision for bad debts

Provisions for bad debts do not become a subject to CIT if debts are repaid during a 36-months period. If a company made provisions up to 31 December 2021 and the debtors are going through insolvency proceedings, the recovery period may be extended to 60 months.

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.

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 are changed once every four years if the property market or factors affecting the value of an area have changed. The base of cadastral value for the period from 2025 to 2028 has been approved and will enter into force as of 1 January 2025. This would result in increase in cadastral value and RET payments.

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 of 21%.

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 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 VAT 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

Construction services are subject to domestic reverse-charge VAT, meaning VAT is paid by the recipient. VAT Act defines construction services as any performance of construction work and all types of design work included in a construction project.

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.

Management fees

Management and consulting fees paid to non-residents are subject to a 20% WHT. However, WHT may be eliminated under provisions of the respective tax treaty. In order to apply for a more favorable tax regime, a non-resident has to provide the payer with a tax residency 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).

12 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 and registration fee. 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). Registration fees of real estate are not material (up to EUR 21.67).

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 2023 are:
- 1% – standard RET rate;
- 0.7% – for cultural, leisure, catering, sport, educational or hotel buildings (with some exceptions);
- 3% – for real estate in actual use, the construction of which has not been completed; for real estate on which advertising is installed without complying with the Law on Advertising; for buildings or premises, the owners or users of which do not fulfill the obligations of its maintenance; for buildings that do not meet the essential requirements of the building project.

In addition, the increase of the rate by 1% may apply in specific cases (by increasing the rate of 1% or 0.7%), e.g. when the requirements for the design of the building structure or noise in public places are not complied with.

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.

Procedure of filing advance real estate tax return

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 (established not earlier than 5 years ago). 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%.

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 older 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 provided in accordance with the procedure established by legal acts regulating tourism activities.

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, 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 June 15th 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 (without interruption) 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.

Dividends paid out to foreign companies or received from foreign companies are not subject to tax exemption in cases where tax benefit is the main or one of the main objectives of a particular structure of companies. Dividends received from foreign companies are also not subject to tax exemption if they were deducted from taxable profit at the distributing company level.

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 5 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

Based on the transfer pricing rules applicable in Lithuania, 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 2023 are:

- 0.12% – standard tax rate for individuals and companies;
- 0.24% – increased tax rate for the use of land for commercial facilities (certain conditions apply) and for the land plots that do not ensure sustainable pedestrian mobility in their environment;
- 4% – for the land that is not used and for the land with buildings recognised as unauthorised construction. As well, for the land on which advertising is provided in breach of prohibitions and requirements established by the Law on Advertising.

Exemption from land tax is available in some cases. 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%. Municipalities have an opportunity to apply tax incentives.

Personal income tax

For local and foreign individuals, income from the sale/rent of RE located in Lithuania is subject to 15% PIT of income not exceeding EUR 202,188 per calendar year of 2023, and 20% PIT rate is applied on the part exceeding this threshold. Upon certain conditions (i.e. rental of residential premises), 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. However, if the amount of income received from rental of residential premises exceeds EUR 45,000 per calendar year, the excess is taxed as property rental income, despite of having a business certificate, at a 15% PIT rate.

DAC6

The European Union (EU) Directive on the mandatory disclosure and exchange of reportable cross-border tax arrangements (referred to as DAC6 or the Directive) has been introduced into Lithuanian law. Under DAC6, 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.

13 Luxembourg

Corporate tax rate

The aggregate income tax rate for 2023 is 24.94% for entities registered in Luxembourg City:

- Standard corporate income tax rate is 17% for taxable income exceeding EUR 200,001. Companies with a tax base of less than EUR 175,000 benefit from a reduced corporate income tax rate of 15%. Companies with a tax base
- between EUR 175,000 and EUR 200,001 are subject to a corporate income tax of EUR 26,250 plus 31% of the tax base above EUR 175,000;
- Municipal business tax is also levied at a rate generally varying from 6.75% to 10.50% depending on where the company is located (the municipal business tax rate is 6.75% if the company has its registered office in the Luxembourg City).

Luxembourg undertakings are also contributing to the Luxembourg employment fund for 1.19% of their taxable income (i.e. 7% rate assessed on the 17% income tax).

Losses carried forward

Tax losses incurred before 1 January 2017 may be carried forward indefinitely by the company that has incurred them.

Tax losses incurred as from FY 2017 may be carried forward for a maximum period of 17 years.

Tax losses cannot be carried back in Luxembourg.

Net Wealth Tax (NWT)

Companies resident in Luxembourg are subject to an annual Net Wealth Tax on their unitary value (net asset value) to be determined as at 01.01 of each calendar year.

The following rates are applicable:

- for a unitary value up to and including EUR 500m: 0.5%;
- for a unitary value exceeding EUR 500m: 0.05% on the portion of the unitary value above EUR 500m and EUR 2.5m (i.e. EUR 500m at 0.5%).

Some exemptions are available under the Luxembourg participation exemption regime (e.g. shares in certain companies) or by virtue of the applicable Double Tax Treaties (e.g. real estate located abroad).

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

Minimum Net Wealth Tax

A minimum NWT charge applies for all corporate entities having their statutory seat or central administration in Luxembourg. Such entities for which the sum of their fixed financial assets, transferable securities and cash at bank (as reported in their commercial accounts presented in the standard Luxembourg form) exceeds 90% of their total gross assets and EUR 350,000, are subject to a minimum NWT charge of EUR 4,815.

All other corporations might be subject to a minimum NWT ranging from EUR 535 to EUR 32,100, depending on the amount of their total assets as shown in the balance sheet.

There is no withholding tax on interest.

Withholding Tax

Generally, dividends are subject to 15% withholding tax unless the conditions of the Luxembourg participation exemption regime are fulfilled or more favorable tax treaty rates are available.

Liquidation proceeds paid by a Luxembourg company are not subject to withholding taxes in Luxembourg.

Director fees related to seating at the board are usually subject to a 20% withholding tax.

Real Estate Levy

The Bill (n°7666) presenting the Budget for 2021 and issued by the Luxembourg Government on 14 October 2020 has proposed the introduction of a new tax, termed a Real Estate Levy ("prélèvement immobilier"). It applies to Luxembourg investment fund vehicle which is regulated under the 2007 specialised investment fund ("SIF") regime, or the 2016 reserved alternative investment fund ("RAIF") regime, or Part II of the 2010 UCI regime and has its own legal persona and owns directly (or indirectly through one or more entities that are regarded as tax transparent under Luxembourg principles) real estate assets that are sited in the Grand Duchy of Luxembourg.

The Real Estate Levy is to apply to the gross (but VAT-exclusive) amount of rental income deriving (directly or through tax transparent entities) from Luxembourg real estate assets and the net amount of gains on disposal deriving from such assets (directly or through tax transparent entities, either on disposal of the real asset by a transparent entity or disposal of the interest in the tax transparent entity owning the Luxembourg real estate) on or after 1 January 2021, and is charged at a rate of 20%.

Real Estate Levy due on income or gains arising or realised in a calendar year must be reported to the tax authorities no later than 31 May of the following calendar year, and the Levy due must be paid no later than 10 June of the following calendar year. Returns of Real Estate Levy due must be accompanied by an auditor's certificate confirming that the amount being subject to the levy is computed in accordance with the provisions of the legislation.

Payments to EU "black-listed" countries

On 30 March 2020 the Luxembourg government issued a Bill (n°7547) setting out the draft legislation that disallows tax deduction of interest or royalties paid or due to related parties, if these are corporate entities established in countries that are "black-listed" as being "non-cooperative" for tax purposes. The Bill applies as from 1 January 2021.

VAT

VAT Grouping implemented in Luxembourg

The VAT grouping legislation has been introduced in Luxembourg with effect from 31 July 2018 (via Law no.671 of 6/08/2018). Some of the feature of the VAT group include:

- Enhances consolidation for VAT purposes;
- Is an optional regime, choice is left to the taxpayer, but all-in or all-out, limited opt-out possibilities;
- Only Luxembourg resident companies and a local branch of a foreign company can join.
- Applicable for any sector/industry but the three following links need to exist simultaneously:
  - Financial links;
  - Economic links and
  - Organizational links.
- Members cannot be part of more than one VAT group;
- Must be set up for at least 2 calendar years.

Although this is a new regime in Luxembourg, VAT groups are already used in other jurisdictions as a way to mitigate irrecoverable VAT costs and cash flow effects on intra-group charges.

VAT and Transfer Pricing

The Luxembourg VAT law has been amended (via Law no.671 of 6/08/2018) to implement Article 80 of the EU VAT Directive with effect from 31 July 2018. This law aims at avoiding VAT loss by allowing the VAT authorities to disregard consideration agreed between related parties to retain the open market values under the following situations:

- When the consideration for a supply has been underestimated while the purchaser has a limited recovery right;
- When the consideration for an exempt supply has been underestimated while the supplier has a limited recovery right and
- When the consideration for a supply has been overestimated while the supplier has a limited recovery right.

Directors Fees

Since 1 January 2017, directors' fees paid to directors (private individuals) are subject to 17% VAT, based on the Circular issued on 30 September 2016. Since 1 January 2017, increase of the enforcement powers of the VAT authorities:

- Personal liability of the delegated administrators, directors and 'de jure' or 'de facto' managers is engaged in case of VAT underpayments/late payments/non-compliance with VAT law if it can be proved that they failed in the performance of their duties.
- General increase of penalties.

FAIA requirement

The Luxembourg VAT Authorities may require certain VAT taxpayers to provide all the information necessary for their audit on an electronic structured audit file (the so-called 'Fichier d'Audit Informatisé de l'Administration de l'enregistrement et des domaines' – 'FAIA').

As a general rule and based on the guidance from the Luxembourg VAT Authorities, this FAIA file can be requested to (1) VAT registered entities under the normal regime and that are subject to the Luxembourg Standard Chart of Accounts and (2) which perform more than 500 transactions per year.

These requests are more and more frequent and the affected companies should ensure that they are able to generate the file and can provide it when requested since failure to provide may attract penalties.

Anti Tax Avoidance Directive (ATAD) I

On 18 December 2018, the Luxembourg Parliament voted for Bill (n°7318) (the 'Law'), implementing ATAD I in Luxembourg domestic law. The Law was published on December 21st 2018 and entered into force on 1 January 2019. The Law covers the following measures:

Interest limitation rules

The Law sets out new interest deduction limitation rules restricting deduction of 'exceeding borrowing costs' up to a higher of i) 30% of the taxpayer's EBITDA or ii) EUR 3m. Exceeding borrowing costs not deductible in a tax period may be carried forward without time limitation. Interest capacity which cannot be used in a given tax period may be carried forward for five years.

The Law also provides for a grandfathering to be applied to any loans granted to a Luxembourg company before 17 June 2016 and to the extent that these loans have not been modified since this date and will not be modified afterwards. Borrowing costs arising from long-term infrastructure projects (where the project operator, borrowing costs, assets and income are all in the European Union) are also excluded from the scope of the interest limitation rules.

Controlled foreign company rules (CFC)

The Law sets out new CFC rules targeting non-distributed income of CFCs arising from non-genuine arrangements, which have been put in place for the essential purpose of obtaining a tax advantage.

If a CFC is identified, the Luxembourg company may have to include totally or partially the non-distributed income earned by the CFC entity/-ies following a functional analysis.

General anti-abuse rule ('GAAR')

The Law aims at modernizing the existing general anti-abuse rule as provided by the Adaptation Law. Under the Law, there is an abuse of law if the legal route which, having been used for the main purpose or one of the main purposes of circumventing or reducing tax contrary to the object or purpose of the tax law, is not genuine having regard to all relevant facts and circumstances.

Exit tax rules (applicable as from 1 January 2020)

The Law modifies the existing exit taxation rules and amends the existing taxation deferral rules to provide for a payment of tax in installments over five years.

The payment of the Luxembourg tax arising on the gains upon transfer of assets outside Luxembourg in any of the circumstances listed in ATAD may be made in installments over a period of five years. However, this is possible only where the transfer is to an EU Member State, or an EEA State with which Luxembourg has an agreement on the recovery of taxes.

Anti Tax Avoidance Directive (ATAD) II

On 19 December 2019, the Luxembourg Parliament voted to approve the law implementing the EU Anti Tax Avoidance Directive regarding hybrid mismatches with third countries ("ATAD 2") into Luxembourg domestic law (the "ATAD 2 Law"). The Law generally follows the text of ATAD 2 rather closely, adapting it mainly to integrate with the structure and terminology used in the Luxembourg Income Tax Law. The ATAD 2 Law applies to tax years starting as from 1 January 2020, with the additional "reverse hybrid" measures that comprise Article 9a of ATAD 2 applying from the 2022 tax year, i.e. to tax years closing in 2022. For taxpayer having a tax year diverging from the calendar year, this means that Article 9a of ATAD 2 may apply to them already in 2021.

The ATAD 2 Law aims at preventing "deductions without inclusion" and "double deductions" caused by "hybrid mismatch" tax treatments. A "hybrid mismatch" may be defined as the difference in the legal characterization of a financial instrument (e.g. debt in the jurisdiction of a payer and equity in payee's jurisdiction) or an entity (i.e. tax transparent in one jurisdiction but opaque from another jurisdictions' perspective).

The provisions of the ATAD 2 Law apply whenever there is a 'hybrid mismatch' under:
(i.) a 'structured arrangement' or
(ii.) between 'associated enterprises' or
(iii.) between a head office of an entity and a permanent establishment or
(iv.) between two or more permanent establishments of the same entity or
(v.) in cases of dual tax residence.

Essentially any link, where there is a 50% or more right to votes, capital ownership or profits, causes two entities, or an individual and an entity, to be associated enterprises (except in relation to payments under a financial instrument - here a threshold of 25% is sufficient to create an associated relationship).

In relation to the 'acting together' concept, the Law deals specifically with investors (either physical persons or entities) in an investment fund that own, directly or indirectly, less than 10% of the shares or units of the fund and are entitled to less than 10% of the profits of that fund. Unless demonstrated otherwise, any such investor in a fund is not to be regarded as 'acting together' with any other investor. This means that in these circumstances any such 'less than 10%' investor should not be 'associated' with the fund vehicle, and as a consequence also not be 'associated' with the entities the fund vehicle controls.

2022 reverse hybrid mismatches

With effect as from the 2022 tax year, Luxembourg transparent partnerships will become liable to corporate income tax in relation to net income, to the extent that such income is not otherwise taxed under the Luxembourg domestic tax law or the laws of any other jurisdiction, provided one or more associated non-resident entities i) holding in aggregate a direct or indirect interest in 50% or more of the voting rights, capital interests or rights to a share of profit in the Luxembourg partnership ii) consider the Luxembourg partnership to be a taxable person.

The ATAD 2 Law confirms that, while the Luxembourg partnership will be considered as a tax resident for corporate income tax purposes, it will be exempt from Net Wealth Tax.

