wts edition

International Taxation of Real Estate Investments

2012 Survey on Europe, Brazil, China, India and Russia

wts edition

International Taxation of Real Estate Investments

2012 Survey on Europe, Brazil, China, India and Russia

About WTS

WTS is an international, integrated and independent consulting group. Through our network we are represented in about 100 countries worldwide. Within our service portfolio we are focused on tax, legal and consulting. In order to avoid any conflict of interest, WTS deliberately refrains from conducting annual audits. Our staff has various backgrounds ranging from corporate tax departments to tax authorities and international consulting firms.

WTS' clients include multinational groups, medium-sized companies, non-profit organizations and private clients. Our real estate practice group is experienced to operate cross-border together with our WTS-Alliance partners and further cooperation partners.

This International Real Estate Tax Guide provides a comprehensive overview of tax regimes in 38 countries as particularly relevant for real estate investments. All details and information contained herein are accurate and correspond to the legal status as of August 1, 2012, unless otherwise indicated.

The following list provides at-a-glance real estate tax information for each country surveyed. This publication is written as a general guide only providing an overview of selected information based on applicable laws and regulations which may change in the course of time. Therefore, this guide should not be relied upon as a substitute for specific tax and / or legal advice which the German WTS offices or any office of the WTS Alliance firms in the respective countries are gladly available to provide at any time.

Although the information contained in this document was complied with utmost care, neither the publisher of this guide nor any other participating firm contributing to this guide can be held liable or accept any responsibility for damages resulting from any form of reliance on details contained herein.

The label "WTS" refers to WTS Alliance Vereniging („WTS Alliance"), an association incorporated under the laws of The Netherlands, and to its members. All WTS Alliance members are legally separate and independent firms only liable for own acts and omissions, not, however, for those of other members. They are also not allowed to represent or legally bind other members of WTS Alliance. The same applies insofar as the relationship between WTS Alliance and its members is concerned. WTS Alliance fulfills coordinative functions within the WTS-network, while it does not provide any consulting or other services to own clients or clients of its members. WTS Alliance neither controls its members nor exerts influence on its members' management. The members of WTS Alliance enter and administer the content of their country-specific websites under own authority and responsibility. Other members of WTS Alliance and WTS Alliance itself are neither owner of nor responsible for such websites.

Contents

Real Estate Investment in

Austria

A. Legal/General

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

Foreigners may acquire real estate in Austria, though such acquisition is subject to approval by land transfer authorities. Austria's nine provinces have the respective legislative competence. Acquisitions by individuals and legal persons from the European Economic Area (EEA) are generally not subject to such approval.

The acquisition of Austrian real estate does not have to be effected by using an Austrian acquisition company. However, also a domestic legal person may be treated as foreigner in the sense of these regulations if the majority of the shares are held by foreigners.

2. Which importance does the Austrian land register have?

Rights with respect to real estate are to be recorded in the Austrian land register as such rights usually only come into existence upon registration.

For the registration of property rights and construction rights a registration fee of 1.1 % falls due, the taxable base of the real estate transfer tax is applicable.

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

B. Income Tax

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

→ Corporate income tax rate: 25 %
Minimum tax level:
  › First year € 1,092
  › From the second year € 1,750 (limited company) or € 3,500 (joint stock company)

In case of companies (AG, GmbH) general principles of determination of business profits apply, which did not change by the new rules as of April 1, 2012. Changes incurred for certain private foundations and associations, for which the speculation period was abandoned and a withholding tax on real estate income tax introduced (see next bullet point and point C.3.).

- Personal income tax rate: Marginal tax rate:
  - Up to € 11,000: 0 %
  - From € 11,001 to € 25,000: 36.5 %
  - From € 25,001 to € 60,000: 43.124 %
  - From € 60,001: 50 %

In the case of alienation of real estate by an individual resident in Austria alienation gains derived as of April 1, 2012 are subject to personal income tax, regardless of the period between acquisition and alienation of the real estate and regardless of whether it is held as business property or as private property.

The alienation gain is determined as the difference between the sales price and the acquisition cost (or book value in case of business property) of the real estate and is subject to a flat tax rate of 25 %. The 25 % tax is also applicable for alienations of real estate in business property of private individuals, unless the real estate is a current asset, it is used in a real estate trading business, was written off tax effectively in the past or was used for a deferral of tax by a transfer of hidden reserves from the alienation of other assets.

The tax is basically withheld by the attorney-at-law or notary public, as far as involved in the transaction as a representative for real estate transfer tax purposes. For transactions without a notary public or an attorney-at-law the tax has to be declared by the tax payer in the individual assessment, but he/she has to submit an advance payment to the tax office within 1 - 2 months after the transaction, which is credited in the assessment. Business expenses related to the income taxed at 25 % are note tax deductible.

The general taxation of capital gains from real estate in private property is applicable also for real estate, for which the speculation period of 10 years had already expired according to the old legislation at March 31, 2012 (so called "old property"). For these buildings and land plots the acquisition cost may be determined for simplification purposes on a lump sum basis with 86 % of the alienation proceeds or 40 % of the alienation proceeds in case of a rededication in a building plot after December 31, 1987. Therefore for "old property" the tax amounts only to 3.5 % of the alienation proceeds or 15 % of the alienation proceeds in case of rededications in a building plot after December 31, 1987.

Participation exemptions

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

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

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

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

Within the scope of the international participation exemption, dividends and capital gains are, in general, tax-exempt. Capital losses (except losses in the event of insolvency or liquidation) and other write-downs of the participation are basically non-deductible. The parent company may, however, exercise an option to have capital gains and losses from the participation be treated as taxable or tax-deductible, as the case may be. The option must be exercised in the year of acquisition and is binding on any group company holding or acquiring that participation. Write-offs and capital losses must be spread over a seven year period. The international participation exemption does not apply in the case of suspected tax avoidance or abuse of law, which is assumed if the foreign subsidiary mainly derives passive income and its profits are subject to an effective corporate income tax, which is not comparable to the Austrian coporate income tax.

Portfolio dividends not covered by the international participation exemption (i.e., participations <10 % or held for less than one year) and received from corporations resident in an EU state or an EEA state, with which Austria has concluded a tax treaty providing for comprehensive information exchange, are also exempt from Austrian corporate income tax ("portfolio exemption"). For assessments of the year 2011 and onwards the portfolio exemption was expanded to all dividends distributed by foreign corporations comparable to an Austrian AG or GmbH (i.e. also from third states), if Austria has concluded a tax treaty providing for comprehensive information exchange with the other state (see Sec 10 (1) (6) CITA).

The portfolio exemption covers only dividends and not capital gains. The portfolio exemption does not apply in case of suspected tax avoidance or abuse of tax law, which is assumed, if the tax level in the state of the foreign company is less than 15 %, regardless of the nature of the company's activity as passive or active.

Tax group

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

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

The group may also include foreign first-tier subsidiaries. Losses of foreign group members may be deducted from the tax income of the group in proportion to the amount of the direct shareholding of the group in the foreign entity. However, such losses are recaptured and taxed in Austria in subsequent years if and to the extent they can be offset against profits of the foreign entity under its domestic tax regime or if the foreign entity drops out of the group (e.g. due to sale of the participation). Profits of foreign group members are not to be included in the tax group.

A write down of participations in the share capital of group members is not deductible for tax purposes. A tax-deductible depreciation of goodwill over 15 years is applicable to acquisitions of participations in domestic corporations running an operating business. The depreciation is limited to 50 % of the purchase price of the shares;or the difference between the purchase price of the shares and the proportional equity capital of the acquired company reduced by hidden reserves of its non-depreciable assets (e.g. land), whichever amount is lower.

Providing that all requirements are fulfilled, the group leader may opt for group taxation simply by filing an application form with the tax authorities (subject to certain time constraints). The tax authorities approve the tax group by official notice.

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

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

For business premises the following depreciation rates are available for tax purposes in Austria depending on the use of the building (without evidence of the actual useful life; half of a percentage for the year of acquisition or disposal if the utilization of the real estate is less than six months):

- Up to 3 % (33.3 years) for production buildings and storehouses
- Up to 2.5 % (40 years) for bank and insurance buildings
- Up to 2 % (50 years) for other business premises (e.g. office buildings)

In case of commercial tenancy the depreciation rate depends on the usage of the tenant. Thus commercial tenancy does not automatically entitle to the higher depreciation rate of 3 %. If the rented building is held as private property by the lessor, only a depreciation of 1.5 % of the assessment basis may be deducted as tax allowable expenses, if no shorter useful life can be proved.

In case of residential buildings maintenance costs have to be split up into repair expenses (immediately allowable expenses, an application for a deduction over a 10 year period is possible) and maintenance expenses (allowable only over a 10 year period), this is applicable for residential buildings owned by individuals, whether held in private property or in business property (Sec 4 (7) and Sec 28 (2) ITA). Maintenance expenses are expenses that increase the utility value or the useful life of the building.

For buildings without solid construction the authorities allow a depreciation rate of 4 %.

Outside a business certain production costs (in particular expenses according to the MRG – Act on Tenancy Law, WSG – Restoration Act for Residential Buildings and the DMSG – Act on Protection of Historical Buildings and Monuments) may be deducted over a 15 year period upon application. Such deduction of certain production costs over a 15 year period has the effect that the speculation period in relation to the real estate is 15 years instead of 10 years.

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

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

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

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

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

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

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

According to the stability Act 2012, applicable as of April 1, 2012 all capital gains in connection with the sale of Austrian real estate are subject to Austrian taxation – regardless of the period in which the real estate has been held and regardless of whether it is in private property or in business property. Therefore non-resident individuals are subject to tax on alienations of Austrian real estate. According to Sec 30a (1) the special tax rate for real estate of 25 % is available also for non-residents. Transitional provisions for Austrian real estate not subject to tax anymore at March 31, 2012 are applicable also for non-residents (see above point B.1.).

Moreover, income from renting out real estate if the immovable property is located in Austria and income from interest earned if the loan is secured by Austrian real estate is subject to limited tax liability. Interest payments derived from Austria without being secured by Austrian real estate are not subject to Austrian tax liability in the hands of non-residents.

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

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

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

Asset deal

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

Share deal

The acquisition costs of the shares must be capitalized and are generally not deductible. However, under the Austrian group taxation regime goodwill can be depreciated over 15 years. The depreciation amount is limited to 50 % of the acquisition cost or the difference between the purchase price of the shares and the proportional equity capital of the acquired company reduced by hidden reserves of its non-depreciable assets (e.g. land), whichever amount is lower. Interest on the debt-financing of the acquisition of a participation in a (resident or non-resident) corporation is tax deductible regardless of the fact that the participation exemption provides for a tax exemption on income from the acquired participation. Avoidance strategies for real estate transfer tax when acquiring the target corporation are available.

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

Thin capital rule
Specific rules on thin capitalization do not exist in Austria. The Austrian Administrative Court has established various principles to determine under which conditions debt financing is not to be recognized for tax purposes. For instance, if the equity is inadequate, a loan may be regarded as hidden equity. However, there are no defined debt-equity ratios to comply with. Hidden equity may also be assumed if the loan agreement is not in line with the arm's length principle. Interest paid on loans that are regarded as hidden equity will be treated as a constructive dividend and may not be deducted from the taxable income.

Transfer pricing rules
Austrian tax law does not provide for specific provisions on the documentation of transfer pricing in connection with the inter-company supply of goods and services. The documentation has to comply with the general provisions of the Austrian Fiscal Code, taking into account the OECD Transfer Pricing Guidelines. In practice, however, setting up a proper transfer pricing documentation is to be recommended. Interest payments or other payments made by an Austrian company to a foreign upper-tier company are not tax deductible, as far as they are above the arm's length level. Additionally, a hidden profit distribution could be assumed as far as such interest or other payments are above arm's length level. The transfer pricing guidelines of the Austrian Ministry of Finance applicable as of 2008 provide details on the determination of the arm's length price.

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

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

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

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

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

An up-stream merger leads to real estate transfer tax. In a down-stream merger, real estate transfer tax can be avoided if NewCo did not own other real estate before the merger.

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

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

A conversion triggers real estate transfer tax.

Tax Group
An Austrian Corporation sets up a tax group with the target. The majority of shareholding and voting rights is required and companies have to enter into a tax group allocation agreement. With the setting up of the tax group, the taxable income of the tax group member (target) is taxed in the hands of the head of tax group.

Therefore, interest expenses of acquisition debt of the Austrian Corporation are pooled with the income of the target. In addition, if the activity of the target qualifies as business activity, a goodwill amortization is typically granted.

Avoidance strategies for real estate transfer tax when acquiring the target are available. The setting up of a tax group does not trigger real estate transfer tax.

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

Interest income of a non-resident taxpayer (corporation and individuals) is not subject to tax in Austria unless the underlying loan is secured by immovable property located in Austria. In the latter case, however, double tax treaties usually protect from Austrian taxation if the treaty contains an OECD-model type of provision on interest.

If the interest income is to be attributed to a permanent establishment of the nonresident recipient, that income is taxable as business income in Austria.

Domestically, interest paid on loans (excluding bonds) is not subject to withholding tax. In addition, interest that is paid to associated companies or to their permanent establishments located in a member state other than Austria is exempt from the withholding tax due to the implementation of the EC Interest and Royalty Directive in Austrian law. The exemption is subject to the conditions that (i) the recipient qualifies as beneficial owner of such payments, (ii) the parent company has a form listed in the Annex to the Interest and Royalty Directive and (iii) the parent company is subject to regular income tax in its residence state (confirmation issued by the competent tax authority is necessary). A company is deemed to be associated if it holds directly at least 25 % in the capital of the subsidiary for an uninterrupted period of one year. Furthermore, the exemption requires a confirmation from the recipient that it qualifies as beneficial owner of the payments and that it fulfills the participation requirements. In the case of tax avoidance, abuse of law and royalties exceeding the arm's length amount are recharacterized as constructive dividends and are subject to withholding tax.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Losses from business activities that could not be deducted from other positive income in the same year may be carried forward without time limit, provided the loss was computed according to generally accepted accounting principles.

If for business income of individuals the tax base was to be determined on a cash basis, losses may be carried forward for a period over three years.

Loss deduction is limited to 75 % of the positive yearly income of each year. If the unused losses are higher, the remaining losses may be carried forward in later periods.

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

There is no tax loss carry back in Austria.

C. Real Estate Taxes

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

Transfer or real estate and comparable rights
Real estate transfer tax is levied on transfers of immovable property (land and buildings) located in Austria. Taxable transactions include – inter alia – the sale and exchange of immovable property as well as transfers without a legal title and transfers of beneficial ownership. The taxable base is the value of the consideration (e.g. purchase price and assumed liabilities). In case the consideration cannot be determined for real estate three times the assessed value ("Einheitswert") constitutes the tax base that is generally considerably lower than the fair market value.

The general tax rate is 3.5 %. A reduced rate of 2 % applies for transfers between close family members.

Transfer of shares
Real estate transfer tax is also levied if all shares of a company owning Austrian immovable property are held in the hands of or are taken over by one shareholder (one shareholder or several shareholders deemed to be one shareholder if they meet the criteria for a VAT group).