In line with the exclusion provided for in ATAD 2, collective investment vehicles are out of the scope of this provision. For the purpose of this rule, collective investment vehicles are defined as an investment fund or vehicle that is widely- held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established. The Commentary to the ATAD 2 Law clarifies that this definition includes undertakings for collective investment in the sense of the Law of 17 December 2010, specialised investment funds ('SIFs') covered by the Law of 13 February 2007, reserved alternative investment funds ('RAIFs') covered by the Law of 23 July 2016, and other alternative investment funds ('AIFs') not falling within the above categories but covered by the Law of 12 July 2013 (implementing the EU AIFM Directive) relating to managers of alternative investment funds although only to the extent that such AIFs are widely-held, hold a diversified portfolio of securities and are subject to investor-protection regulations.

The recent 2023 Budget Law adopted by the Luxembourg parliament on 15 December 2022 clarifies that reverse hybrid rules should only be triggered in case the non-inclusion of the income of a Luxembourg tax transparent partnership in the investors' taxable basis results in a difference of characterization of the Luxembourg tax transparent partnership in the investors' tax jurisdictions (i.e. investors viewing the Luxembourg partnership as tax opaque for their own local tax purposes when it is actually a tax transparent entity for Luxembourg tax purposes). The reverse hybrid rules should however not be triggered when the non-inclusion of the Luxembourg tax transparent partnership's income at the level of the investors is rather due to the investors' tax status (i.e., tax exempt entities) or results from the fact that the investors' jurisdictions do not levy corporate tax.

DAC 6 – Disclosure for certain cross-border arrangements

DAC 6 provides for a mandatory disclosure of certain cross-border arrangements by intermediaries or relevant taxpayers to the tax authorities and mandates automatic exchange of this information among EU Member States (taking place every quarter). As a result, intermediaries who provide their clients with complex cross-border financial schemes may be obliged to report these structures to their tax authorities. Similar reporting obligations may apply to fund promoters.

On 21 March 2020, the Luxembourg Parliament voted to approve the Bill (n°7465) implementing the EU Directive into local law. This DAC 6 Law is applicable since 1 July 2020. The first reportable transactions will however be those whose first implementation step occurred between 25 June 2018 and 1 July 2020 (transitory period). According to the DAC 6 Law, the relevant information would then have to be reported to the Luxembourg tax authorities by intermediaries (or relevant taxpayers) by 31 August 2020.

However, on 22 July 2020, the Luxembourg Parliament voted to approve the draft bill (n°7625), which was published in the Memorial on 24 July 2020 to enact the extension of reporting deadlines, in accordance with the provisions of the Directive 2020/876 adopted on 24 June 2020. According to the Law of 24 July 2020, the final deadline for filing arrangements linked to the transition period is postponed to 28 February 2021. In addition, the date for the beginning of the period of 30 days for reporting by intermediaries (or relevant taxpayers) on reportable cross-border arrangements for which the first step of implementation occurs between 1 July 2020 and 31 December 2020 (the “post-transition” period) is changed from 1 July 2020 to 1 January 2021.

Investment structures should be analysed by intermediaries or relevant taxpayers to identify potential reportable cross-border arrangements and to assess any reporting obligations towards the Luxembourg or foreign tax authorities based on the applicable local law. And even if, based on the local assessment, no reporting is required, a proper documentation would be crucial and might serve as a proof for DAC 6 compliance.

Disclosure obligations

As from 2017 tax return, the following TP related information would need to be disclosed:

- if the Luxembourg company engages into transactions with related parties;
- if the Luxembourg company opts for the simplification measure stated in section 4 of the 2017 TP Circular (L.I.R. n° 56/1 – 56bis/1 of 27 December 2016).

As from the 2018 tax return, Luxembourg entities are required to indicate in their tax return whether they have performed any transaction.

Development concerning Country-by-Country (CbCR) reporting

A grand-ducal regulation has been issued on 18 March 2019 (the Mémorial A N° 163), amending the revised grand-ducal regulation published on 13 February 2018. In case the ultimate parent is resident in a jurisdiction that is not listed in the mentioned regulation, a CbC report will have to be filed either by a "surrogate entity" resident in a jurisdiction listed in the grand-ducal regulation or by an affiliate in Luxembourg. Exceptions may apply, on a case-by-case basis, if countries mentioned in the regulation have CbC reporting obligations but starting from a different fiscal year. In case of CbC reporting and notifications finalised before the regulations, MNE groups shall review them to ensure they have been done in compliance with the list of 'exchanging' jurisdictions listed in the regulations.

The grand-ducal regulations only indicate that exchange of information will take place from Luxembourg to each of the other jurisdictions listed. It is important to note that there are jurisdictions, which are exchanging CbC reports with Luxembourg, although Luxembourg may not be exchanging with such countries, i.e. so-called 'non-reciprocal' jurisdictions. In case MNE groups have the ultimate parent company in such jurisdictions, the Luxembourg tax authorities may not accept that those groups can satisfy their CbC reporting obligations by using a Luxembourg group entity as a 'surrogate entity' filing in Luxembourg.

OECD's Chapter X

Transfer Pricing

On 11 February 2020 the OECD issued its final report on "Transfer Pricing Guidance on Financial Transactions".

The Report addresses general guidance to the application of the arm's length principle, as well as specific issues relevant to treasury functions (i.e., intra-group financing, cash pool structures, and hedging), issues linked to financial guarantees, and captive insurance and reinsurance arrangements.

We would recommend taking a look at the inventory of TP documentation currently in place supporting the arm's length nature of the existing intra-group financing transactions and revisit such analyses in light of the clarifications conveyed in new Chapter X of the OECD TP Guidelines.

Substance in Luxembourg

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

According to Luxembourg income tax laws, a company is considered to be resident in Luxembourg, and therefore fully taxable therein, if either its registered office or central administration is located in Luxembourg.

To avoid the risk of challenge by other tax authorities, it is usually recommended that it can be evidenced that a Luxembourg company is effectively managed and controlled in Luxembourg and that minimum substance exists in Luxembourg (e.g. bookkeeping, phone line, etc.). In particular, with respect to the day-to-day management it is recommended to have at least one local director in charge of the day-to-day management with a real decision power (to be assessed in light of the decision power of the foreign directors).

Transfer pricing requirements related to the substance have been reinforced and highlight the need to have a majority of the board of directors tax resident in Luxembourg and that the personnel is sufficiently qualified to control the transactions performed.

14 The Netherlands

Statutory corporate income tax (CIT) rates

The (highest bracket) corporate income tax (CIT) rate is expected to remain at 25.8% per 1 January 2024. The threshold for the lower bracket is EUR 200,000. The rate for profits up to this threshold is expected to remain at 19% as per 1 January 2024.

Abolishment of the FBI-regime for property investments (2024)

Starting from 1 January 2025, fiscal investment institutions (Fiscale Beleggingsinstellingen) (FBIs) are no longer allowed to directly invest in Dutch real estate. Under current law an FBI is subject to a CIT rate of 0%, provided that specific conditions, including distribution and shareholder requirements, have been met. However, once the new rules enter into force, corporate taxpayers can no longer apply the FBI regime (CIT rate of 0%) if this corporate taxpayer holds Dutch property investments directly. In that case the corporate taxpayer will be subject to the regular CIT rates. FBIs are still allowed to indirectly invest in Dutch real estate, i.e. via a (non-transparent) subsidiary or directly in real estate located outside the Netherlands. The purposes of this change of law is to ensure that income deriving from Dutch real estate is always subject to Dutch CIT.

Furthermore, under the current draft legislative proposal an FBI is still allowed to engage in the management of a related real estate entity. The so-called financing requirement remains unchanged; the financing with debt cannot exceed 60 per cent of the book value of the real estate. This rule continues to apply to financing, for example, direct investments in foreign real estate. For other investments, debt financing is limited to a maximum of 20 per cent of the book value of those investments.

A temporary real estate transfer tax exemption is proposed to allow FBIs to restructure into tax transparent mutual funds. This exemption is only applicable in 2024 and applies only to the acquisition of beneficial ownership of real estate by participants in a tax transparent mutual fund (the acquisition of legal ownership is therefore not exempt under this temporary measure). Such a restructuring is particularly an alternative for FBIs of which the shareholders (partially) exist of tax exempt investors, such as pension funds.

Mutual fund (fonds voor gemene rekening, FGR)

As per 1 January 2025, the conditions under which a mutual fund (fonds voor gemene rekening, FGR) (including a comparable foreign mutual fund) qualifies as transparent will be changed. The aim is to bring the transparency rules for Dutch investment funds more in line with international standards. Furthermore, the goal of the changes is to limit the non-transparent FGRs to funds qualifying as a fund under the Dutch Financial Supervision Act (alternative investment fund (AIF) or undertaking for collective investment in transferable securities (UCITS)). As from 2025, FGRs will only be considered non-transparent (and hence subject to Dutch CIT and possibly applying specific tax exempt fund regimes) if:

1. the fund is an AIF or UCITS within the meaning of article 1:1 of the Financial Supervision Act; and
2. the units in the FGR are transferable, whereby units are considered non-transferable in case the units can only be transferred to the FGR itself via redemption (‘redemption mechanism’).

If the above conditions are not met, the FGR is considered transparent for Dutch tax purposes. Under current law, FGRs are also considered non-transparent in case a participant is allowed to transfer its participations in the FGR without the unanimous consent of all the other participants. This category of non-transparent FGRs will therefore be considered tax transparent as from 2025.

In case a current non-transparent FGR converts into a tax transparent FGR, this will have tax implications at the level of the fund as well as at the level of the investors. All the assets and liabilities of the FGR are deemed to be transferred to the unit holders against the fair market value. Corresponding gains are subject to corporate income tax at the level of the fund. In addition the unit holders are deemed to have transferred their units against fair market value. Any related gain may be subject to corporate income tax or personal income tax at the level of the taxable participants. Therefore, certain temporary facilities become available:

1. A roll-over facility whereby the tax claim on the hidden and tax reserves and goodwill present in the FGR is rolled over to the unit holders subject to Dutch corporate income tax. This facility only applies in case all the participants are subject to Dutch corporate income taxation.
2. A share merger facility, based on which participations can be contributed to a company in exchange for shares. Any gain realized on the contribution of the participation will be rolled-over in the tax basis of the new shares issued by the company.
3. A temporary and conditional exemption for real estate transfer tax in relation to the share merger mentioned under 2. A real estate transfer tax return must be filed in which the temporary exemption is claimed.

In case a taxpayer cannot use the role-over facility mentioned under 1, a payment in installments of the corporate tax due over a period of maximum ten years is available.

The temporary facilities are applicable as from 1 January 2024, so that taxpayers can apply them prior to the change of qualification in 2025

Tax qualification rules partnerships

The Dutch qualification rules for Dutch and foreign partnerships will be changed as from 1 January 2025.

The aim of the proposal is to reduce the number of hybrid mismatches in an international context. In particular, the proposed rules should result in less hybrid mismatches due to the asymmetric qualification of entities. Discrepancies in the fiscal qualification of entities between countries may result in income either being taxed twice (i.e., at the level of the entity and at the level of its participants) or not at all.

Under the proposed rules, the 'unanimous consent requirement' is revoked as it is the source of many hybrid mismatches in the Netherlands that cause the application of ATAD2 hybrid mismatch rules. Based on the current 'unanimous consent requirement', a Dutch limited partnership (commanditaire vennootschap, CV) and Dutch partnerships with a capital divided into shares are considered non-transparent for Dutch corporate income tax purposes if the admission or replacement of limited partners is possible without the consent of all other partners. Based on the proposed measures, CVs and other Dutch partnerships as well as comparable foreign partnerships will always be transparent under the new rules and will not be liable to Dutch CIT nor to Dutch dividend withholding tax or conditional withholding tax. Instead, as of 1 January 2025 the partners of these partnerships will become liable to Dutch – corporate or personal – income tax for their participation in the partnership.

For CVs, other partnerships and comparable foreign partnerships that currently qualify as non-transparent for Dutch CIT, the change to transparency (by fiction) results in the deemed transfer of their assets and liabilities to the partners for the fair market value. Corresponding gains are subject to corporate income tax at the level of the partnership. In addition, the partners are deemed to have transferred their partnership interest against fair market value. Any related gain is subject to

corporate income tax or personal income tax at the level of the taxable participants. Therefore, certain temporary facilities become available:

1. A roll-over facility whereby the tax claim on the hidden and tax reserves and goodwill present in the partnership is taken over by the limited partners who are subject to corporate tax. This facility only applies in case all the participants are subject to corporate income taxation.
2. A share merger facility, based on which the participation in the partnership can be contributed to a company in exchange for shares. Any gain realized on the contribution of the participation will be rolled over in the tax basis of the new shares issued by the company.
3. A temporary and conditional exemption for real estate transfer tax in relation to the share merger mentioned under 2. A real estate transfer tax return must be filed in which the temporary exemption is claimed.

In case a taxpayer cannot use the roll-over facility mentioned under 1, a payment in installments of the CIT due over a period of maximum 10 years is available.

The temporary facilities are applicable as from 1 January 2024, so that taxpayers can apply them prior to the change of qualification in 2025.

Income allocation rules for partnerships, FGRs and comparable foreign entities

In addition to the change in the qualification rules for partnerships and FGRs, the proposal also contains a prescription on the basis of which assets and liabilities as well as the revenues and costs of a tax transparent entity are directly allocated to the participants. On this basis, the participant has to take into account these elements separately and not on a net basis as (revenues from) the participation in the transparent entity. This may result in additional tax compliance obligations.

EIA and MIA/Vamil

The Energy Investment Allowance (EIA) and Environmental Investment Allowance (MIA) and the Abitrary Depreciation of Environmental Investments (Vamil) are fiscal investment facilities for qualifying investments in energy efficient and environmentally friendly technologies. These facilities stimulate 'green investments' even more and will be extended for five years until 2029. The deduction percentage for the EIA is expected to decrease from 45.5% to 40%.

Generic interest deduction limitation

Although no proposal of law has been published yet (and it is not part of the Budget Day proposal), it has been announced that the generic interest deduction limitation (the so-called 'earnings stripping rules') regarding real estate companies will be changed as of 1 January 2025. Under current law, interest expenses for Dutch CIT purposes are limited in deduction to the extent that the net financing costs exceed the higher of EUR 1 million or 20% of EBITDA (adjusted for tax purposes). As of 1 January 2025, the EUR 1 million threshold no longer applies to entities that own real estate that is rented (to third parties). For these taxpayers financing costs exceeding 20% of EBITDA becomes non-deductible.

Treatment of share transactions for real estate transfer tax (RETT)

The so-called 'concurrence exemption' in the Dutch RETT legislation will be adjusted for the situation in which shares in a so-called 'real estate rich companies' are acquired. Based on the current scheme, this exemption applies if the real estate property held by the company consists of new real estate for VAT purposes. If the real estate property is used for VAT-exempt activities, VAT can be saved by transferring the shares in the company that holds the real estate property. The transfer of shares is not subject to VAT and if the real estate property qualifies as new for VAT purposes, an exemption from RETT can still be applied. To avoid these savings, as of 1 January 2025, the exemption will only apply to share transactions if the real estate property held by the company is used by the company – during a period of two years after acquisition – for activities that for at least 90 percent give entitlement to deduct VAT on costs. In other cases, where the real estate property held qualifies as new for VAT purposes, real estate transfer tax will be due at a rate of 4 percent. The 4 percent rate is based on the estimated VAT savings on a share transaction.