The taxable base is three times the assessed value for tax purposes of the immovable property, or if lower, on application the fair market value. The general tax rate is 3.5 %. A reduced rate of 2 % applies for transfers between close family members.

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

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

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

Real Estate withholding tax
As described in point B.1., the income tax of individuals and corporate income tax of corporations which do not exclusively generate business income (e.g. associations, private foundations) for alienations of real estate after March 31, 2012 is in principle levied by deduction of a withholding tax of 25 % by an attorney-at-law or notary public, as far as involved in the transaction as representative for real estate transfer tax purposes (Sec 24 (3) (4) CITA). For transactions without a notary public or attorney-at-law the tax has to be declared by the tax payer in the tax return, but the taxpayer additionally has to submit an advance payment to the tax office until the 15th of the second month following the taxable transaction, which is credited to the tax in the assessment. For Austrian companies (AG or GmbH) and non-resident corporations comparable to those the withholding tax and advance payment should not apply according to the interpretation of the law (Sec 24 (3) (4) CITA in connection with Sec 21 (1) (3) CITA).

D. Value Added Tax

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

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

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

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

The leasing out of real estate for business purposes is, in general, VAT exempt. The lessor may opt for VAT liability; in that case the lessor would charge VAT of 20 % on the rent. The lessor is only entitled to input VAT deduction for services received that are related to the renting activity if he leases out with VAT. As of September 1, 2012 the option for VAT liability for renting / leasing real estate for business purposes is excluded, if the lessee uses the real estate almost exclusively for VAT exempt transactions excluding VAT deduction (e.g. banking or insurance transactions).

Rental income from residential buildings is subject to VAT at the lower rate of 10 %, rental income from office/business buildings is exempt from VAT (thus no deduction of input VAT), optionally subject to VAT at a rate of 20 %.

E. Other Taxes

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

Contributions of capital to Austrian companies (i.e. the AG, GmbH and a specific type of a partnership – the GmbH & Co KG) by the shareholder trigger a capital tax of 1 %. The tax base is the amount of the contribution or the value of shares being issued in exchange for the contribution, as the case may be.

The following transactions are subject to capital tax:

- → Initial acquisition of shares upon foundation of the company or subsequent increase of its capital
- → Mandatory contributions by shareholders
- → Voluntary contributions by shareholders that increase the value of their shares
- → Contributions made by a non-resident company to its Austrian branch or permanent establishment, except for contributions made by companies resident in another EU Member State
- → Transfer of seat or place of management to Austria, except for transfers by companies resident in another EU Member State

"Indirect" capital contributions, e.g. contributions made by a person/company other than the direct shareholer, are basically tax-free subject to the constraints set by Austrian case law.

Capital contributions in the course of a reorganization within the scope of the Reorganization Tax Act RTA) – which is based on the EC Merger Directive (90/434/EEC; see Annex III) – may also be exempt from capital duty.

Moreover, the Capital Transfer Tax provides for a capital duty exemption of the contribution of (i) all assets and liabilites or (ii) a business or (iii) a part of a business of a corporation into an Austrian corporation in exchange for shares.

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

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

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

Real Estate Investment in

Belarus

A. Legal/General

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

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

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

Before December 2010, the acquisition of residential properties (apartments and houses) by foreign citizens not domiciled in Belarus was possible only if permitted by a respective international treaty. Regulations which established this restriction lost its legal effect on December 03, 2010 creating certain legislative vacuum. The current practice on this issue is ambiguous.

There are no restrictions with regard to the acquisition of residential properties by corporations. Commercial properties may be acquired both by foreign citizens and corporations.

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

2. Which importance does the land register have?

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

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

B. Income Tax

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

→ Corporate income tax rates:
  › 18 %
  › 12 % – dividends
  › 10 % – income received from the sale of high-tech goods (work, services) that are self-produced
  › 10 % – income gained by science and technology parks, technology transfer centers, residents of scientific and technological parks
  › 10 % – income received by companies producing laser-optic equipment (provided that the share of this equipment in terms of value in the total volume of their production is not less than 50 %)
  › 9 % – income from sale of shares in Belarusian companies
  › 5 % – income received from the sale of information technology and services on their development by the members of the scientific and technological association

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

As an alternative to the general system of taxation, businesses may use the simplified taxation system (STS) and pay a unified tax imposed on gross revenues. Gross revenues are considered to be the amount of revenues received during the taxation period as the result of sales of goods (work, services), property rights and non-operating income. In order to use the STS, certain requirements on gross revenues within one calendar year and number of personnel have to be met. Depending on the circumstances, the main tax rates under the STS are 2 % (with regard to exported goods and services); 5 % (if the STS with payment of VAT is used); and 7 % (if the STS without payment of VAT is used).

Certain taxpayers and certain activities are subject to special taxation treatment. In particular, special taxation regimes are provided for residents of free economic zones and residents of High Technology Parks (HTP).

→ Personal income tax rate:
  › Flat tax rate – 12 %
  › 15 % – income received from commercial private notaries' activities and private advocacy activities.
  › 9 % – income received by:
    – Individuals from residents of the HTP under labour agreements;
    – Individual entrepreneurs who are residents of the HTP;
    – Individuals involved in implementation of a registered business-project in the sphere of high technologies from non-residents of the HTP under labour agreements

→ Participation exemptions: No

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

For the purposes of tax depreciation real estate objects are divided into 2 main categories: buildings and constructions, each of these contains a range of corresponding groups and types. Depreciable fixed assets do not include land.

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

Under this Resolution normative lives for buildings are as follows:

→ Industrial and non-industrial buildings – from 10 to 125 years,
→ Demountable and portable buildings – from 5 to 20 years,
→ Other buildings – from 30 to 125 years.

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

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

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

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

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

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

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

Corporate income tax rate is reduced by 50 % and is equal to 9 % with regard to income received by resident companies from the sale of shares in the authorized capital of Belarusian companies. Income received by non-resident companies which do not carry out activities through a Belarusian permanent establishment from the sale of shares in Belarusian companies is subject to withholding tax at a rate of 12 % (double tax treaties with a number of countries provide exemption of such income from taxation).

Income received by a resident company from the sale of real estate is subject to corporate income tax at a rate of 18 %, while income received by a non-resident company which does not carry out activities through a Belarusian permanent establishment is subject to withholding tax at a rate of 15 %.

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

Currently, thin capital rules are not applicable in Belarus. Such rules will come into force on January 1, 2013.

Thin capital rules will restrict deductibility of interest on loans to related parties and will apply if the lender is: (a) a foreign company that directly or indirectly holds a share of more than 20 % in the authorized capital of a Belarusian company, or (b) a Belarusian company which is an affiliate of such foreign company. The maximum debt-to-equity ratio will be 3:1.

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

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

As a general rule, costs on acquisition of depreciable assets are not included in the costs deductible for corporate income tax purposes. However, taxpayers may record up to 10 % of the initial value of buildings and constructions as costs for corporate income tax purposes as of the date when those assets were initially accounted for.
Currently, interest costs can be deducted without limitations as far as they result from business purposes (see also paragraph B 5 above).

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

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

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

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

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

9. Is a Loss Carry Forward or Loss Carry Back granted and what are the restrictions?

Starting from 2012, local companies became entitled to carry forward losses. Taxpayers may carry forward losses incurred in 2011 and subsequent tax periods for a period of 10 years. Carry-forward of losses is not possible with regard to:

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

Carry back of losses is not allowed in Belarus.

C. Real Estate Taxes

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

N/A

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

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

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

The annual corporate tax rate is 1 %. A 2 % rate applies to incomplete real estate objects where the terms of construction are exceeded.

Individual real estate tax is imposed on buildings, constructions and car parking spaces owned by individuals (including individual entrepreneurs). The annual tax rate is 0.1 %. Tax is calculated by the tax authorities based on the assessed value of the real estate object. The tax authorities send an individual written notice to taxpayers by August 1 of the relevant year.

Local government authorities may increase (by not more than 100 %) or decrease (by not more than 50 %) the tax rates for certain categories of taxpayers.

Land tax
Companies and individuals who own or use land in Belarus pay land tax. Except for a limited number of cases, the tax base is the cadastral value of the land, which can be found at the official website of the National Cadastre Agency http://nca.by/. Tax rates vary significantly depending on the cadastral value and functional use of land. Local government authorities may increase (by not more than 100 %) or decrease (by not more than 50 %) the tax rates for certain categories of taxpayers.

D. Value Added Tax

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

As a general rule, the sale of real estate is subject to VAT at a rate of 20 %.
Sale of real estate by individuals does not trigger VAT.

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

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

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Belgium

A. Legal/General

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

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

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

2. Which importance does the Belgian land register have?

Rights with respect to real estate are to be recorded in the Belgian land register as such rights only come into existence upon registration.

Registration taxes amount to 10 % of the acquisition price in the Flemish Region and to 12.5 % of the acquisition price in the Brussels and Walloon Region.

On the transfers of rights in rem (e.g. a long lease or a building right) a registration duty of 0.2 % applies.

These registration taxes are not due in case of a share deal since such a share deal does not imply the transfer of ownership rights of the real estate.

B. Income Tax

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

Corporate income tax

- Corporate income tax rate
  33 % corporate income tax plus 3 % surcharge = 33.99 %

If the taxable income does not exceed € 322,500, the following progressive tax rates apply:

- From 0.01 € up to 25,000 €: 24.98 %;
- From 25,000 € up to 90,000 €: 31.93 %;
- From 90,000 € up to 322,500 €: 35.54 %.

There is no specific tax rate for real estate investments.

→ Deferred taxation
Capital gains tax may be deferred by reinvesting the proceeds into other depreciable assets, provided the real estate has been held for more than 5 years and the sale proceeds are reinvested within 3 years (reinvestment in depreciable assets other than buildings, ships or aircrafts) or 5 years (buildings, ships or aircrafts). Furthermore, the capital gain must be made unavailable for distribution (by recording it as an unavailable reserves account). If the aforementioned conditions are met, the corporate income tax on the capital gains will be deferred over the period during which the reinvested assets are being depreciated.

→ Notional interest deduction
Belgian resident companies may deduct a notional interest deduction from their taxable profits. The deduction is also granted to non-resident companies in respect of their Belgian permanent establishment or immovable property (or rights thereon) located in Belgium.

The deduction is based on the company's equity, subject to certain adjustments. The notional interest deduction rate applicable for assessment year 2013 (financial year 2012) is 3 %.

However, the current "stock" of notional interest deduction carry-forward will remain available, but its use will be restricted.

→ Participation exemption
The distributed profits qualifying for the participation exemption received by Belgian companies are exempt from taxation. However, an amount equivalent to 5 % of a corporation's dividend income is treated as a non-deductible business expense. Therefore, 95 % of the dividend income received is effectively tax-exempt. The excess dividend received deduction may be carried forward. This regulation applies to dividends that are paid by domestic or foreign corporations.

In order to qualify for the participation exemption, several conditions must be met (such as a minimal participation, a minimal detention period and a minimal taxation of the distributed profits).

Capital gains from the sale of shares qualifying for the participation exemption held by a corporation are exempt from corporate income tax, except for shares sold within the year of acquisition to which a tax rate of 25 % applies.

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

→ Change of ownership
Changes of ownership (directly or indirectly) of a corporation can cause the loss of the aforementioned exemptions or deductions, if the takeover cannot be justified on sound financial or economic grounds. The taxpayer is entitled to ask for a ruling on this issue.

→ Tax group
Belgian tax law has no concept of tax consolidation for corporate income tax purposes.

Personal income tax

→ General personal income tax rates
Progressive tax rate (fiscal year 2013):
› From 0.01 € up to 8,350 €: 25 %;
› From 8,350 € up to 11,890 €: 30 %;
› From 11,890 € up to 19,810 €: 40 %;
› From 19,810 € up to 36,300 € ; 45 %;
› Above 36,300 €: 50 %.

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

There are however a number of exceptions:
(1) Capital gains realized on the disposal of land transferred within 8 years from the acquisition (or within 3 years if acquired by gift if the transfer occurs within 8 years of the original acquisition by the donor). These capital gains are taxed at a rate of 33 % in the hypothesis of a disposal within 5 years from the acquisition and at 16.5 % in the hypothesis of a disposal after this period of 5 years;

(2) Capital gains realized on the disposal of buildings transferred within 5 years from the date of the acquisition (or within 3 years if acquired by gift if the transfer occurs within 5 years of the original acquisition by the donor) or on the disposal of buildings constructed on land acquired if the construction of the building started after 5 years after acquisition by the taxpayer or the donor and if the alienation takes place within 5 years after the date of the first occupation or rental of the building. These capital gains are taxed at a rate of 16.5 %;

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

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

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

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

Land is not depreciable.

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

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

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

In most cases depreciations are made at straight line rate. However, provided the taxpayer does not rent the building to third parties, the taxpayer is entitled to a double-declining depreciation on a reducing-balance basis up to a maximum of the double of the straight line depreciation (with an absolute maximum of 40 % of the acquisition price).

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

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

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

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

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

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

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

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

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

Asset deal

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

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

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

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

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

- → A 5:1 debt-equity ratio applies in case interest is paid by a Belgian company to:
  (1) beneficial owner who is either not subject to income tax or who is, for the interest concerned, subject to a tax regime which is significantly more advantageous than the common Belgian income tax regime (it should be noted that common tax regimes applicable to companies established in another EEA member state are deemed not to be significantly more advantageous than the common Belgian income tax regime); or

  (2) a beneficial owner who is a (directly or indirectly) related company.

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

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

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

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

- → A 1:1 debt-equity ratio applies in case of interest payments by a Belgian company to a foreign company which is at the same time managing director or member of the board (or has similar functions as those executed by a managing director) of a Belgian company. The interest deduction would be disallowed and dividends are deemed to be distributed to the extent that the amount of the loan exceeds the sum of the paid-up capital (at the end of the taxable period) and the taxable reserves (at the beginning of the taxable period). The same applies for the part of the interest paid to such beneficiaries exceeding market interest rates.

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

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

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

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

Acquisition costs and financing fees can be regarded as business expenses or charges if they are directly or closely connected with the conduct of a business. Deductible business expenses or charges are those which were incurred or borne by the taxpayer to obtain or retain taxable business income (article 49 BITC). They must actually be paid or borne during the taxable period, or be booked as certain and fixed liabilities. Their authenticity and their amount must be proven.

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

Fiscal consolidation (the creation of a tax group for corporate income tax purposes) is not possible in Belgium.

In the past debt push down was possible under strict conditions, based on rulings.

The amended general anti-abuse rule (article 344, § 1 BITC), applicable as of financial year 2012, makes it currently uncertain whether and to what extent debt push down is still possible.

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

Dividends distributed by Belgian companies are subject to a withholding tax at a rate of 25 %. Under certain conditions this rate is 21 %.