A transitional rule applies based on which the current rules can still be applied till 1 January 2030 if:

1. parties agreed in writing the acquisition of the shares before 19 September 2023, 3.15 p.m.; and
2. the acquirer has requested the Dutch tax authorities for application of the transitional rule before 1 April 2024 at the latest, which request encloses a copy of the written agreement; and
3. at the time the agreement was concluded, it was plausible that the main purpose of the agreement was not to qualify for the so-called 'concurrence exemption'.

Ongoing developments

The measures described above are (mostly) part of a set of proposals published on Budget Day (19 September 2023), which are currently being discussed in parliament and may, as a result, be amended or expanded.

Conditional withholding tax on dividends

During end of 2021, the Dutch Upper House of Parliament adopted the legislative proposal on Conditional Withholding Tax on Dividends (CWHT rule) and will enter into force on 1 January 2024.

Pursuant to the new CWHT rule, a withholding tax will be levied on (i) dividend payments to low-tax jurisdictions (i.e. countries with a statutory profit tax rate

lower than 9%), (ii) dividend payments to jurisdictions that are included on the EU list of non-cooperative jurisdictions and (iii) dividend payments to hybrid entities and artificial structures intended to avoid Dutch withholding tax on dividends (i.e. abuse situations).

The rate of the CWHT on dividends is linked to the highest rate of the Dutch CIT (currently being 25.8%). The proposed CWHT on dividend payments will be a new tax that will exist next to the regular Dividend Withholding Tax Act 1965 (rate: 15%). As a result, these taxes may apply simultaneously on the same dividend payment under certain circumstances. For these situations, the new CWHT rule provides for an anti-accumulation scheme that could be applied so that effectively a maximum rate of 25.8% is applied.

Broadening of Dutch dividend withholding tax exemption

The State Secretary of Finance has published a Decree on the entry into force of a new article in the dividend withholding tax act related to the dividend withholding tax exemption as per 1 January 2024.

The new provision regulates a dividend withholding tax exemption for, in short, proceeds from shares, profit-sharing certificates, share buybacks and participating loans, which are received by bodies that are (partly) not subject to corporate tax (as well as for comparable objectively or subjectively exempt foreign bodies) such as pension funds.

This new provision is the counterpart of the article which currently provides for a refund mechanism for the same entities.

15 Norway

Corporate tax rate

The corporate income tax rate for both resident and nonresident corporate real estate investors is 22% for 2023.

Tax consolidation

Norwegian tax law allows for tax consolidation/group relief by way of group contributions. Certain conditions must be met, but the main condition is that the rendering and receiving entity must be within the same tax group, where the parent must directly or indirectly own more than 90% of the shares and voting rights in both entities.

If a Norwegian holding entity draws down debt in connection with the acquisition of shares in a Norwegian entity owning real estate, it should be possible to carry out tax effective “debt pushdowns” by way of rendering group contributions where the income in the acquired entity is used to offset the holding entity’s losses (interest costs etc.)

Tax losses carried forward

Tax losses can be carried forward indefinitely and can be utilised against any future taxable profit in the company. Tax losses can also be offset through group contributions from other entities in the tax group.

In the event of a change of control in ownership (directly or indirectly), Norwegian antiavoidance rules/GAAR may apply if the main motive behind an acquisition, a transaction or a restructuring is to utilise tax positions, i.e. tax losses carried forward. Under which scenario, the tax benefit may be forfeited.

Dividends and withholding tax

Dividends distributed to Norwegian resident corporate shareholders are tax exempt under the Norwegian participation exemption method.

Norway levies withholding tax on dividends distributed to non-resident shareholders at a domestic rate of 25%. Dividend distributions can, however, be reduced to up to 0% under an applicable double tax treaty or be exempt under the Norwegian exemption method. The Norwegian exemption method requires that the shareholder in real terms is regarded as established in an EEA state carrying out genuine business activity in that EEA state (the “substance requirement”).

Whether a company has substance is a question of whether the company is actually established and conducts genuine business activities in the jurisdiction of residence; and whether the establishment or upholding in the company is tax motivated.

Repayment of paidin capital and liquidation proceeds are not subject to withholding tax. However, please refer to the section regarding liquidation proceeds for information on the suggestion to impose withholding tax on such payments.

Capital gains tax on shares

Gains on shares in Norwegian limited liability companies are as a starting point taxable at 22% but can be tax exempt under the Norwegian exemption method for Norwegian corporate shareholders. To the extent gain on shares in a Norwegian limited liability company is not taxable; losses on the shares are not deductible either.

Norway does not levy capital gains tax on sale of shares by non-resident shareholders.

Capital gains tax on property

Capital gains/losses on the sale of real property owned by both resident and non-resident taxpayers are taxable/deductible.

Normally, gains on sale of real estate, other depreciable property and non-depreciable property that is used for business purposes, may be transferred to a collective "gains and loss account" to the extent the gains are not treated as income in the year of the sale. On a declining balance basis, at least 20% of such positive "gains and loss account" must be entered as income annually. As a result, it is effectively possible to achieve a partial deferral of income recognition for tax purposes. It is mandatory to transfer losses to the "gains and loss account", which is charged with a maximum of 20% annually on a declining balance basis.

Stamp duty

A 2.5% stamp duty is payable on the transfer of real property title in Norway. The stamp duty is calculated on the sales value (ie, the market value) of the property. There is no stamp duty on sublease of property, or on the transfer of shares or parts in limited liability companies or partnerships holding real estate.

Property tax

Property tax is a municipality tax that is set by each individual municipality. The basis for the calculation of property taxes is a stipulated valuation based on the square meter price, size and location of the property. For business properties, the property tax is calculated as a percentage of the stipulated valuation. The percentage used will differ between municipalities where the maximum rate allowed is 0.7%. The property tax is paid in four terms each year.

Capitalisation and depreciation

The acquisition cost of land and sites is not depreciable for tax purposes.

Buildings/assets used for business purposes will normally be depreciable in accordance with the declining balance method. The buildings/assets are allocated to different depreciation groups based on type of asset (ie, office buildings, other buildings and technical installations), and may be depreciated annually at the maximum rate for the group in question (2–30%).

Maintenance and upgrades

All costs related to operation and administration of the property, including depreciation, are deductible. Maintenance costs are tax deductible in the year of accrual. Costs of improvement or extensions of the building in later years must be capitalised and depreciated together with the cost of the building.

Interest deduction limitation

As a starting point, interest costs are deductible in Norway. However, Norwegian group entities are subject to interest limitations if net interest expenses in the Norwegian part of a group combined exceeds NOK 25m. The interest costs are measured for the companies that are part of a group (can be consolidated) at year-end.

If total net interest expenses in the Norwegian part of the group exceeds NOK 25m, the maximum deduction in each company is 25% of tax EBITDA. However, all interest costs will be deductible if the equity escape clause exemption applies. The equity escape clause applies if it can be demonstrated that the equity ratio at either company level or for the Norwegian part of the group is no less than 2 percentage points lower than the highest level in the structure where the group consolidates or may consolidate in accordance with IFRS. Disallowed interest costs can be carried forward up to ten years.

Group companies that have net interest costs that exceed NOK 25m, may also choose to only deduct interest expenses up to NOK 25m. However, the part that is not deducted may not be carried forward.

In addition to the above, separate rules apply to debt to related parties outside of the Group, where the threshold is NOK 5m. Any interest cost to a related party not comprised by the group (eg, individual holding 50% of the shares/interest in the Norwegian taxpayer directly or indirectly) is limited to 25% of the Norwegian company's tax EBITDA when exceeding the threshold. These interest costs are not covered by the abovementioned equity escape clause.

Any increased taxable income arising from the interest limitation rules cannot be offset by any brought forward tax losses or by group contributions. Consequently, an adjustment under these rules is likely to result in additional tax payable. However, current year tax losses may be offset against increased income.

Liquidation proceeds

Liquidation proceeds are not taxable at the hand of foreign shareholders as Norway does not have legal grounds for taxing foreign shareholders on capital gains. However, it has now been proposed to include liquidation proceeds within the scope of Norwegian withholding tax on dividends. This will as a starting point result in 25% withholding tax on liquidation proceeds, but with the possibility to reduce the withholding tax rate under an applicable double tax treaty.

The Norwegian government did not introduce this rule in connection with the FY24 fiscal budget, but there is risk that it will be introduced in the future.

VAT

As a main rule, there is no VAT on purchase, sale, lease or sublease of real property in Norway. The owner/lessor and sublessor of real property may apply for a voluntary VAT registration if the property is leased for use in VAT-liable activity. Such registration may often be advantageous because it opens for deduction of input VAT on construction, maintenance and improvement costs. The general VAT rate is currently 25%.

Please note that there may be VAT consequences connected to sale of real property, even though the sale as such is exempt from VAT, especially if the seller has deducted input VAT in connection with construction, etc.

A new building, or the rebuilding or improvement work on an existing building, will create a possible obligation to repay a proportional part of the deducted VAT (obligation to adjustment of VAT), provided the property is used more in non-VAT liable activity (compared with the original use), or sold within a period of ten years from the year of completion. A possible obligation to repay a proportional part of the deducted VAT may also apply in case of a merger or demerger.

This obligation or right to adjustment of VAT may be transferred to the buyer in case the property is sold or otherwise transferred. In order to transfer an obligation to adjustment of VAT, the parties need to enter into a contract according to the Norwegian VAT regulation section 9-3-3.

16 Poland

Withholding tax ("WHT"): Hot topic. Second draft of WHT guidelines issued by the Ministry of Finance

Despite lack of changes to the law as regards WHT, it is still a hot topic in Poland and the key matters include:

- the obligatory WHT pay and refund mechanism for dividends/interest/royalties to related parties with the aggregated amount over PLN 2m, unless the special opinion of the tax authorities is obtained or the board statement is signed under penal fiscal responsibility;
- the due care obligations (including i.a. beneficial ownership) etc.

On 28 September 2023 the Ministry of Finance issued the long-awaited draft WHT guidelines, including i.a.:

- an exemplary list of situations which may indicate that the payment recipient is not its beneficial owner, but only acts as an income administrator – understood as an entity whose right to dispose of the income is limited by the obligation to transfer the receivables to another entity (where the obligation may be "legal" or just "actual"; with the guidance on an explanation of an "actual" obligation as well);
- statement that with respect to dividends the beneficial owner requirement should be examined as part of due diligence and should apply to every double tax treaty ("DTT"), regardless of the fact whether DTT's wording includes the beneficial owner clause or not;
- statement that the tax authorities are not obliged to apply the "look-through concept" and the possibility of its application is basically limited only to cases in which the following conditions are jointly met:
  (i.) the use of an intermediary between the payer's country and the country of the recipient of the receivable who is the actual beneficiary does not result in a reduction of WHT collected in the payer's country;
  (ii.) the nature (type) of payment made between the payer – the foreign intermediary – the foreign recipient of the payment who is the actual beneficiary is the same;
  (iii.) the entire structure or payment is not artificial within the meaning of article 22c of the CIT act.
- explanation on how the condition of "effective taxation" provided for in the Article 21 section 3 (interest exemption) and Article 22 section 4 (dividend exemption) of the CIT act should be interpreted, in particular stating that in the context of the dividend exemption this condition should refer only to objective exemptions – as per type of entity (i.e. subjective exemptions – as per type of income – should not be taken into account).

Detailed analysis of the guidelines, their impact on real estate investors WHT position, as well as monitoring the practical impact of the guidelines on the practice of Polish tax authorities.

Limitation on tax depreciation of buildings – evolving court practice

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 it to the fair market value) tax depreciation of such a building should be excluded.

Deductibility of the depreciation write offs for tax purposes may potentially be retained in two cases:

- Change of the accounting policy from the revaluation approach into depreciation approach (subject to certain accounting / business / legal considerations).
- Following the approach presented in some recent judgments of the Polish administrative courts (please note that there are also contrary judgements) that the restrictions on tax depreciation on buildings:
  (i.) apply only to a situation in which – for accounting purposes – the buildings are treated as fixed assets on which depreciation is made,
  (ii.) do not apply to buildings recognised as investments for accounting purposes (which is often the case).

Further monitoring of the practice of the authorities and courts.

”Diverted profit tax” – changed wording as of 2023

“Diverted profit tax” can be imposed @19% on “diverted profits” understood as certain costs (such as intangible services, royalties, debt financing cost or payments for transfer of functions, assets or risks) incurred – directly (in certain cases: also indirectly) – for the benefit of related entities (provided that certain conditions are met).

As a “safe harbour” mechanism, the “diverted profit 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).

As of 2023 specific changes in the wording of diverted profit tax rules were implemented (compared to 2022) – and they should be taken into account while analysing the applicability of this tax for 2023.

“General minimum CIT” – applicable as of 2024

As of 2024 “general minimum CIT” will apply to the taxpayers declaring tax losses or relatively low income (<2% of the revenue). General minimum CIT will be calculated as 10% of the tax base, i.e. (as a rule) of the sum of:

- 1.5% of the revenues qualified to other (“operating”) revenues basket;
- debt financing costs incurred for related entities in the part in which these costs exceed 30% of the so-called “tax EBITDA”;
- costs of services incurred directly or indirectly to related entities or entities from tax havens exceeding approx. 5% of tax-EBITDA increased by PLN 3m; services covered include in particular:
  (i.) advisory services, market research, advertising services, management and control, data processing, insurance, guarantees, securities and similar services,
  (ii.) fees and charges for the use or the right to use specific intangible assets (e.g. copyrights, licences etc);
  (iii.) transfer of the risk of debtor's insolvency arising from specific loans.

Upon taxpayer's choice, an alternative, simplified method of calculation of the tax base may be applied – i.e. 3% of the other ("operating") revenues.

Analysis, whether general minimum CIT may apply to the Polish special purpose vehicles ("SPVs") as of 2024.

Change relevant for Private Rented Sector ("PRS"): Civil Law Activities Tax ("CLAT")

6% CLAT on the purchase of the sixth and subsequent residential premises (purchased in one or several buildings constructed on one piece of land) or shares in these premises was introduced – on the top of any Value Added Tax ("VAT") charged on the acquisition.

The current wording imposes the 6% CLAT only on specific transactions covering completed and legally separated residential units. At the same time, PRS acquisitions can cover e.g. (i.) whole buildings (without legally separated units), (ii.) buildings or units classified as non-residential, (iii.) on-going construction by a developer on land already held by a project SPV (without any transfer of completed buildings / units to the project SPV).

Detailed analysis of the impact of the new regulations, on a case-by-case basis. Monitoring of further legislative works.

KSeF (National e-invoice System) – obligatory for most taxpayers as of 2024

As of 1 July 2024 the obligation to use structured e-invoices (KSeF) will apply to: (i.) active VAT taxpayers and (ii.) foreign entities having the fixed establishment in Poland.

The obligation will involve issuance of the so-called "structured invoices", i.e. invoices issued using the dedicated IT system called "KSeF", supported by the Ministry of Finance.