In accordance with the European Parent-Subsidiary Directive of July 23, 1990 (90/435/EEC), modified by the Directive of December 22, 2003 (2003/123/EC), dividends are exempt from withholding tax provided the parent company (i) has a legal form mentioned in the annex of aforementioned Directive or a similar legal form in a state with which Belgium has concluded a double tax treaty providing for the required exchange of information, (ii) has its tax residency in Belgium, a Member State of the European Union or the double tax treaty, (iii) is subject to a corporate taxation or a similar taxation without the benefit from a specific beneficiary regime different from the normal taxation rules, and (iv) holds, at the moment of attribution of the income, a participation of at least 10% of the share capital of the distributing company for an uninterrupted period of at least one year. In order for this exemption to apply, and (v) the minimum participation has not been subject to any collateral or a stock lending arrangement. If the one year period has not expired yet, withholding tax relief is granted provisionally.

Interest paid to (non-resident) companies is subject to a withholding tax at a rate of 21 %.

In accordance with the European Directive of June 3, 2003 (2003/49/EC), interest and royalties paid or attributed by a Belgian company are exempt from withholding tax, provided the beneficiary is a Belgian company or a company of a Member State of the European Union, and the companies are affiliates. The companies are affiliated if one of them holds, directly or indirectly, a participation of at least 25 % of the share capital of the other company at the moment of attribution or payment of the income. The same exemption applies when at the moment of allotment or payment of the income a third company of the European Union has fully owned a direct or indirect participation of 25 % of the share capital of both aforementioned companies for an uninterrupted period of at least one year. The beneficiary of the income must have fully owned or enjoyed the usufruct of the stock, rights or goods in respect of which the income arises and that these stock, rights or goods were in the period during which the income arises at no point under the assets of a permanent establishment of the beneficiary situated in a third state.

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

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

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

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

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

Losses cannot be carried back.

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

Furthermore, there are restrictions on loss carry-forwards on the occasion of a merger.

C. Real Estate Taxes

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

Transfer or real estate and comparable rights
Transfer of the ownership of real estate in Belgium generally triggers real estate transfer tax ('droit d'enregistrement'/'registratierecht'), payable by the purchaser. The tax base is the actual sale proceeds. However, the tax authorities may adjust the price upwards if it is below market value. This adjustment must take place within 2 years after the transfer.

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

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

On the transfers of rights in rem (e.g. a long lease or a building right) a registration duty of 0.2 % applies.

Real estate transfer tax is normally not payable in cases where the transfer of real estate is subject to VAT. In such cases only a fixed amount of € 25 is due.

Transfer of shares in corporations
In general, the transfer of shares in companies owning Belgian real estate does not trigger any registration duties.

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

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

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

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

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

For specific cases exemption of real estate tax is possible.

D. Value Added Tax

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

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

VAT is applicable under the following scenarios:

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

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

If VAT is applicable, in general, the standard rate (21 %) applies. Reduced rates apply for certain real estate transactions in connection with social housing (6 %) and the social sector (12 %).

Any change in the use of the real estate property within a 15 year period requires a pro rata adjustment of the input VAT claimed upon purchase (a sale of real estate property without VAT within this period will trigger a VAT adjustment). Renovation and transformation work in connection with real estate is subject to a 5 year adjustment period.

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

The transfer of shares in corporations is VAT exempt.

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

The lease of real estate is in principle VAT exempt, without the right to recover input VAT. Belgian VAT law does not provide for an option to tax the lease of real estate.

There are several exceptions to this VAT exemption:

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

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

E. Other Taxes

1. Is there a capital tax for equity Injected Into a local company?

Only a fixed capital duty of € 75 is due upon contribution made to Belgian companies.

However, if real estate is contributed together with a debt related to this real estate, the 10 % (Flemish region) or 12.5 % (Brussels or Walloon Region) transfer tax is due on the amount of the debt.

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

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

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

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

Real Estate Investment in

Bosnia and Herzegovina

A. Legal/General

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

Foreign investors may acquire property with the prior approval of the relevant government bodies based on the reciprocity principle. For companies that own only real estate, there are no provisions restricting a foreign investor from owning shares in the company. In addition, a Bosnian company can be established by a foreign investor for the purpose of land acquisition, as there are no formal approval requirements to be obtained from relevant governmental bodies.

2. Which importance does the Bosnian land register have?

Property rights should be registered with the land registry. The ownership right according to civil law of real estate may only be acquired with the incorporation of the property right in the land register. Bosnia and Herzegovina is in the process of modernizing the whole system of the land registry to make it more transparent and to provide legal safety to all land and real estate owners.

After the signing of a sales contract and the certification of contracting parties' signatures by the public notary, the land and the new owner are registered in the land register. Requests for land registry extracts, as well as requests for alterations in land register records, are submitted to the land register offices located in courts, specifically municipal courts in FBH (Federation of Bosnia and Herzegovina) and district commercial courts in RS (Republika Srpska).

Where shares in a Bosnian company owning real estate in Bosnia and Herzegovina are acquired, there are no registration requirements to be fulfilled with the land registry in respect of the real estate.

B. Income Tax

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

Bosnia and Herzegovina is established as a state consisting of two entities: the Federation of Bosnia and Herzegovina (FBH) and the Republika Srpska (RS), as well as the neutral, self-governing administrative unit Brčko District (BD). The responsibility for assessment and collection of certain taxes is allocated to the entity level. The tax system of Brčko District is not subject of this real estate overview.

Corporate tax rate is 10 % on the whole territory of Bosnia and Herzegovina.

Withholding tax rate is generally 10 % (5 % on dividends in FBH, RS does not levy withholding tax on dividend distribution – subject to a 10 % participation rule).

In both FBH and RS the personal income tax rate amounts to 10 % and is levied on the level of each entity separately.

Tax rates for real estate
Real estate tax rates depend on the location of the property. FBH has both the real estate transfer tax as well as property tax. Real estate tax rate is at 5 % in all cantons. In RS, there is only property tax whose rate cannot be less than 0.05 % of the estimated value of real estate, and cannot exceed 0,50 % of the estimated value of real estate. The rate is set by a municipality in which the property is located.

Participation exemptions
Dividends derived by resident corporations from resident or non-resident corporations are exempt from corporate profit tax (CPT) in both entities. A withholding tax rate of 5 % is applies on dividends paid abroad by the FBH taxpayer. RS does not levy withholding tax on outbound dividends.

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

Depending on the type of real estate (except land) a depreciation period is from 10 to 33 years. Depreciation expenses can only be calculated on a straight-line basis.

Accelerated depreciation is possible in both entities in specific circumstances (e.g. in FBH for equipment used for reduction of pollution of water, air, land and noise; for equipment which is used for education and training purposes; in RS for all equipment and machines which is used for business purposes in a way that depreciation in first year is 40 %, in second 30 %, and in third year 30 %).

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

Foreign individuals with income from renting or alienation of real estate in Bosnia and Herzegovina are subject to limited income tax liability. Depending on the actual activity it has to be distinguished between income from property and property rights or business income, whereas these income types differ in the methods of their assessment, i.e. difference in method of calculation (deductions, allowances) and way of submitting tax returns.

Foreign legal persons are subject to profit tax liability with their profit earned in Bosnia and Herzegovina (e.g. from renting or alienation of real estate in Bosnia and Herzegovina) if they have a permanent establishment in Bosnia and Herzegovina. A permanent establishment usually will be founded with the establishment or renting of real estate. For this purposes the foreign legal person had to establish at least a branch office in Bosnia and Herzegovina.

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

The real estate investor can acquire real estate in Bosnia and Herzegovina by the means of an asset deal (e.g. direct acquisition of real estate) or by means of a share deal (e.g. acquisition of a corporation owning real estate).