Additional note

Note that – except the key issues described above – the Polish tax law contains a bunch of filing / payment / reporting obligations, as well as provisions which should be taken into account for real estate investors/structures, relating i.a. to:

- the rules of CIT taxation of the on-going operations of the entities holding real properties – including i.a. revenue basketing, deductibility limitations of certain costs (i.a. EBITDA-based deductibility limitations of debt financing costs, ATAD 2 provisions), rules of utilisation of the tax losses, applicable tax rates, general depreciation rules and limitations (such as tax depreciation exclusion in relation to residential buildings and apartments, irrespective of their accounting treatment);
- obligation to file annual CIT returns and settling the tax due (if any);
- obligation to report real estate structures by the so-called "real estate companies" (in short: entities deriving their value mainly from Polish real properties and meeting certain other, additional criteria) and their shareholders (deadline: as a rule: 3 months after the end of the tax year of the real estate company);
- WHT filing and payment deadlines, as well as due care;
- VAT taxation of the on-going operations of the entities holding real properties;
- taxation of real estate transactions (asset deals / share deals) – CIT, VAT, CLAT etc.;
- transfer pricing obligations;
- MDR;
- anti-abuse regulations.

17 Portugal

Losses carried forward

The carry forward of tax losses are no longer subject to time limitation (but still no carry back is allowed). On the other hand, the deduction of tax losses is limited to 65% of the taxable profit of the year (formerly, 70%), with the possibility of carrying forward the remaining 35% in future years.

This rule applies to the deduction of tax losses against taxable profit of tax years starting on or after 1 January 2023. It also applies to tax losses assessed in tax years prior to 1 January 2023, which period for deduction is still running.

Tax losses assessed in 2020 and 2021 will continue to benefit from an additional deduction of 10% against the taxable profit.

Losses can be used to offset net operating income and capital gains realised on the sale of property located in Portugal.

There is no need to apply for authorisation from the Ministry of Finance for the maintenance of tax losses in case of a change of ownership of more than 50% of the share capital or of the voting rights. This rule only applies if the operation does not have tax evasion as its main or one of its main purposes. Namely this happens if the operation was carried out under valid economic reasons.

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.

Taxpayers with total revenues above EUR 10,000,000 (formerly EUR 3,000,000, for tax periods 2020 and earlier) with reference to the tax year to which the obligation concerns, are required to prepare and organize the transfer pricing documentation file.

Taxpayers with total revenues exceeding EUR 10,000,000 are not required to prepare transfer pricing documentation in respect of transactions with related parties whose amount in the year concerned does not exceed, per entity, EUR 100,000, and EUR 500,000 in total, considering the respective market value.

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 at the higher of a fixed cap of EUR 1,000,000 or a variable cap of 30% of the sum of the tax result (either profit or loss) plus NFE and allowed depreciation and amortisation of the year. This rule covers indebtedness with both related parties and independent parties, as well as between resident and non-resident entities.

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.

It is possible to maintain the break and carry forward of the NFE that were not deducted in previous tax years in case there has been a change in the ownership of more than 50% of the share capital or the majority of the voting rights of the taxpayer. This rule only applies if the operation does not have tax evasion as its main or one of its main purposes. Namely this happens if the operation was carried out under valid economic reasons.

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)

The acquisition of at least 75% of the share capital of a private limited company, general partnership, limited partnership (Portuguese Lda) or non listed joint-stock company (Portuguese SA) which owns immovable property located in Portugal, is deemed to be an acquisition of the underlying immovable property, and therefore, subject to IMT.

This rule applies in case of companies whose assets consist of more than 50% of real estate located in Portugal. An exception applies in case the real estate is allocated to a commercial, industrial or agricultural activity (except real estate buy-sell activity).

Nonetheless, the acquisition of immovable property located in Portugal by companies resident or domiciled in a tax haven or companies that are directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant “black-list”, is always subject to a 10% rate, and not entitled to any applicable IMT exemption.

The More Housing ("Mais Habitação") Law Package changed the IMT exemption applicable to the real estate buy-sell activity, reducing the period to resell the property from three to one year; and applying late assessment interest counting from the purchase date in case the properties acquired for resale (i) are allocated to another activity (that not the real estate buy-sell activity); (ii) are not resold within the period of one year or (iii) are resold again for resale.

Real estate municipal taxes (IMI)

IMI is due by the real estate owner on 31 December of each year (and paid in the following year). IMI rates range between 0.3% and 0.45%, for urban properties, and 0.8% for rural properties.

However, IMI rate will be 7.5% for real estate held by entities resident in a blacklisted jurisdiction, as well as to all immovable properties located in Portugal that are indirectly controlled by a company resident or domiciled in a blacklisted jurisdiction.

Municipalities can increase the IMI rate applicable to urban real estate properties, vacant for over a year, 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 ten times. An additional increase of 20% in each of the following years is also possible, however, it is capped at 20 times of the applicable IMI rate. Despite the above, the 20 times cap can be increased by (i) 50% in the case of residential urban building or unit that is not rented or used for permanent abode in the year concerned, and (ii) 100% if the taxpayer is a collective person or other equivalent entity for tax purposes.

The More Housing ("Mais Habitação") Law Package revoked the 3-year IMI suspension applicable for properties allocated to the buy-sell activity.

In case a direct investment is completed before the end of 2023, 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 2023.

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.

Foreign Collective Investment Undertakings

As a general rule, Portugal exempts dividends, rents and interest paid to Portuguese collective investment undertakings from CIT. Distinctly, non-resident collective investment undertakings operating in Portugal are subject to CIT (withheld at source) on their Portuguese-sourced income.

According to the Court of Justice of the European Union (ECJ) case no C-545/19, there is a restriction to the free movement of capital if a Member State's tax law provides taxation to non-residents less favorably than to residents, as such treatment may deter non-resident entities from investing in that Member State.

Taking into account the merit of the ECJ, it is possible that Portugal would have to extend its tax rules to non-resident collective investment undertaking operating in Portugal as applicable to Portuguese funds. In this way, it could be possible to claim exemption from WHT like Portuguese funds and request the refund of the WHT suffered in previous years.

18 Romania

Exceeding borrowing cost capping rules

Interest limitation rules apply, with a cap at EUR 1 Mio 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.

We note that based on unofficial draft of Government Ordinance, there are rumours whereby the interest limitations rules are expected to be changed so as to reduce the above mentioned threshold in case of intercompany loans.
Although there is no Romanian holding legislation, specific holding tax incentives (i.e. participation exemption rules) apply in Romania.

Holding legislation

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 8%.

The domestic rate (16%/8%) 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.

General anti-abuse rule (GAAR)	The provisions of a DTT or of the EU law generally prevail over the domestic legislation, if more favourable. 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.
DAC6	The reporting obligation of DAC6 Directive has been implemented in Romanian legislation. Intermediaries are obliged to maintain professional secrecy and 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.
MLI	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). Romania has signed and ratified 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 reorganizations (spin offs, mergers).
Tax credits/avoidance of double taxation	The recovery of the annual fiscal losses is made in order of their registration, at each payment term of profit tax. 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% of the revenues. Also, a minimum Turnover tax has been recently adopted, entering into force as of 1 January 2024. Taxpayers having i) a turnover of more than EUR 50 mil. in the previous year, and ii) whose CIT is lower than the minimum turnover tax, will have to pay CIT at the level of the minimum turnover tax. The minimum turnover tax is calculated as 1% of the Total revenues with certain adjustments (e.g. non-taxable revenues, depreciation of assets acquired as of 1 January 2024, etc) and is compared with the CIT. The taxpayer is required to pay the higher of the two amounts. The provisions will apply to companies, other than financial institutions and Oil & Gas companies (i.e. there are other specific rules applicable to financial institutions and Oil & Gas companies when computing the turnover tax).

Accounting and fiscal period

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. 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 consolidation

The fiscal consolidation system for CIT has been included in Romanian legislation 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 incentives

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.

Tax incentives 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 (currently) RON 4,000. Starting 1 November 2023, income tax exemption remains however the social security exemptions were partly eliminated (the health contribution tax exemption (CASS) and employment insurance contribution (CAM) have been removed).

Exemption of reinvested profits

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.

Depreciation methods for movable fixed assets

Buildings can only be depreciated using the straightline 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 straightline 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 straightline 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.

Transfer of business

Failure to present appropriate documentation to the tax office may result in the non-acceptance for tax purposes of group charges and penalties. Domestic mergers, total or partial spin-offs, transfer of assets and exchange of shares are harmonised with those applicable to similar crossborder 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

As of 1 January 2023, the micro-enterprises tax regime has become optional and can be applied by a company having a turnover of less than EUR 500k per year. Certain other conditions need to be fulfilled (e.g. at least one employee). Microcompanies are taxed on their turnover, at a rate of 1%. Starting 1 November 2023, the micro-companies tax rate is increased to 3% for companies who either have a turnover of more than EUR 60k or undertake activities under specific NACE Codes (e.g. NACE Code 5510 – Hotel service, etc.).

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%.

However, please note that starting 1 January 2024 the VAT rate mentioned above will increase from 5% to 9%.

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

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 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 CIT 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 came 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. As well, the calculation method should be revisited.

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 and will be computed on a group basis under tax consolidation. With effect for the tax periods that begin in 2023, when aggregating the individual tax bases in order to calculate the tax group base (under tax consolidation), only 50% of the negative tax bases will be computed (new temporary measure). The 50% of non-utilized tax bases will be recaptured on a straight-line basis during the following 10 years starting as from 2024.

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 2023 the tax return should be filed between 1 November and 30 November 2024.

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 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 should 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 operates.

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 in 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 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 and not qualifying for the reinvestment period.

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

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.

Business Activity Tax (BAT)

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.

Review of the BAT position for Spanish companies belonging to a corporate group is advisable.

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 “cadastral reference value”). In this regard, as of 2022, said value is considered as the minimum value for tax purposes (taxable base) in case that the price agreed in the transaction would be lower.

We recommend monitoring the assignment of a reference value for the properties located in Spain to properly determine the taxable base for RETT and Stamp Duty purposes. In particular, this should be checked in advance of any acquisition.

Solidarity Tax and Net Wealth Tax

By the end of 2022 a new Solidarity Tax on Large Fortunes and some amendments on the existing Net Wealth Tax (NWT) were passed in Spain. According to the amendments included in the NWT, regarding non-resident taxpayers (individuals) subject to NWT, securities representing holdings in the equity of entities, not traded on organized markets, would be deemed to be located in Spain where at least 50% of their assets, directly or indirectly, consist of property located in said territory.

On the other hand, the new Solidarity Tax on Large Fortunes is very similar to the NWT and it is shaped as a supplementary tax to the NWT for taxpayers with a net worth higher than EUR 3m. In this respect, generally the main purpose of this new tax is to limit the 100% exemption on the NTW applicable in certain Autonomous Regions (for instance, Madrid).

Finally, it must be noted that, notwithstanding the above, certain double tax treaties could prevent Spain from applying these taxes.

Based on the above, non-resident individuals which could directly or indirectly hold Spanish properties should analyze if these new rules could impact them.

20 Switzerland

Changes in tax rates

In Switzerland, there are two different kinds of taxation of capital gains on real estate. The Swiss Federal level, as well as the so called “dualistic” cantons apply the ordinary income tax on real estate capital gains, whereas other cantons, the so called “monistic” cantons, apply a special real estate capital gains tax on real estate capital gains.

- The changes in income tax rates will have an impact on the deferred tax position in cantons that apply the ordinary income tax on real estate capital gains.
- On the other hand, the special real estate capital gains tax is not impacted by the corporate tax reform, meaning that in these cantons the deferred tax position is not affected by the corporate tax reform.

Recaptured depreciations and value adjustments on real estate are subject to ordinary income tax on a Swiss Federal level as well as in all cantons.

For FY2023, the following changes in corporate income tax rates may impact Swiss real estate investors (overall ETR in the capital city of each canton for illustration):

Canton	FY2022	FY2023
Aargau	17.42%	16.26%
Basel-Land	17.97%	15.90%
Neuenburg	13.57%	14.89%
St. Gallen	14.40%	14.29%
Schwyz	14.06%	13.91%

The applicable real estate capital gains tax rates depend on various factors, such as the holding period of the real estate and the canton and commune where the property is located. For FY2023, the following changes in real estate capital gains tax rates may impact Swiss real estate investors:

Canton	FY2022	FY2023
Basel-Stadt	30%	40.5%

Changes in safe harbor interest rates on inter-company loans

For the assessment of appropriate interest on loans in CHF to related parties, the Swiss Federal Tax Administration publishes safe harbor rates. Due to rising interest rates on the market, the safe harbor rates have significantly increased of of 1 January 2023, compared to prior years.

	Safe harbor interest rate 2022	Safe harbor interest rate 2023
Max. rate on mortgage in CHF for housing and farming up to <2/3 LTV	1.00%	2.25%
Max. rate on mortgage in CHF for other real estate as of >2/3 LTV	1.75%	3.00%
Max. rate on mortgage in CHF for industry and production up to <2/3 LTV	1.50%	2.75%
Max. rate on mortgage in CHF for industry and production as of >2/3 LTV	2.25%	3.50%
Max. rate on mortgage in EUR for housing and farming up to <2/3 LTV	0.50%	3.00%
Max. rate on mortgage in EUR for other real estate as of >2/3 LTV	0.50%	3.00%
Max. rate on mortgage in EUR for industry and production up to <2/3 LTV	0.50%	3.00%
Max. rate on mortgage in EUR for industry and production as of >2/3 LTV	0.50%	3.00%
Max. rate on mortgage in USD for housing and farming up to <2/3 LTV	2.00%	3.75%
Max. rate on mortgage in USD for other real estate as of >2/3 LTV	2.00%	3.75%
Max. rate on mortgage in USD for industry and production up to <2/3 LTV	2.00%	3.75%
Max. rate on mortgage in USD for industry and production as of >2/3 LTV	2.00%	3.75%

Note that for operational loans that use real estate as collateral, the safe harbor rate for mortgages is not applicable and the safe harbor rate for operational loans must be used instead.

Assessment basis for capital tax for real estate funds

The Federal Act on Collective Investment Schemes (CISA) mandates real estate funds to record property values based on independent market estimates, while some cantons determine property values based on rental income and capitalization rates, resulting in tax values often exceeding market values. In a recent judgement, the Federal Supreme Court ruled that the tax law's goal of assessing economic performance differs from CISA's goal of protecting investors. This permits cantons to use tax values based on capitalization rates for capital tax purposes, even if tax values may surpass both book and market values.

Loss offsetting in the Swiss inter-cantonal context relating to real estate gains taxation

According to Swiss inter-cantonal tax allocation rules, real estate is exclusively taxed by the canton in which the real estate is located in ("Location Canton"). In a recent judgement, the Federal Supreme Court allowed losses from other cantons to be offset against real estate gains in the Location Canton, even across different types of taxes (i.e. losses for corporate income tax purposes in one canton can be recognized for real estate capital gains tax purposes in a different canton). This is a significant development for entities operating in multiple cantons and applying different real estate taxation regimes within Switzerland, allowing for a more holistic view on a company's Swiss wide overall tax situation incl. real estate.