Direct acquisition of real estate – asset deal
Foreign investors may own real estate in Bosnia and Herzegovina and enjoy the same property rights with respect to real estate as Bosnian citizens and legal entities. A company resident in the FBH can directly acquire real estate in Bosnia and Herzegovina. The acquisition of real estate is subject to VAT or real estate transfer tax (RETT). RETT is not recoverable and represents a final tax for the real estate acquirer. Capital gains realized by a CPT taxpayer from the sale of real estate are treated as revenue and are subject to a CPT rate of 10 %.

Indirect acquisition of real estate – share deal
There are no provisions restricting a foreign investor from owning shares in a company that exclusively owns real estate. In accordance with the CPT law of RS, income earned by a foreign legal entity through the disposal of shares in a company that predominately owns real estate (i.e. if real estate comprise the major part of fixed assets in the business ledgers) is subject to a CPT of 10 %. The FBH's CPT law does not include such provision. Income earned by a foreign legal entity through the disposal of shares in a company that predominately owns real estates will not trigger a CPT liability.

Capital gains realized by domestic CPT taxpayers from the sale of shares in a company owning real estate are treated as revenues and subject to CPT at a rate of 10 %.

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

Thin capitalization
There are no rules governing thin capitalization in both FBH and RS.

Transfer pricing rules
In accordance with the profit tax act (PTA), interest paid by a taxpayer subject to CPT to a non-resident related party is considered at arm's length (i.e. deductible for profit tax purposes) up to the rate that can be agreed in the free market (i.e. on loans concluded between non-related parties). Differences arising between the "market" rates and actual rates will not be a tax-deductible expense or will be deemed to be dividends (applicable only in the FBH). Transactions with related parties have to be recorded in the tax balance sheet separately.

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

Acquisition costs must be capitalized and for buildings such acquisition costs may be depreciated over the useful life. Fees incurred in the transfer are deductible due to depreciation. Interest expenses for a debt-financed direct acquisition may be deducted from income of real estate if real estate is rented or used for business purposes.

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

Tax Group
In general, each corporate entity is regarded as a separate entity for profit tax purposes and debt push down is not allowed. However, upon request tax consolidation is available in both entities. In the FBH, tax consolidation is available to resident FBH taxpayers provided that there is a direct or indirect control over at least 90 % of shares. The condition for tax consolidation in the RS is ownership of at least 80 % of shares with voting rights or 80 % of the total value of shares in the subsidiary, or if a maximum of 5 individuals directly or indirectly (through related individuals) owns at least 80 % of shares with voting rights in companies which are subject to tax consolidation.

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

In accordance with the CPT law of both entities, a withholding tax of 10 % is generally required to be deducted in respect to interest payments to non-residents.

However, a valid double tax treaty may reduce or eliminate any withholding tax liability if the foreign entity is located in a jurisdiction with which Bosnia and Herzegovina has a double tax treaty in effect.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Losses may be carried forward for a maximum period of five years. No carry back is allowed. Foreign losses cannot be set off against domestic losses. In case of a loss it is not possible to reduce the taxable base or refund taxes already paid in previous years.

C. Real Estate Taxes

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

Taxation of real estate in the FBH is regulated by canton laws. Therefore, the taxation depends on the area in which the real estate is located. In the FBH, the purchase of real estate is taxed at a rate set on a cantonal level. In most of the cantons in FBH the real estate transfer tax rate is 5 %. The tax base is the value of the property estimated by the commission appointed by the local tax administration office (according to the location of the real estate).

The real estate transfer tax is avoidable through a share deal option.

RS does not levy real estate transfer tax.

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

Both FBH and RS levy a property tax. In FBH it is set on a cantonal level on transfer of real estates, while in the RS on a municipal level depending on the location of the property.

In FBH transfer tax is at a rate of 5 %. In RS the property tax rate depends on the region and cannot be less than 0.05 % of the appraised value of the property, and cannot exceed 0.50 % of the appraised value of the property.

D. VAT

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

VAT is not payable on the transfer of land. The transfer of newly constructed buildings is subject to VAT at the rate of 17 %. Individuals generally cannot recover VAT; however, VAT is generally recoverable for VAT registered legal entities, provided general criteria for VAT recovery are met.

"New buildings" are defined as buildings built and sold on or after January 1, 2006. The taxable base for VAT is defined as the consideration paid for the building.

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

The VAT law distinguishes between renting of real estate for business purposes in contrast to renting of real estate for residential purposes.

Business rentals
The renting of real estate for business purposes is subject to VAT at the general VAT rate of 17 %.

Residential rentals
The VAT Law provides that the service of renting of real estate for residential purposes during a period in excess of 60 days is exempt from VAT and consequently no input VAT can be reclaimed upon the acquisition of real estate (for residential purposes), regardless whether the acquirer is VAT registered or not.

E. Other Taxes

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

N/A

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

Stamp duties are levied on documents and dealings involving bodies of public administration as well as local authorities. Lump sum varies from € 5 up to a few hundred Euros depending on the type of request.

Real Estate Investment in

Brazil

A. Legal/General

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

Residents as well as non-residents may acquire real estate in Brazil.

Both individuals and corporations must have a tax payer identification number to acquire property in Brazil. Moreover, there are some restrictions regarding the acquisition of rural property by foreigners.

The acquisition of real estate in Brazil does not need to be effected by using a local acquisition company.

2. Which importance does the land register have?

Property is only recognized if the land is registered with the Registry Office.

B. Income Tax

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

Corporations located in Brazil
Corporations are subject to income tax at a 25 % rate and social contribution on net profit at a 9 % rate levied on the capital gain (deriving from the sale of a real estate).

Individuals
Individuals are subject to progressive income tax rates from 0% to 27.5 %.

The individual that holds only a single real estate property and sales is exempt of income tax in the event of selling it up to the value of BRL 440,000.00. This benefit is only applicable for one sale every 5 years.

Capital gain deriving from the sale of real estate is subject to income tax rate of 15 %.

Received dividends are exempt of income tax. Other participation exemptions will depend on DTT Brazil has with other countries. Brazil does not have a double tax treaty with Germany.

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

Only corporations are subject to assets depreciation. The rate for depreciation is the same for all kinds of property.

Tax authorities fix the depreciation to be used. They fix that a building has an estimated useful life of 25 years. Hence the general depreciation rate amounts to 4 % per year.

However, companies can demonstrate that its assets will be devaluated more quickly and, upon approval from Federal Revenue, use a different depreciation rate.

The only accepted method fixed by the tax authorities is the straight-line method.

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

If the foreign investor is a resident in Brazil for tax purposes, he will be subject to Brazilian taxation for all the income received, even if it was generated abroad. On the other hand, if the investor is not a Brazilian tax resident only income derived from Brazilian sources will be subject to taxation in Brazil.

Regarding taxable income, foreigner investors are subject to the same rules and obligations like residents in Brazil.

However, Brazilian courts and tax authorities do not adopt the practice of international tax enforcement. Only if the company or the individual have a representative in Brazil it will be possible to collect tax debts or apply penalties for the non-compliance with Brazilian legislation.

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

Both ways of acquisition are possible.

Depending on the goods to be transferred there could be tax subrogation regarding the outstanding taxes.

Asset deals are subject to taxation only on the real estate (see below part C 1 – ITBI tax). The income tax on the capital gain may apply on the sale of asset or shares, as explained before (part B 1).

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

Thin capital rules are applicable for intercompany loans.

Currently, the payment of interest deriving from intercompany loans is limited according to the interest rate included in the loan contract registered with the Brazilian Central Bank. There is a new rule with effects only as of January 2013 that will limit the payment according to the 6-Month US-Libor plus a spread to be fixed by the Minister of Finance. This rule depends on the approval of the Brazilian Congress expected in 2012 to have full effect.