21 Turkey

Corporate tax

Resident companies in Turkey are subject to corporation tax on their worldwide income. The standard corporate tax rate is 25% (for FY23). On the other hand 5% discount (capped with TL 4.4m for 2023) is provided to the compliant taxpayers (who submit their tax returns on time, and have no outstanding tax liability, etc.). 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 (for the properties acquired before 15 July 2023) 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 CIT 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. 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.

Thin capitalization rule

If the ratio of the borrowings from related parties exceeds 3 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 capitalization analysis should be made by the taxpayer.

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. The rates are determined by the Ministry of Finance. The maximum applicable rate for the declining-balance method is 50%. With the new amendments taxpayers are allowed to calculate depreciation expenses on a daily basis. A longer useful life may be used as long as it does not exceed two times the useful life (determined by the MoF) and 50 years. The calculation method for these fixed assets cannot be changed. 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 and each quarter based on the exchange rates announced by the Ministry of Finance.
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. Receivables lower than TL 8,900 (for FY23) can be written as doubtful receivables without litigation process if they are requested more than one time via mail, etc. It should be determined whether the conditions are met.
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 the conditions are met.

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.

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

The determination of the VAT rate to be applied (1%, 10%[1] or 20%[2]) on the deliveries of houses starting from the year 2013 will vary based on several different factors such as; Building license obtaining date, Construction class of the building, Square meters of the house, etc.

For the units with the building license obtaining date is after 1 April 2022; parts which is up to 150m^2 of the residences will be subject to 10% VAT, exceeding part of 150m^2 will be subject to %20 VAT.

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.

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 etc.

Stamp tax is capped at TRY 10,732,371.80 (approximately EUR 373K under the current foreign exchange rate, subject to annual revaluation) for the year 2023. All signatory parties are jointly held liable for the stamp tax payment.

[1] 8% VAT rates was increased to 10% 20% starting from 10 July 2023.
[2] 18% VAT rates was increased to 20% starting from 10 July 2023.

Resource utilization 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.

Financial expense restriction

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 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.

Companies can benefit from a deemed interest deduction for the year of cash injection and following four years. Certain companies operating in real estate industry especially the ones earning rental income and making land investments may not utilize the above-mentioned interest deductions.

Inflation Accounting

The financial statements of 2023 will be restated for inflation, regardless of whether the conditions prescribed in the Tax Procedural Code for inflation accounting exist or not in 2023. Net gains from the restatement of 2023 financials will not be included in taxable income. Likewise, if the restatement of 2023 financials result in loss, such losses will not be tax deductible. That is, the inflation adjustments in 2023 will have no effect on the tax calculations of 2023. The net result (gain/loss) will be posted to balance sheet under prior years' gains/losses account.

As the inflation accounting will be applied by end of 2023, the revaluation opportunity of the immovables and fixed assets provided under Temporary Art. 32 and repeated Art. 298/ç of the Tax Procedural Code will not be applicable for the end of FY23.

Inflation adjustment will be applied for the end of FY23.

Partial spin-off of the immovables

Previously, immovable property held by a company could be transferred to an existing or a newly established company under tax-free spin-off provisions (i.e., without paying taxes). As per the new developments, tax free partial spin-off of the immovables will not be applicable after 31 December 2023.

The new law repeals this provision with effect from 1 January 2024.

22 United Kingdom

For UK tax purposes, the period of assessment depends on whether the investor is subject to corporation tax or income tax.

Non-UK resident companies are 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.

Non-resident investors which are not companies are required to submit a UK income tax return for the fiscal year which runs from 6 April to 5 April, which is unlikely to correlate with the fiscal year. This guide deals with the position for companies only.

For companies, 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 25% on profits over GBP 250,000 (19% pre-1 April 2023).

Rental income subject to corporation tax

As noted above, non- UK resident companies are within the charge to corporation tax on UK property rental income although withholding at the basic rate of income tax (20%) may apply. As a result of the increased rate of corporation tax of 25%, non-UK resident companies may find that the income tax withheld is not sufficient to discharge their UK corporation tax liability and that an additional payment may be required.

There are restrictions for companies on the deductibility of interest (see further detailed comments below), deductions related to hybrid mismatches and 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.

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

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

Financing costs

In calculating the profits subject to corporation tax for non-resident companies with a UK property business, this will include debits/credits in relation to loans or derivative contracts which the company is party to for the purposes of that business.

Shareholder financing in relation to 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 tax deductible (in addition to the restrictions referred to below).

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.

The 'corporate interest restriction' (CIR) rules were introduced in accordance with the OECD's BEPS project and their starting point, in broad terms, is to restrict finance cost deductions to 30% of taxable profits before interest and capital allowances In addition, the net interest deduction of the UK group cannot exceed the net interest shown in the worldwide group's consolidated financial statement. There is also a GBP 2m de minimis (pergroup) and the option of using an alternative group ratio or a public infrastructure exemption if this will provide a better result.

There are other ways in which interest deductions can be restricted. These include:

- The hybrid mismatch rules which, as noted above, can deny interest relief;
- 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).

The public infrastructure election, if relevant, must be made by the year end. There are also finance cost related filings and elections which must be made within 12 months of the year end, including the nomination of the reporting company for corporate interest restriction return, the group ratio election, and the 'disregard' election in respect of certain derivatives.

Capital allowances

Capital allowances is the mechanism under which tax relief is obtained for capital expenditure. Allowances are available for capital expenditure on plant and machinery in UK properties at 18% per annum on a reducing balance basis for loose plant and machinery, or 6% for integral features. Providing certain requirements are met, relief is also available at 3% per annum on a straight line basis for the cost of the construction, conversion and renovation of certain buildings ('Structural Buildings Allowances').

Companies are entitled to an annual 100% allowance for investment in most plant and machinery up to the annual limit of £1m per annum (AIA). One AIA is available per company or group of companies if relevant.

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.

From 1 April 2023 until 31 March 2026, companies investing in qualifying new plant and machinery assets benefit from a 100% first-year capital allowance rather than the existing 18% writing down allowance, and 50% first-year allowance for qualifying special rate (including long life) assets rather than the existing 6%.

Each UK property investment should be reviewed to ensure the maximum entitlement to capital allowances, in particular, the temporary super-deduction, is being claimed, and that the relevant data is being captured.

Disposals by non-residents

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 a company (or an entity deemed to be a company) in which it has at least a 25% interest where that entity derives 75% or more of its gross asset value from UK land. Where the disposal is of an interest in certain collective investment vehicles (which includes certain holdings in UK REITs and PAIFs), the 25% interest requirement is disapplied so that non-residents making disposals of interests in these vehicles do not have to have a stake of 25% or more to fall within the charge, or, in certain limited circumstances, replaced with a 10% threshold. 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 and certain other conditions are met, their assets will be aggregated to establish whether the 75% test is met.

The gain or loss is generally calculated using the market value of the asset as at April 2019 but there is an option to calculate the gain or loss on a disposal using the original acquisition cost of the asset. The April 2015 value replaces the April 2019 value in the case of direct disposals of UK residential property that would previously have been within the charge to UK tax prior to 6 April 2019. Where the option to use the original acquisition cost is taken in the case of an indirect disposal, and this results in a loss, this will not be an allowable loss.

There is a trading exemption, so that disposals of interests in property-rich entities where, broadly, at least 90% of the UK land (by value) is used in a qualifying 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.

Losses arising to non-UK residents under the 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 £5m de minimis applied on a group basis (which includes income losses).

It may be possible for a group company to elect for gains (or losses) to be treated as arising in another group company. This can impact on the ability to offset gains and losses and also the date on which any tax is due. The election must be made within 2 years of the accounting period in which the gain arises.

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 may therefore be necessary to keep up with any changes in UK GAAP and investors should consider the implications for their UK tax liability.

Asia Pacific

1 Australia

Tax on distribution of trust income to non-residents

Withholding managed investment trust

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

The MIT rules are an ongoing area of focus for the Australian Taxation Office (ATO). It is therefore critical that taxpayers confirm MIT eligibility on an annual basis.

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

Distributions by trusts that are not withholding MITs

Where trustees of non-withholding MITs make distributions to non-resident investors, they are assessable on the distributions at a rate of 30% where the non-resident investor is a company, and at a rate of 45% where the non-resident investor is an individual or trustee. The tax due is generally deducted from the distributions paid to the non-resident investors as a 'non-final withholding tax'. The non-resident investors are subject to Australian income tax in respect of the distributions they receive, and must lodge an Australian income tax return, but may be able to deduct any expenses relevant to the Australian investment, and also receive a credit for any non-final withholding tax paid.

Non-resident investors need to make sure they are aware of their compliance obligations if they invest into non-withholding MITs.

Flow through status of trusts

To ensure a trust is treated as a flow through trust, distributions must be made in accordance with the terms of the trust deed and the requirements set out in the tax legislation. Where distributions are not made in accordance with the terms of the trust deed and tax legislation, there is a risk that the trustee could be assessed on the income of the trust at a rate of 45% (which is not then available as a tax credit to the investors).

It is strongly recommended that the trust deed is considered in detail and the process of the distribution must be managed properly to avoid the trustee being taxed at 45%.

The AMIT Regime

Attributable managed investment trust (AMIT)

A MIT can make an irrevocable election to be treated as an AMIT. Broadly, the AMIT regime applies an attribution model to the taxation of unitholders rather than the current system of present entitlement. Any trusts that are AMITs will also be deemed fixed trusts for Australian income tax purposes.

Some other important features of the AMIT regime are cost base adjustments that increase and decrease the cost base of membership interests where the taxable distribution is greater or less than the cash distribution, and the introduction of 'multiple classes' of membership interests that can be issued by AMITs, where each class can be treated as a separate AMIT.

As AMIT distributions are made on an attribution rather than a present entitlement basis, cash distributions can be less than taxable income.

The pros and cons of electing into the AMIT regime must be carefully considered prior to making such election. Becoming an AMIT may require changes to systems, documentation (including trust deeds) and processes.

Taxation of trading income

Public trading trust

Generally, Australian real estate is held by trusts in order to access certain tax advantages, e.g. flow-through tax treatment. However, a trust is taxed in a similar manner to a company under Division 6C of the tax law if it is classified as a 'public trading trust' for a year of income. A public trading trust is a trust that is both a 'public unit trust' (i.e. a listed or widely held trust) and a 'trading trust'. A trading trust is a trust that carries on a trading business at any time during an income year. In the context of land, a trading business is any activity other than investing in land primarily for the purpose of deriving rent.

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

Integrity measures regarding staple structures and agricultural/residential property

In respect of managed investment trusts, integrity measures regarding stapled structures and agricultural/residential property seek to:

- Subject converted trading income to MIT withholding at the corporate tax rate of 30% (instead of the concessional MIT withholding tax rate of 15%); and
- ensure investments in agricultural land and residential property, (other than certain types of commercial residential and affordable housing), are subject to MIT withholding at 30%.

Note that an announcement was made in the recent 2023/24 Federal Budget to confirm that eligible BTR projects should be subject to a 15% withholding tax rate from 1 July 2024 (notwithstanding it is residential property).

Taxpayers should consider the impact of these integrity measures on their investment structures for Australian investments.

Taxation of foreign tax-exempt investors

Withholding tax exemption for foreign superannuation funds

The dividend and withholding tax exemption for foreign superannuation funds is restricted to portfolio like investments (i.e. less than 10%) as from 1 July 2019 (subject to transitional rules). Specified additional conditions also need to be satisfied before the exemption can be applied.

Foreign pension funds that have established captive trusts to house their Australian real estate investments should consider whether they qualify for the withholding tax exemption.

Access to sovereign immunity exemptions

From 1 July 2019 (subject to transitional rules), the tax treatment of sovereign wealth funds has been codified in the tax legislation. An entity that meets the definition of a sovereign entity will only be exempt from tax on ordinary or statutory income that is derived from portfolio-like investments in Australian companies and managed investment trusts. The portfolio level interest must be measured by reference to a sovereign entity group (entities are grouped according to whether they are federal, state or provisional level government entities).

Sovereign entities will need to consider whether they meet the eligibility tests for the sovereign immunity exemption (which may include gathering information on investments held by other group members).

Debt deductions

Thin capitalisation

The Australian thin capitalisation rules can restrict the deductibility of interest expense for inward or outward investors. In 2023, draft legislation for new interest limitation rules were released in line with the OECD's recommended approach under Action 4 of the BEPS Action Plan. The new legislation introduces earnings-based tests rather than the asset based tests that have historically applied in Australia.

The new rules include three new tests:

- The fixed ratio test (replacing the safe harbour debt test) that will allow an entity to claim net debt deductions up to 30% of its tax EBITDA. Denied deductions may be carried forward for up to 15 years subject to certain conditions.
- The group ratio test (replacing the worldwide gearing ratio test) will allow an entity in a group to claim debt-related deductions based on a ratio determined by the worldwide group's third party debt, but no carry forward is available for denied deductions.
- The third-party debt test (replacing the arm's length debt test) is intended to allow debt deductions that are attributable to genuine third party debt which is used to fund Australian business operations, while entirely disallowing third party deductions that do not meet the requisite conditions and all related party debt deductions. No carry forward is available for denied deductions under this test.

New 'debt deduction creation' (DDC) rules have also been introduced which has a very broad application and can apply to debt retrospectively. Where these rules apply they may deny some or all of the debt deductions associated with that arrangement.

Once enacted, the rules are broadly expected to apply to taxpayers from income years commencing on or after 1 July 2023.

Taxpayers should consider the impact of these rules on any existing and proposed funding structures for Australian investments.

Transfer pricing

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

For income years commencing on or after 1 July 2015 increased penalties are applicable to Australian and foreign multinationals with a global income of more than AUD 1 billion in respect of any adjustments made by the Commissioner in transfer pricing and anti-avoidance cases. The penalties applied may be up to 100% of the tax shortfall from the adjustment. Such penalties may be mitigated to some extent where a taxpayer has established a 'reasonably arguable position' through preparation of compliant Australian transfer pricing documentation.

The ATO has issued practical compliance guideline PCG 2017/4 which sets out the framework used by the ATO to assess the risk of whether related party financing arrangements are entered into on arm's length basis.

By using the guidance in the PCG, a taxpayer can self-assess the risk level of whether their related party debt funding will be considered by the ATO to be arm's length for transfer pricing purposes.

Where the ATO undertakes a compliance review of a taxpayer's related party debt funding, the ATO may request and check a taxpayer's self-assessment of their risk. If a taxpayer is unable to provide sufficient evidence to support their risk assessment, this is likely to prompt further compliance activity by the ATO.

Detailed questions regarding intra-group finance arrangements are requested as part of Foreign Investment Review Board approvals.

Under proposed rules, taxpayers will also be required to demonstrate that their actual quantum of debt is arms length for the purposes of the transfer pricing provisions, even if debt deductions are less than the threshold set under the fixed and group ratio tests.

The transfer pricing rules should be considered by all Australian entities with cross-border related party dealings and consider the implications of the documentation requirements.

In addition, taxpayers should undertake a self-assessment of their related party debt under the PCG framework, and in particular, if they wish to fit within the green "low risk" zone.

Hybrid mismatch rules

Australia has statutory 'hybrid mismatch' rules in Division 832 of the Income Tax Assessment Act 1997. These rules generally took effect for income years commencing on or after 1 January 2019.

The above legislation implements the OECD's recommended hybrid mismatch rules to prevent entities obtaining a tax benefit from hybrid mismatch arrangements. In addition, the act introduced an integrity measure, a unilateral low tax rate (10% or less) lender rule.

Broadly, hybrid mismatches arise from differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions, which result in either a deduction/deduction mismatch (whereby a business obtains a deduction in two countries for the same payment) or a deduction/non-inclusion mismatch (whereby a deduction is provided for payment in one country (i.e. Australia), but the corresponding income is not included in the assessable income in the recipient country).

The hybrid mismatch rules are amongst the most complex set of tax rules enacted in Australia in recent years. These rules also have wide-ranging application, with no de minimus threshold for small and less complex operations. Taxpayers will therefore need to gather detailed information of the foreign income tax treatment of related entities and instruments. Any restructuring will need to be carefully evaluated, due to the interaction with other areas of the business (accounting, operational and legal/regulatory issues).

Tax losses

Recoupment tests

Any change in direct or indirect interests in an entity (e.g. in the course of restructurings) may lead to a partial/total forfeiture of tax losses at the Australian entity level.

Broadly, a trust must maintain a more than 50% continuity of ownership to recoup prior year losses. Certain listed trusts can also rely on the same business test.

Companies in Australia must similarly consider whether they satisfy the relevant loss recoupment tests prior to recouping tax losses in any income year. Broadly, a company must maintain 50% of more continuity of ownership, or failing that, satisfy the same business test (or similar business test) in order to recoup its tax or capital losses.

The tax loss rules must be considered prior to the recoupment of prior year and current year losses. The tax loss rules should also be considered where there are transactions that result in significant changes to ownership.

Reporting requirements

Country-by-country reporting (CbCR)

Australia has a comprehensive reporting and penalty regime including CbCR transfer pricing reporting standards, FATCA and tax transparency.
In June 2023, the Australian government also released draft legislation (which is currently waiting to be passed) to require Australian public companies (listed and unlisted) provide a 'consolidated entity disclosure statement' as part of their annual financial reporting obligations. This disclosure will include information in relation to entities within the consolidated entity, including the tax residency of each of those entities during the financial year.

Once enacted, these rules must be considered as there could be significant adverse outcomes for non-compliance.

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
Investments are subject to lock-in period of three years from date of receipt of each installment/tranche of investment.	Investments are subject to lock-in period of three years from date of receipt of each tranche of investment.
Lock-in shall not apply on completion of the project or after development of trunk infrastructure or in case of transfer between non-residents.	Permitted activities – Operating and managing Townships, Malls, Shopping Complexes and Business Centre, including leasing of properties.

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 above 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 in India for minimum period of three years (75% of committed portfolio size).
Single FPI (including related FPIs) cannot subscribe more than 50% of any issue of corporate bonds, subject to certain exceptions.	Concentration limits do 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 in case where the incentives are claimed, it would also be liable to Minimum Alternate Tax at the rate of 17.47% 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 / income 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). Further, REIT are required to distribute at least 90% of their cash flows to their unit holders.

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 REIT. Other incomes, including capital gains on disposal of REIT assets are taxable in the hands of the REIT.

Distribution by REIT to unitholders in form of capital / debt repayment in excess of issue price of units is taxable at applicable rates in the hands of the unitholders. Distribution not taxed as above is to be reduced from the cost of acquisition of units.

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 16.38%[3]
b. Long-term capital gains – Effective tax rate 10.92%[3]

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, 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.

[3] We have considered maximum applicable surcharge applicable to foreign company (non-resident)

Tax incentives

Investment linked tax deduction (i.e., 100% deduction for capital expenditure) is available for certain asset classes (e.g. slum redevelopment or rehabilitation projects, affordable housing projects, certain category of hotels and hospitals etc. which meet the requisite certain criteria).

Quasi thin capitalisation rules

In summary, interest deductibility is capped 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-associated enterprise is guaranteed by an associated enterprise.

Anti-abuse provision (sale of immovable properties)

Sale of immovable 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%.

Anti-abuse provisions (receipt of immovable properties)

Receipt of immovable 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). The difference is taxable if the same exceeds:

- INR 0.05 million; and
- 10% of the consideration

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 from a sale standpoint 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 (in which the carpet area of the commercial apartments is not more than 15%)	5% (without ITC)
Commercial property other than above	12% (with ITC)

[1] Effective GST rate after 1/3rd land deduction.

GST law was amended to define 'affordable residential apartments' 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.

There were ambiguities on whether sale of land post carrying out basic development such as land leveling should be liable to GST as provision of construction services or exempt from GST as sale of land. A recent Circular has clarified as sale of land post certain development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. is not liable to GST.

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 favourable judicial decision by the Orissa High Court allowing ITC to the developer. Post this ruling, similar petitions have been filed before various other High Courts in India. Currently, an appeal filed by the revenue authorities is in the process of being heard 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. As a result, theliability 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.

The above provisions are prescribed only for JDA projects under RERA.

Supplies to Special Economic Zone (SEZ) developers and units

Goods and/or services provided to SEZ developers and SEZ units for SEZ approved operations within an SEZ 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 within an SEZ unit continues to be GST free.

3 Korea

Adjustment of income tax rates and brackets

Adjustment of corporate income tax rates and brackets. Under the Reform Bill, the top marginal corporate income tax rate would be lowered and the income tax base brackets (including local surtax) would be simplified as below.

Tax Base (KRW)	Tax rate before January 2023	Tax rates on 1 January 2023 and after
200 million or less	11%	9.9%
More than 200 million to 20 billion	22%	20.9%
More than 20 billion to 300 billion	24.2%	23.1%
More than 300 billion	27.5%	26.4%

Extension of dividend declared deduction for PFV

The sunset rule that the dividend declared deduction for Project Financing Vehicle ("PFV"), one of vehicles available for real estate development project in Korea, has been extended to 31 December 2025 from 31 December 2022. Therefore, if the PFV declares a dividend on its distributable income for the fiscal period ending 31 December 2025, it is allowed to claim a tax deduction to reduce its taxable income.

Increased limit for the deduction of losses carried forward.

Increased limit for the deduction of losses carried forward. Under the Reform Bill, the deduction limit that companies are allowed to deduct losses carried forward from taxable income would increase generally to 80% from 60% of taxable income for the respective year. This is effective from 1 January 2023.

4 New Zealand

Non-resident investment in New Zealand

Overseas persons may invest in New Zealand (NZ) property directly or through a local company, non-resident company, trust or partnership. Investments in NZ real property by overseas persons may require consent from the New Zealand Overseas Investment Office.

The Overseas Investment Office assesses applications for consent from overseas investors who intend to:

- acquire significant assets, including through the acquisition of shares, where the consideration or value is >NZD 100m (higher thresholds apply for certain Australian investors and investors from member countries of certain free trade arrangements); or
- acquire an interest (whether freehold or a lease of more than 10 years) in 'sensitive' land (for example, residential land, marine or coastal land, farm land, historic or heritage land or areas adjacent to reserves or water). This includes where the investment is in another entity that holds a relevant interest in 'sensitive land'.

An increase in an existing >25% ownership or control interest past certain threshold limits will also be captured.

It is important to note the different consent requirements for different types of investments. In the case of an investment in 'sensitive land', among other things, the overseas investor must demonstrate the benefit(s) that the proposed investment brings to New Zealand. A national interest assessment may also apply, under which the Minister of Finance considers whether the proposed overseas investment is contrary to New Zealand's national interest. The assessment applies mandatorily for certain investments in strategically important businesses (SIBs) or investments by an overseas investor that are made by, or associated with, a foreign government. The Minister of Finance has discretion to call-in overseas investment for national interest assessment in other circumstances.

There is also a broader national security and public order regime which requires overseas persons to notify the Overseas Investment Office of investments in certain types of SIBs, and also provides an opportunity for voluntary notification in respect of investment in certain other types of SIBs.

As part of obtaining consent, overseas investors must provide tax disclosures for certain investments, and disclose historic penalties for tax avoidance or evasion, and outstanding unpaid tax of NZ$5 million or more in any jurisdiction.

Separately, persons who buy and sell property in NZ are required to provide certain details to their property lawyer or conveyancer, including a NZ tax number and their offshore tax identification number (where relevant). The driver for this requirement is to make it easier for Inland Revenue to track the buying and selling of property for investigative purposes.

Real property taxation

Net rental income derived from NZ real property is taxable in NZ at:

- the owner's personal marginal tax rate if the owner is an individual (the highest NZ marginal tax rate is currently 39%);
- a flat rate of 33% if the owner is a trust (i.e., trustee tax rate) and the income is not distributed to beneficiaries within a specific tax year (expected to increase to 39% for tax years starting on/after 1 April 2024); or
- a flat rate of 28% if the owner is a company.

Expenses incurred in deriving rental income are generally deductible (subject to various restrictions, including the anti-hybrid rules). These include property costs such as repairs and maintenance, insurance, rates, administration costs and depreciation.

Interest on loans used to acquire the property is currently generally deductible subject to potential restrictions under any of the thin capitalisation, anti-hybrid or transfer pricing rules.

Since 2021, deductions for interest in respect of residential investment properties have been restricted. The rules include:

- restriction since 1 October 2021 on deductibility for interest on new loans obtained (subject to some exceptions for refinancing of existing loans) or in respect of properties acquired after 27 March 2021;
- certain grandfathering provisions for interest on loans for properties acquired prior to 27 March 2021, with the proportion of interest that can be deducted gradually being reduced to nil over the period to the end of the 2024/2025 income year;
- exclusions for employee or commercial accommodation, farmland, care facilities and retirement villages, as well as newly built residential properties.

These interest deductibility rules may be repealed in whole or in part with a change in NZ Government in 2023.

Capital expenditure in relation to the property is not deductible. Capital expenditure is able to be included in the cost base of the property and depreciated (provided it relates to depreciable property, see further details below).

NZ does not have a comprehensive capital gains tax regime. As such, if the property is held on 'capital' account, there should not be any taxable gain or loss on disposal (subject to recovery of depreciation deductions noted below). If the property is held on 'revenue' account, then any gain or loss will be taxed in the same way as other income earned in relation to the property (outlined above).

Generally, property acquired for long term investment for the purpose of earning rental income is regarded as held on 'capital' account. There are some important exceptions to this general rule, including where:

- the property is acquired with a purpose or intention of disposal;
- the person selling the property is in the business of developing land, erecting buildings or dealing in land;
- the person who owns the property is treated under NZ tax rules as associated with another person who carries on a business of developing land, erecting buildings or dealing in land, which could include a significant owner or an entity with shared ultimate ownership that carries on these activities (in either case not limited to activities within NZ).
- residential property is subject to the 'bright-line property rule'. The bright- line property rule, broadly, deems a gain on disposal to be taxable if a residential property (subject to specific exclusions including a main home exemption) was acquired within 5 or 10 years depending on the acquisition date. These rules are also subject to change with the change in NZ Government in 2023.

Tax depreciation

The depreciation rate for buildings with an estimated useful life of 50 years or more was 0% from the 2011/2012 income year until the 2019/2020 income year. From the 2020/2021 income year, depreciation has been available on commercial buildings at a 2% diminishing value rate (or 1.5% straight-line rate). It has been signaled that depreciation for buildings will be repealed from the 2023/2024 income year, however legislation has not yet been introduced to confirm this. The depreciation rate for residential buildings remains at 0%.

Certain components of buildings (such as fixtures and fittings that constitute commercial fit-out (e.g. non-load bearing walls or wiring)) are eligible for higher Inland Revenue-determined depreciation rates. The components of a building eligible for a higher depreciation rate are different depending on whether the building is residential or non-residential.

On disposal, the amounts allocated to land, buildings and other depreciable property for tax purposes generally need to be consistent as between buyer and seller (via agreement or a default statutory mechanism and based on relative market value). Where depreciated assets are sold at a value in excess of the depreciated value, there will be a taxable gain on sale in the year of sale (capped at the amount of depreciation previously deducted). A tax loss can be claimed on the disposal of depreciable property (e.g., fixtures and fittings). However, a taxpayer is only able to claim a tax deduction for a loss made on the disposal of a building in very limited circumstances.

As noted above, capital expenditure in relation to a building is not deductible. The criteria for capitalising costs for accounting purposes is not the same as the criteria for tax purposes. As a result, there are typically items that are expensed for accounting purposes that need to be capitalised for tax purposes and vice versa (and, where appropriate, then depreciated for tax purposes over the useful life of the asset).

Transfer pricing

Cross-border related party transactions are subject to transfer pricing (TP) rules. The NZ TP regime aligns with the OECD TP guidelines, with the effect of placing a focus on economic substance over legal form. The onus of proof is on the taxpayer to demonstrate that cross border arrangements are conducted on an 'arm's length' basis. Contemporaneous NZ specific TP documentation is critical and mitigates the risk of the 'lack of reasonable care' penalty being applied if audited.

In addition to the general TP rules, NZ has a restricted transfer pricing (RTP) regime which limits the tax deductions available for interest where inbound related party cross-border debt is at least NZD 10m, using a prescribed set of rules. The RTP regime represents a significant departure from OECD principles, which allow for interest to be priced with reference to the actual loan terms and conditions agreed between parties and general arm's length principles. This can lead to a disconnect between the interest rate that the counterparty jurisdiction will expect based on general arm's length principles.

Thin capitalisation rules

A portion of a NZ taxpayer's interest expense is disallowed where an entity's debt percentage (calculated as total interest-bearing debt/total 'net' assets) exceeds both of the following:

- 60% for 'inbound' investment (i.e. non-NZ owned groups) or 75% for 'outbound' investment (i.e. NZ owned groups); and
- 110% of the worldwide group's debt percentage (or 100% in certain circumstances).

The use of a debt-to-net asset percentage differs from many other jurisdictions' thin capitalisation regimes which tend to monitor an entity's debt-to-equity ratio.

There are certain de-minimis provisions giving full or partial relief. Other concessions allow the debt percentage to exceed 60% for certain infrastructure projects.

Anti-hybrid regime

NZ has had anti-hybrid rules since 2018. The rules are based on OECD principles, and are aimed at eliminating tax benefits arising from hybrid mismatch arrangements. Generally, hybrid mismatch arrangements are arrangements that take advantage of the differences in tax treatment of an instrument, entity or branch across different jurisdictions. They can include a deduction where there is no income inclusion by the recipient or where there is a deduction for the same expense (or portion thereof) in more than one jurisdiction. The rules are extremely complex, whilst the legislation and guidance with respect to these rules continues to develop.

Taxpayers have annual disclosure requirements with respect to the anti- hybrid rules. Inland Revenue also expects non-NZ headquartered taxpayers to obtain appropriate written confirmations from their offshore group tax function confirming the application of the rules.