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

It is possible to increase the book value by the acquisitions costs, interest and financing fees applied to the acquisition of real estate properties. The mentioned costs are deductible due to depreciation.

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

It may be possible to implement a debt push down in Brazil through assignment of debt instruments. We may expand our analysis on a case-by-case basis, but beforehand we may note that there are thin capitalization rules applicable to intercompany debt transactions.

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

Withholding tax applies at the rate of 15 %.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Companies can carry forward losses (perdas para exercícios futuros) and offset them in the future, but limited to 30 % of the taxable income earned in the financial year.

Loss Carry Back is not possible in Brazil.

C. Real Estate Taxes

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

In Brazil, only municipalities levy a real estate transfer tax (ITBI or ITIV tax). The rates vary according to the law of each municipality (e.g., in São Paulo the tax rate is 2 %). Moreover, it is applicable if the transfer occurs between the parties by a sale agreement. If the transfer occurs by death or donation, the state is liable to charge a different tax (ITCMD tax) at a rate of 0 % to 8 %.

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

The owner of the real estate must pay a property tax (IPTU Tax) to the municipal-ity once a year. The tax rate varies according to the municipality. Some apply progressive tax rates according to the location and purpose of the real estate (São Paulo city applies rates from 0.8 % to 2 %).

D. Value Added Tax

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

The sale of real state is not subject to VAT.

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

Revenues received from renting of real state will incur in PIS (1.65 %) and COFINS (7.6 %) taxation on total revenues. PIS and COFINS are non-cumulative social contributions being levied on the company's total revenue, with some legal exclusions. Revenues resulting from the sale of a fixed asset are legally excluded from PIS and COFINS calculation basis. However, revenues resulting from renting a fixed asset are not exempted.

E. Other Taxes

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

No. However, when a foreign company invests money in a Brazilian company, a tax (IOF tax) on the settlement of the exchange rate (foreign currency into BRL) will be charged at the rate of 0.38 %.

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

No.

Real Estate Investment in

China

A. Legal/General

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

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

- → For self-use real estate: Generally, only representative offices of foreign companies, foreign invested non-real estate enterprises and foreigners who work or study more than one year in China can purchase self-use real estate
- → For non-self-use real estate: Only foreign invested real estate enterprises can purchase non-self-use real estate

2. Which importance does the land register have?

Rights with respect to real estate are to be recorded in the Real Estate Registration Office as such rights only come into existence upon registration.

A registration fee has to be be paid varying from location to location.

B. Income Tax

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

There is no special tax rate for real estate.

- → Corporate income tax ("CIT") rate:
  - › 25 %
  - › Enterprise with "high and new technology enterprise" qualification can enjoy a 15 % tax rate
  - › A so-called "small low-profit enterprise" can enjoy a 20 % tax rate. (manufactory enterprises with no more than 100 employees, RMB 30 million total asset and RMB 100 thousand taxable income. Commercial enterprises with no more than 80 employees, RMB 10 million total asset and RMB 80 thousand taxable income)
  - › Non-resident enterprises which have not set up institutions or establish ments in China, or which have set up institutions or establishments but which do not have any actual relationship with the income obtained by the institutions or establishments are subject to a 10 % corporate income

tax rate in relation to the income originating from China unless reduced under an applicable double tax treaty.

- Individual income tax ("IIT") rate:
  - The income tax of individual persons in China would be distinguished according to the income categories.
  - The IIT rate of transfer of property would generally be 20 % of the income derived from the transfer minus the previous purchase cost.
  - Income from selling property, which has been used above 5 years by the owner and was the family's only house is exempt from individual income tax.
  - With a view to encouraging individuals to change their housing, if tax payers plan to buy a new house at the market price within one year since they have sold their previous house, the income from selling their previous house may be exempt completely or partially from individual income tax according to the value of the newly bought house.

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

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

Real estate in China should be divided and capitalized into the following two categories:
- Fixed assets, such as houses and buildings
- Intangible assets, such as land use rights

The minimum term of calculating the depreciation is as follows:
- For buildings, it shall be 20 years;
- For land use rights, it shall be 10 years.

Straight-line method shall be applied.

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

For Enterprises

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

By dividends from Chinese investments, the foreign investor shall be subject to withholding tax at a rate of 10 % unless reduced under an applicable double tax treaty.

For Individuals

For the individual income besides the salary income, non-residents performing activities in China are subject to individual income tax on the Chinese source income.

For the salary income, the residency condition and the salary payer should be put into consideration:
- For individual stays in China of less than 90 / 183 (if double tax treaty can be applied) days, only Chinese source and Chinese paid/undertook salary would be subject to taxation in China.
- For individual stays in China of more than 90 / 183 days but less than one year (having left China for 30 consecutive days or accumulated 90 days in a calendar year / consecutive 12 months), only Chinese source salary income would be subject to taxation in China.
- For executives of a resident enterprise meeting the residency condition in the two scenarios above, the overseas salary income which is paid/undertaken in China would be subject to taxation in China.
- For individuals staying in China for more than a year but less than 5 years, overseas source and paid salary income can be exempted from the IIT.
- After staying in China for a period of 5 consecutive years, the worldwide income is subject to taxation in China.

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

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

Selling the real estate purchased in the asset deal is subject to CIT. Selling the share purchased in the share deal should be treated as capital gain and also be subject to CIT.

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

For the loan granted by a foreign company there is the following limitation from a foreign exchange control perspective: The maximum loan shall be no less than the difference between the registered capital and the total investment. In situations where the total investment is less than US$ 3 million, registered capital must constitute 70 % of the total investment. Where the total investment is more than US$ 3 million but less than US$ 10 million, registered capital must constitute at least 50 % of the total investment. In cases where the total investment is more than US$ 10 million but less than US$ 30 million, 40 % of the total investment must be in the form of registered capital. When the total investment exceeds US$ 30 million, at least a third of total investment must be registered capital.

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

Meanwhile the thin capital rule rate for general enterprises is 2:1 (debt to equity ratio) and 5:1 for financial enterprises. The interest expense derived from the exceeding part of the debt investment cannot be deducted before CIT, unless the enterprise can provide relevant materials to prove that the related transaction is at arm's length or the actual tax burden of the borrower is lower than the domestic related parties'.

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

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

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

Each corporate entity is regarded as a separate entity for income tax purposes. Thus, parent corporations and subsidiaries are taxed separately. Resident parent corporations and resident subsidiaries may not opt for taxation as a fiscal unity. Any agreement in this regard is not valid for tax purposes.

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

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

Creditor is an individual
Local company should withhold the individual income tax for the interest paid to an individual; the tax rate is 20 %.

9. Is a Loss Carry Forward or Loss Carry Back granted and what are the restrictions?

An enterprise's loss can be carried forward to deduct the future profit within a 5-year period.

There is no possibility to carry back losses in China.

C. Real Estate Taxes

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

China levies a real estate transfer tax on the sale of real estate. For the sale of shareholdings, no real estate transfer tax is levied.

Land value-added tax
Income from the transfer of real estate is subject to land value-added tax. Tax is based on a progressive tax rate with 4 different tax levels and is levied on the amount of the gain. The lowest tax rate is 30 % and the highest tax rate is 60 %.

However, land value-added tax shall be exempted for individuals selling houses started from November 1, 2008.

Business Tax
When selling real estate in China, the income from the sale is subject to business tax with a tax rate of 5 % and the tax base is the total sales income.

When selling real estate in China, if the time period between the selling date and the previous purchase date is more than 5 years and the sold real estate is an ordinary one, individuals can be exempted from business tax. For sales of a non-ordinary house which is purchased within the 5-year period, business tax shall be levied on the difference between total sales income and the previous purchase cost.