Tax losses

NZ tax losses incurred may be carried forward and used to offset income in future income years provided there has been (a) at least 49% continuity in the ultimate shareholding from the year in which the losses are incurred to the year in which they are used to offset profits, or (b) the requirements of the 'business continuity test' (BCT) are met. Under the BCT, tax losses can be carried forward where there is no 'major change' in the nature of the taxpayer's business activities, generally for five years after a change in ownership. Tax losses cannot be carried back.

Tax losses arising from residential rental properties are 'ring- fenced'. Taxpayers may only offset residential rental property tax losses against other residential property-related income (and not against other income such as salary or other business income). Residential rental property tax losses may be carried forward.

Goods & Services Tax (GST)

Goods and services tax (GST) registration is required if income from non-residential rental income is, or is expected to be, over NZD 60,000 for any 12-month period. If GST registration is required, GST is payable on rental income derived from commercial or industrial property rental but no GST is imposed on residential rental property.

Most sales of non-residential land (and buildings) between GST registered persons are zero-rated for GST purposes. Depending on whether you or your NZ investment entity is registered for GST, and the past and intended use of the property (i.e., whether for a GST taxable activity or not), the purchase or sale of the property may or may not be subject to GST. It is important to seek GST advice from your advisor prior to any transaction.

5 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 naturalized 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 meters of urban land or up to 3 hectares of rural land, and
b. for residential purposes, up to 1,000 square meters 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.

Leasehold

Sale/acquisition and lease of real estate property

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 realized 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; and
- Real property used in trade or business of the taxpayer.

Ordinary income tax/expanded withholding tax

Sale of real property classified as ordinary assets, however, shall be subject to ordinary income, and any gain/income from the sale or exchange of such real properties shall be subject to the 20% or 25% normal corporate income tax (CIT) or 1% minimum corporate income tax (MCIT) until 30 June 2023, as the case may be. The rate of 20% CIT shall be applicable to domestic corporations with a net taxable income not exceeding PHP 5m, and with a total assets 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 and without any intent to evade tax.

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. The VAT shall be based on the gross selling price of the real property sold, or gross receipts for the lease of the real property.

The following sales are exempt from VAT:
- Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business;
- Sale of real property utilized for socialized housing as defined by Republic Act (RA) No. 7279, as amended;
- Sale of house and lot, and other residential dwellings with selling price not more than PHP 3,199,200;
- VAT may be imposed on incidental sales; and
- Lease of a residential unit with a monthly rental not exceeding PHP 15,000 per month, regardless of the aggregate rental amount during the year.

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]
- Lease 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]

Capital gains tax (CGT)

Sale of shares

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 a flat capital gain 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 or gross value in money of the shares of stocks.

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.

Documentary stamp tax (DST)

The sale, barter or exchange 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, in the case of shares without par value the DST levied shall be 50% of the DST based on the original issuance of the said shares.

On the other hand, if the shares are listed and traded through the PSE, the sale, barter or exchange of said shares is exempt from DST.

Transfer Pricing

Transfer Pricing

In the Philippines, Section 50 of the National Internal Revenue Code ("Tax Code") authorizes 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 Organization 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 standardized 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 use of the new BIR Form No 1709 replacing BIR Form 1702H or the Information Return on Transactions with Related Foreign Persons, series of 1992. In this regard, RR No 19-2020 provided rules in determining related parties and related party transactions in accordance with PAS 24, the required disclosures on related party transactions which shall be presented separately per related party, and the guidelines on the submission of BIR Form No 1709 and its supporting documents as an integral part of the Annual Income Tax Return of the taxpayer.

Tax Authorities further issued Revenue Memorandum Circular (RMC) No. 76-2020 which provides further clarification on certain issues on the filing of BIR Form No. 1709 regarding the streamlined procedures for the submission of the BIR Form No 1709, TP documentation and other supporting documents by providing, inter-alia, 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 PHP300m.

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 authorization from the SEC.

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 in relation to taxation of real properties. The proposals are part of the Comprehensive Tax Reform Program of the previous administration, which the current government is supporting to promote the development of a just, equitable, and efficient real property valuation system based on internationally accepted valuation standards. Additionally, the Department of Finance stated that the said system will broaden the tax base used for property-related taxes of the national and local governments, thereby increasing government revenues without increasing the existing tax rates or devising new tax impositions.

America

1 Argentina

Income tax rate

For fiscal periods which start in 2023, 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 143.012.092. This amount will be annually updated by inflation rates.

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 reduced 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 capitalization 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 unutilized deduction capacity for three years.

Foreign exchange control regulations

As of 1 September 2019, the Argentine government issued two relevant measures: Decree 609/2019 and Communication "A" 6770 of the Central Bank of the Argentine Republic ("BCRA", for its Spanish acronym). In general terms, both regulations were aimed to restore the Foreign Exchange Control Regime, therefore allowing the administration to further restrict and control all transactions carried out in foreign currency.

A local company cannot access the Foreign Exchange Market ("FX Market") to obtain foreign currency to buy real estate out of Argentina. It could only do so if it has Free Availability Funds ("FAF") deposited abroad.

The possibility of accessing the FX market to obtain foreign currency to invest in real estate in Argentina is only reserved for human persons who can purchase a certain amount of foreign currency for the purchase of real estate in Argentina intended for single-family housing, for permanent occupancy and with a mortgage loan.

Consequently, if a resident company needs to invest in real estate in Argentina, it can only do it if it has FAF deposited abroad. For the purpose of obtaining FAF, the local company can receive a financial loan abroad. It is to be noted that the local company does not have the obligation to bring into and settle the foreign currency of the financial loan through the FX Market.

In this regard, it is possible to bring into the FX Market the foreign currency to perform an exchange operation for the currency to be deposited in local bank accounts (without being settled), to be utilized later to buy real estate in Argentina. Nevertheless, it must be taken into account that the foreign exchange regulation only allows access to the FX market for the repayment of capital and interest if the foreign exchange obligation to bring and settle the funds of financial loan has been fulfilled.

Besides, it must be noted that there are restrictions to repay the principal of financial loans when the lender is a foreign related party. Regarding the payment of interest on financial loans with related parties through the FX market, prior approval from the BCRA is required. If the lender is a foreign third party, the local company may have to comply with a refinancing plan to access the FX Market for the repayment of capital scheduled up to 31 December 2023.

Moreover, for the purpose of obtaining FAF, the local company can receive a capital contribution abroad from non-resident entities and there is no obligation to bring into the country the foreign currency of such contribution. The money can remain outside the country and be used to pay for the purchase of a property in Argentina. Because of this, it is also possible for the funds in foreign currency to be brought into through an exchange operation (without being settled) to be then deposited in a local bank account in foreign currency, for it to be used to buy real estate.

If a local company receives a capital contribution from its non-resident shareholders, in the future the latter may seek a repatriation of the investment or collecting profit and dividends from the local entity. However, the local company that intends to access the FX Market to purchase and / or transfer abroad foreign currency for a repatriation of direct investments will need the prior formal approval of the BCRA. Specifically, if the local company brought the foreign currency of a capital contribution by an exchange operation in which there was no settlement of said funds through the FX Market, the prior formal approval of the BCRA will be needed to access the FX Market to repatriate. Such prior formal approval will not be necessary to carry out a capital repatriation if the funds of the capital contribution were brought into and settled in the FX Market because in that situation, and complying with certain requirements of the rule, access to FX Market may be allowed.

To make a dividend payment through the FX Market, prior formal approval of the BCRA is also required, with certain exceptions, for instance: except the local company receives a new capital contribution through the FX Market, and it seeks a dividend payment of up to 30% of such new capital contribution.

Another way to obtain FAF to invest in real estate in Argentina is through transactions with securities in the Stock Market. But operating in the stock exchange market may imply restrictions to access the FX Market to make payments abroad. Accessing the FX Market for residents to pay debts and other obligations in foreign currency contracted with other residents and agreed as of September 1st, 2019, onwards is not allowed, unless such obligations have been implemented through public records or deeds by 30 August 2019.

In all the cases in which the prior formal approval of the BCRA is requested, it is to be noted that BCRA's authorizations 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 proceedings 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 27 May 2021, the Office of Corporations General Resolution No. 8/2021, established that companies incorporated abroad which 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 owner ("UBO") from the companies registered. Since 19 October 2021, the Financial Information Unit ("UIF") Resolution 112/2021 has lowered the threshold to be considered an UBO from 20% to 10%, and since 23 November 2021, the Office of Corporations General Resolution No. 17/2021 has adopted the same criterion. In this sense, the final beneficiary is understood to be human persons who have at least ten percent (10%) of the shares or voting rights of the company, or who by other means exercise the final, direct or indirect control of the company registered in the Argentine Republic. Whenever it is not possible to identify any individual as UBO, then it shall be considered as UBO the individual who is in charge of the management, administration or representation of the legal entity head of the group and its personal information must be disclosed in the UBO Affidavit.

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 authorization.

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 of the property subject to the right to build (or the right on what is built) in relation to 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 27,349 provides 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 its 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 determine the effective economic activity using such real estate 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 responsible to 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.

Corporations resident in Canada are subject to Canadian tax on worldwide income. Non-resident corporations are subject to tax on income derived from carrying on a business in Canada (generally through a permanent establishment located in Canada) and on capital gains from the disposition of taxable Canadian property.

Partnership income is determined at the partnership level and the partners are taxed on their share of the partnership income, whether or not such income is distributed.

Income of a trust resident in Canada that is paid or payable to a beneficiary is generally deductible in computing the trust's taxable income and is included in the beneficiary's taxable income.

Corporate income tax rates

The combined federal and provincial/territorial corporate income tax rates for the 2023 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.

Capital cost allowance (tax depreciation)

Non-residents are generally subject to the same rules relating to depreciable property and capital cost allowance ('CCA') as for residents of Canada. A non-resident person cannot claim CCA in respect of property situated outside Canada. Depreciation determined for accounting purposes is not deductible.

CCA on rental buildings, including additions or component replacements of a capital nature, is calculated on a declining balance basis at a maximum annual rate of 4% (or 6% for certain Canadian non-residential buildings, or parts thereof, constructed after 19 March 2007). 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 (decreasing to 1 times for the years 2024-2027; otherwise, first year CCA is limited to 50% of the full-year maximum amount).

CCA is calculated on a pool basis, with separate tax classes provided for various types of property. Most rental properties (i.e. buildings costing more than CAD 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, up to an annual maximum amount, but 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.

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 that alone or with other related persons owns more than 25% of the Canadian corporation's shares (or that with such persons has more than 25% by 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 a measure of equity exceeds 1.5/1, the interest on the excess is not deductible.

Special rules address situations involving such debts owing by a partnership. The rules can also apply in respect of certain back-to-back loan or secured guarantee arrangements in respect of third-party debts that would otherwise not be subject to the thin capitalisation limitations.

Interest expense of a Canadian corporation disallowed under the thin capitalisation rules will be deemed to be a dividend subject to Canadian non-resident withholding tax of 25%, which may be reduced under a tax treaty.

The legislation relies on the use of various defined terms and significant uncertainty may arise due to many interpretive issues. Careful consideration of all financing arrangements is required.

The Government of Canada has released draft legislation for the Excess Interest and Financing Expense Limitation ("EIFEL") rules. The EIFEL rules are proposed to take effect for taxations years beginning after 30 September 2023.The rules will limit interest deductibility in Canada, and are generally consistent with the recommendations under BEPS Action 4, and apply in addition to existing interest limitations including the thin capitalisation rules. The proposed rules limit the amount of deductible net interest expense for a corporation (and a trust, or Canadian branch of a non-resident as well as non-residents that earn passive rental income) to no more than a fixed ratio of its 'tax EBITDA'.

The ratio is 40% for taxation years beginning after 30 September 2023 and before 1 January 2024 and 30% for taxation years beginning on or after 1 January 2024. A 'group ratio' rule will allow a taxpayer to deduct interest that exceeds the fixed ratio if certain criteria are met. If actual interest expense in a year is less than the maximum allowable amount, this excess capacity can be carried forward 3 years. Interest denied can generally be carried forward by Canadian resident corporations or trusts, or non-resident corporations or trusts that carry on business in Canada indefinitely and deducted to the extent the taxpayer has excess capacity under the rules in that carryover year.

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 50% of any resulting capital gain (proceeds of disposition less capital cost of the property). TCP generally includes real property situated in Canada and 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, the full amount (if any) of the lesser of the proceeds of disposition of Canadian depreciable property that is TCP (e.g. a building) and the property's original capital cost over the property's undepreciated capital cost is taxable to the non-resident as recaptured depreciation.

When the TCP is held on income account rather than as capital property (e.g. inventory), the full amount of any profit from a disposition, net of applicable expenses, is taxable in Canada, subject to possible tax treaty relief.

Generally, a non-resident vendor of TCP 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. In addition to the federal reporting and withholding obligations noted above certain provinces within Canada have separate reporting and withholding requirements, subject to available relief provisions.

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.

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.

Additionally, a non-resident that makes payments to another non-resident may be deemed to be a Canadian resident for the purposes of withholding tax, in respect of payments made to the other non-resident person to the extent that those payments are deductible in computing the non-resident payer's Canadian-source income (including passive rental income).

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.

Land transfer tax, registration fees, and property tax

All provinces and territories and some Canadian municipalities levy a land transfer tax or registration fee on the purchaser of real property (land and buildings) 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% to 25% of the property value.

The Underused Housing Tax is a federal annual 1% tax on the value of certain non-Canadian-owned residential real estate considered to be vacant or underused. Certain exemptions may be available. In addition, certain cities and provinces have similar vacancy tax measures generally ranging from 1 to 3%, and are applicable in addition to the Underused Housing Tax.

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.

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.

Residential Real Property Ownership Restrictions

Effective 1 January 2023 foreign-controlled commercial enterprises and individuals who are not Canadian citizens or permanent residents are prohibited from acquiring residential property in Canada for a period of two years, subject to certain exceptions.

Also effective 1 January 2023, profits arising from certain dispositions of properties owned for less than 12 months are deemed to be business income, rather than a capital gain.

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 analyzed.

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

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 obtained 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 capitalization 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 capitalization position of the company and also the computation to determine the non-deductible interest, if this is the case.

Limitation on deducting interest expense

The Mexican tax laws provide a in limitation on the deduction of interest expense. 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 similarly 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.

Mexican domestic legislation disallows 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 whose effective place of management is located in Mexican territory would be considered as Mexican residents for tax purposes.

Review and analyze 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.

Reportable schemes

Tax advisors 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 apply not only to transactions carried out as of 1 January 2021 (date in which provisions regarding reportable schemes became effective) 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.

General anti-abuse rule (GAAR)

A general anti-abuse rule (GAAR) is included in the Mexican Federal Tax Code. This provision is 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 purpose 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. 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. The master and country-by-country fillings shall be submitted non later than on 31 December of the immediately following year of the corresponding fiscal year. Local file shall be submitted no later than 15 May of the immediately following year of the corresponding fiscal year.

Analyze if the mark up currently used can be adjusted based on the transfer pricing study.

Pension fund exemption

Mexican tax law establishes a tax exemption regime for foreign pension and retirement funds investing in Mexican real estate. Such regime grants tax exemptions 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.

Creditable VAT for specific business transactions.

VAT paid on strictly indispensable costs and expenses which are deductible for Income Tax purposes should only be creditable when the taxpayer carries out taxable activities. For VAT purposes, for example, the sale of land, houses and dwellings is VAT exempt. Therefore, VAT may be a cost for those real estate companies performing VAT exempt activities, as paid VAT will not be creditable. Also, VAT paid on expenses and investments in pre operative period can be credited either 1) on the first VAT return filed after starting to carry out business activities or 2) request a VAT return in the following month of that in which preoperative expenses and investments are made, according to an estimation of the proportion of the business activities to be carried out by the taxpayer that will be VAT taxed at a 16% or 0% rate.

Finally, regarding VAT crediting, the Mexican Supreme Court recently issued a ruling establishing that VAT paid through settlement of debt is non creditable. This ruling is binding jurisprudence and was published in the Official Gazette of the Federal Judiciary (Semanario Judicial de la Federación) on 12 May 2023.

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.

Labor Outsourcing

Employee outsourcing and insourcing are prohibited practices in Mexico. Mexican labor legislation only allows the provision of specialized services, as long as the contractor that will provide the specialized services is registered under the Mexican Secretary of Labor public registry for specialized services providers, and the specialized services or work to be provided by the contractor are out of the scope of the client's business purposes or economic activities.

4 United States

U.S. Economy and 2023 Outlook

The U.S. economy has expanded at an estimated 2.0 to 2.4% annualized pace through the first half of 2023. It is expected that growth will continue to moderate in the next few months as the combined impact of Federal Reserve rate hikes, tightening in lending standards, and relatively elevated inflation limit the upside for both business and consumer spending. Consumer spending is projected to strengthen in late 2024 as interest rates and unemployment decline.

Higher borrowing costs and tighter credit conditions will likely continue to challenge businesses, particularly those in rate-sensitive industries. Capital spending has continued to shrink and monetary policy uncertainty is high. Although the Federal Reserve decided to skip a rate hike in June 2023 for the first time since March 2022, continued strong payroll growth and elevated inflation mean further rate hikes are likely. The US economy has endured such tightening so far, but economic momentum from earlier in the year is waning and risks remain for the remainder of 2023. Even if the U.S. avoids an official recession, economic growth will likely be subdued, and many companies could still find themselves in a profit's recession in the near term.

IRS Compliance and Enforcement Efforts

In early September 2023, the Internal Revenue Service (IRS) announced that it is shifting its compliance focus and enforcement efforts onto high-income earners, partnerships, and large corporations. The IRS plans to leverage its Inflation Reduction Act of 2022 (Act) funding to use improved technology, including artificial intelligence (AI), in order to help exam teams better detect tax avoidance efforts, identify emerging compliance threats, and improve case selection tools to avoid burdening taxpayers with "no-change" audits.

The IRS's renewed focus on high-income earners, partnerships, and large corporations already has led to increased audit activity for these categories of taxpayers and likely will continue to do so. With this increased enforcement effort, taxpayers potentially affected by these changes should consider preparing audit-ready files to support their tax returns in the event of possible IRS examinations.

The key elements of the IRS's effort include the following:

- Expanding high-income/high-wealth and partnership compliance work
  - Prioritizing high-income cases
  - Leveraging AI to focus on large partnerships
  - Focusing on partnership issues through compliance letters
- Targeting priority areas for FY24 compliance work
  - Expanding work around digital assets
  - Increasing scrutiny around Foreign Bank and Financial Accounts violations
  - Focusing on labor brokers
- Improving audit fairness and protecting taxpayers
  - Improving audit fairness for individuals claiming the earned income tax credit
  - Protecting individuals and businesses from aggressive scams and schemes
  - Protecting taxpayers against identity theft

Tax Credit Monetization

As part of the Act, current incentives for clean, renewable, and traditional energy sources were reinstated and significantly expanded by providing an estimated USD 370 billion of new energy-related tax credits over the next 10 years. The legislation also has a significant impact for companies relying on financing arrangements for energy-related projects, permitting more flexibility with direct-pay and transferable credit options.

The Act extends and modifies several existing energy tax credits, creates new energy tax credits (collectively, tax credits); and modifies the existing Section 179D deduction. These changes may be of particular interest to the commercial real estate industry at a time when environmental, social and governance (ESG) initiatives are important to the C-suite. The Act allows a broader spectrum of taxpayers to benefit from the tax credits, either through an elective payment (as referred to in the latest proposed regulations, and previously 'direct pay' or 'refundability') or a transferability election. Tax-exempt entities, state and local governments, the Tennessee Valley Authority, Indian tribal governments, and Alaska Native Corporations can claim refunds from certain tax credits that are earned. Other entities that are not eligible for refundable credits, including real estate investment trusts (REITs) and partnerships may transfer certain tax credits that are earned.

On June 14, 2023, the IRS and Treasury released three regulation packages addressing the elective payment and transfer of energy credits: temporary regulations requiring taxpayers to register on a portal when monetizing credits, proposed regulations on elective payment, and proposed regulations on transfers. The temporary regulations apply to tax years ending on or after June 21, 2023. However, the proposed regulations state that a taxpayer may rely on the proposed regulations in tax years ending after December 31, 2022, but before publication of final regulations if it applies the proposed regulations consistently and in their entirety.

One common credit monetization question for infrastructure, real estate, and private equity funds was how refundability and transferability would work in a partnership context since many partnerships are owned by both entities eligible for direct pay (i.e., tax-exempt) and entities eligible for transferability (i.e., taxable). In response, Treasury and the IRS indicated that the partnership is the relevant entity for these purposes. As a result, the proposed regulations provide that a partnership may monetize via direct payment only for credits related to clean hydrogen, carbon sequestration, and advanced manufacturing. For all other eligible tax credits, a partnership may only elect transferability, without regard to whether one or all its partners are tax-exempt. An eligible taxpayer may transfer an eligible credit either for (1) eligible credit property held by a disregarded entity of which the taxpayer (including a partnership) is the sole direct or indirect owner or (2) the taxpayer's undivided share of eligible credit property co-owned through a tenant-in-common arrangement or through an organization that has made a Section 761(a) election to be excluded from the application of subchapter K. Eligible credits transferred are ineligible for elective payment.

REITs and certain tax-exempt entities should be mindful that the energy-related activities these tax credits are intended to incentivize may impact their REIT qualification or generate unrelated business taxable income (UBTI), respectively. While the proposed regulations do not include any new guidance particular to REITs, the preamble touches on a variety of issues specifically related to REITs. The preamble indicates that proceeds received by a REIT from selling a tax credit should not impact its income tests. The preamble also provides that the general rule that amounts received in exchange for a tax credit are excluded from gross income applies for purposes of the REIT income tests. Similarly, the preamble states that the receipt of (or the right to receive) an eligible credit does not result in income to an eligible taxpayer that also is a REIT. The preamble also notes that until additional guidance is published in the Internal Revenue Bulletin, in any tax year in which the quantity of excess electricity transferred to the utility company during the tax year from energy-producing distinct assets that serve an inherently permanent structure does not exceed the quantity of electricity purchased from the utility company during the tax year to serve the inherently permanent structure, the IRS will not treat any net income resulting from the transfer of such excess electricity as constituting net income derived from a prohibited transaction. The preamble notes that any sale of electricity that does not meet the test above should be analyzed on a facts and circumstances basis to determine whether the sale is subject to the prohibited transaction rules.

Another item to note is that while a taxpayer can only elect the production tax credit (PTC) or investment tax credit (ITC) with respect to a single facility, in some situations a single project may be able to elect the PTC on some assets and the ITC on other assets. When analyzing whether to claim the ITC versus the PTC, taxpayers should consider the different risks and limits associated with the tax credits and model out what the present value of tax credits would be based on the specific nature of the project. Items to consider may include discounts, inflation, depreciable lives, and evolving legislation impacting project cost. In order to maximize the ITC, taxpayers would have to meet a prevailing wage and apprenticeship requirement in the installation of the energy property, or the energy property must produce less than 1 megawatt of energy.

The Act further provides that some credits may be increased if 1) the project is constructed with certain domestically produced materials, and/or 2) the project is in a particular community (e.g. certain locations where fossil fuel mines or plants have been retired, low-income areas, Indian land). The applicability depends on the type of credit generated.

Real Estate Tax Issues in a Depressed Market

The real estate environment will continue to be shaped by the raised interest rates as they have increased recession risks and exposed fault lines in banking, real estate and private equity businesses that were predicated on low interest rates. The combination of higher interest and inflation rates have led to reduced transactions and a credit crunch for real estate.

With the current state of the economy, there has been an increase in foreclosures which have resulted in unique tax issues, especially in the context of a U.S. REIT foreclosing. Such U.S. REITs should be cognizant of technical REIT requirements when foreclosing on leases or loans in order to ensure there are no adverse tax impacts that could jeopardize REIT status.

Further, modifications of loans and leases may have unexpected tax consequences. With regards to nonperforming or underperforming loans, borrowers and lenders should be aware of the tax impact especially in the case when a loan modification results in a “significant modification” as promulgated under the debt modification regulations. Similarly, in the case of a lease modification, lessors and lessees should be aware of the tax implications, particularly if there is prepaid or deferred rent as a result of the modification.

Contacts

PwC Argentina
Lisandro Martin Lopez
Tel: +5411 3120 9829
lisandro.martin.lopez@pwc.com

Alejandra Veltri
Tel: +5411 4850 6881
alejandra.veltri@pwc.com

PwC Australia
Josh Cardwell
Tel: +61 2 8266 0532
josh.cardwell@pwc.com

Nick Rogaris
Tel: +61 2 8266 1155
nick.rogaris@au.pwc.com

PwC Austria
Franz Rittsteuer
Tel: +43 1 50188 3433
franz.rittsteuer@pwc.com

PwC Belgium
Grégory Jurion
Tel: +32 476423916
gregory.jurion@pwc.com

Evelyne Paquet
Tel: +32 476240655
evelyne.paquet@pwc.com

PwC Canada
Fred Cassano
Tel: +1 905 418 3469
fred.cassano@pwc.com

Alex Howieson
Tel: +1 416 526 4658
alex.t.howieson@pwc.com

PwC Cyprus
Stelios Violaris
Tel: +357 2255 5300
stelios.violaris@pwc.com

Panayiotis Hadjiconstantinou
Tel: +357 2555 5040
panayiotis.hadjiconstantinou@pwc.com

PwC Denmark
Soren Thorvaldsen Svane Keller
Tel: +45 3945 9010
soren.keller@pwc.com

Kaspar Bertram
Tel: +45 3945 3561
kaspar.bertram@pwc.com

PwC Finland
Mikko Leinola
Tel: +358 44 527 1617
mikko.leinola@pwc.com

Karin Svennas
Tel: +358 50 3543906
karin.svennas@pwc.com

PwC France
Sandra Aron
Tel: +33 1 5657-4474
sandra.aron@avocats.pwc.com

Jitka Susankova
Tel: +33 1 5657-8368
jitka.susankova@avocats.pwc.com

PwC Germany
Marcel Mies
Tel: +49 211 981-2294
marcel.mies@pwc.com

Dr Michael A. Müller
Tel: +49 30 2636-5572
mueller.michael@de.pwc.com

PwC Greece
Fredy Yatracou
Tel: +30 210 6874 017 fredy.yatracou@pwc.com

Christina Tsironi
Tel: +30 694 045 6013
christina.tsironi@pwc.com

PwC Hungary
Gergely Juhasz
Tel: +36 30 689 5487
gergely.juhasz@pwc.com

Mihály Gerhat
Tel: +36 30 334 3860
mihaly.gerhat@pwc.com

PwC India
Atanu Bhattacharjee
Tel: +91 093204 92040
atanu.bhattacharjee@pwc.com

Janvi Wadhwa
Tel: +91 9819 434 868
janvi.wadhwa@pwc.com

PwC Italy
Daniele Di Michele
Tel: +39 347 6536599
daniele.di.michele@pwc.com

Mario Joseph Feminò
Tel: +39 345 1061337
mario.joseph.femino@pwc.com

PwC Korea
Seung-Ryul Lee
Tel: +82-2-3781-2335
seung-ryul.lee@pwc.com

Jae-Dok Lee
Tel: +82-2-709-0282
jae-dok.lee@pwc.com

PwC Latvia
Zlata Elksnina
Tel: +371 29 119 180
zlata.elksnina@pwc.com

Ilze Rauza
Tel: +371 29 618 227
ilze.rauza@pwc.com

PwC Luxembourg
Alexandre Jaumotte
Tel: +352 4948 5380
alexandre.jaumotte@pwc.com

Thierry Braem
Tel: +352 4948 485106
thierry.braem@pwc.com

PwC Mexico
Juan J. Chavez
Tel: +52 55 5263 6000
juan.jose.chavez@pwc.com

Angel Zorilla
Tel: +52 55 5263 6000
zorrilla.angel@pwc.com

PwC Norway
Lars Helge Aasen
Tel: +47 95 2602 74
lars.helge.aasen@pwc.com

Marie Emilie Nerell
Tel: +47 99 10 4300
marie.emilie.nerell@pwc.com

PwC Netherlands
Jeroen Elink Schuurman
Tel: +31 (0)653 984810
jeroen.elink.schuurman@pwc.com

Serge X. de Lange
Tel: +31 (0)653 686660
serge.de.lange@pwc.com

PwC New Zealand
Helen Johnson
Tel: +64 27 501 9007
helen.n.johnson@pwc.com

Mark Russell
Tel: +64 9 3558316
mark.russell@pwc.com

PwC Philippines
Maria Lourdes Lim
Tel: +63 2 845 2728
malou.p.lim@pwc.com

Jose Jaffy Azarraga
Tel: +63 2 845 2728
jaffy.y.azarraga@pwc.com

PwC Poland
Marta Pabianska
Tel: +48 502 184 688
marta.pabianska@pwc.com

PwC Portugal
Jorge Figueiredo
Tel: +351 917 627 293
jorge.figueiredo@pwc.com

Diogo Gonçalves Pires
Tel: +351 913 396 125
diogo.goncalves.pires@pwc.com

PwC Romania
Ruxandra Tarlescu
Tel: +40 748 201 649
ruxandra.tarlescu@pwc.com

Diana Coroaba
Tel: +40 742 330 134
diana.coroaba@pwc.com

PwC Spain
Antonio Sánchez Recio
Tel: +34 915 685-615
antonio.sanchez.recio@pwc.com

Carlos Bravo Gutierrez
Tel: +34 915 684 956
carlos.bravo.gutierrez@pwc.com

PwC Turkey
Ersun Bayraktaroglu
Tel: +90 212 326-6474
ersun.bayraktaroglu@pwc.com

Baran Akan
Tel: +90 212 326-6534
baran.akan@pwc.com

PwC United Kingdom
Richard Williams
Tel: +44 7725 632540
richard.x.williams@pwc.com

Jonathan Clements
Tel: +44 7876 571677
jonathan.clements@pwc.com

PwC United States of America
John Sheehan
Tel: +1 617 620 2184
john.f.sheehan@pwc.com

Julanne Allen
Tel: +1 571 235 7837
julanne.allen@pwc.com

www.pwc.com