An "ordinary house" shall satisfy the following conditions in principle: the volumetric fraction of the buildings in residential communities shall be more than 1.0, the floor space of a single set of apartment shall be less than 120 m^2, and the bargaining price is 1.2 times lower than the average dealing price of those houses as built on the land at an identical level. However, different provinces/cities could regulate their criteria.

Farmland Occupation Tax
Farmland occupation tax is levied on taxpayers who construct buildings or conduct non-agriculture related activities on farmland.

Effective since January 1, 2008, this tax is computed according to the actual area of farmland occupied, varying from location to location.

Deed tax
When purchasing real estate in China, accept the land or the real estate, deed tax is needed to be paid. Tax rate is 3 % - 5 %.

For individuals, if the real estate is smaller than 90 m^2 and is the only real estate of the purchaser, the tax rate is 1 %.

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

Real Estate Tax
For enterprises
Real estate tax shall be paid by property owners.
- → In case of real estate for self-use, it should be 1.2 % of the residual value of the property. The Real Estate Tax will be calculated from the original value of the property after deducting between 10 % and 30 %. Details of the scope of this deduction will be determined by the people's government of the province, autonomous region or municipality directly under the Central Government.
- → If the real estate is rented out, real estate tax rate is 12 % of the rent.

For individuals
Real estate tax shall be paid by property owners.
- → If the real estate is for self-use, income is exempt from taxation.
- → If the real estate is rented out, real estate tax rate is 4 % of the rent.

Urban land-use tax
For enterprises
Taxpayers, including all enterprises and individuals utilizing land within cities, counties, townships and mining areas, are subject to this annual tax. The urban and township land use tax ("UTLUT") was promulgated in 1988 and revised on December 31, 2006. Effective since January 1, 2007, foreign investment enterprises and foreign enterprises previously covered by land use fees were brought under the revised UTLUT regime. The tax rates are set by the tax authority in each location.

For individuals
Urban land-use tax is exempted for self-use real estate.

D. Value Added Tax

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

The sale of real estate is not subject to VAT. However, it should be subject to the business tax and land value-added tax. For detailed information please refer to part C1 above.

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

The landlord/lessor is subject to business tax on the rental amount. The tax rate is 5 % for enterprise and 1.5 % for individuals.

E. Other Taxes

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

No.

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

Stamp Duty with a rate of 0.005 % shall be levied on the total amount of the contract signed by the company and the bank/financial institution.

Real Estate Investment in

Croatia

A. Legal/General

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

The most complicated aspect of foreign investment in Croatia is the acquisition of real estate (both land and buildings). In addition to the complicated legal restrictions, problems also exist with outdated land ownership and land use registries. However, the Croatian government commenced several projects of updating and computerizing both land use and land ownership registries in order to simplify investments for domestic and foreign investors.

Foreign investors (both individuals and entities) may acquire property with the prior approval of the relevant government bodies based on the reciprocity principle. Therefore, it is essential that real estate acquisition rights given by a foreign country to its own citizens and to commercial companies established in foreign countries according to the laws of these countries are also given to the citizens and commercial companies of Croatia. For European Union citizens, no approval is required as of February 1, 2009.

The respective approval process which is still valid for foreign investors who are not European Union citizens can be time-consuming and the Croatian authorities have the discretionary right to reject requests for acquisition. For companies that only own real estate, there are no provisions restricting a foreign investor from owning shares in the company. In addition, a Croatian company can be established by a foreign investor for the purpose of land acquisition, as there are no formal approval requirements imposed by the relevant governmental bodies.

2. Which importance does the Croatian land register have?

Property rights should be registered with the Croatian land registry. According to civil law of real estate the ownership right may only be acquired with the incorporation of the property right in the land register. However, the law regarding property and other real property rights contains an important divergence of this principle in the case of acquisition of real estate that is not yet registered in the land register.

In this case, the ownership right will be acquired by deposit of an appropriate accredited certificate at the land register office. This exception is still of importance in Croatia as not every real estate is registered in the land register yet. Furthermore, there could exist restitution claims, so that at present no complete legal security from the status of the legal register can be derived.

With regard to the acquisition of shares in a Croatian company owning real estate in Croatia, there are no registration requirements to be fulfilled with the Croatian land registry in respect of the real estate.

B. Income Tax

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

- Corporate income tax rate: 20 %
- Personal income tax rate:
  Marginal tax rate: The tax rates of 12 %, 25 % and 40 % apply to the following monthly amounts:
  - 12 % on taxable income up to HRK 2,200,
  - 25 % on taxable income from HRK 2,200 to HRK 8,800 and
  - 40 % on taxable income over HRK 8,800.
- Participation exemptions:
  - Dividends derived by resident corporations from resident or non-resident corporations are exempt from corporate profit tax (CPT).
  - Capital gains of a non-resident corporation (or individual) resulting from the alienation of a participation in a Croatian corporation are not taxable in Croatia.

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

All real estate (except land) has a depreciation period of about 20 years. The depreciation can be doubled by the taxpayer. The depreciation is calculated on a straight-line basis.

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

Foreign individuals with income from renting or alienation of real estate in Croatia are subject to limited income tax liability. Depending on the actual activity it has to be distinguished between income from property and property rights or self-employment income, whereas these income types differ in the methods of income determination. The income is liable to the progressive income tax rate. Individuals deriving self-employment income can choose between taxation regarding the Income Tax Act or regarding the Profit Tax Act. There is no deduction of withholding tax; annual tax returns have to be filed.

Foreign legal persons are subject to profit tax liability with their profit achieved in Croatia (e.g. from renting or alienation of real estate in Croatia) if they have a permanent establishment. A permanent establishment will usually be founded with the establishment or renting of real estate. For this purposes the foreign legal person has to establish at least a branch office in Croatia. The profit tax rate is 20 %.

There is no deduction of withholding tax. Annual tax returns have to be filed.

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

The real estate investor can acquire real estate in Croatia by means of an asset deal (e.g. direct acquisition of real estate) or by means of a share deal (e.g. acquisition of a corporation owning real estate).

Direct acquisition of real estate – Asset deal
A Croatian company may directly acquire real estate in Croatia. Interest expenses for a debt-financed acquisition may be deducted from income of real estate if real estate is rented or used for its own business.

Capital gains derived by a domestic corporate taxpayer from the sale of real estate are subject to profit tax at the rate of 20 %.

On the other hand, capital gains derived by non-resident legal entities are not subject to profit tax (please note that this scenario may have permanent establishment implications).

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

Indirect acquisition of real estate – Share deal
Capital gains derived by a Croatian corporate taxpayer from the alienation of shares in a Croatian company owning real estate are subject to profit tax at the rate of 20 %. Both realized and unrealized gains arising from the value adjustment of financial assets are taxable if posted to the P&L account as normal business income. If the unrealized gains are posted to the balance sheet, they are not taxable.

Likewise, the gains derived by a non-resident from the alienation of shares in a company owning real estate are not subject to profit tax.

The real estate transfer tax burden can be avoided if a share deal option is utilized.

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

Thin capitalization
The Croatian profit tax act (PTA) provides that interest on loans provided by shareholders with a participation of 25 % or more on a Croatian company is not deductible for profit tax purposes if the amount of the loan exceeds four times the amount of the equity holding for that shareholder (i.e. a 4:1 safe harbour). The Croatian PTA regulations clarify that the non-deductibility treatment is applicable to interest that corresponds to the amount of a shareholder's loan in excess of the safe harbour.

The thin capitalization provisions also apply to loans granted from third parties that are guaranteed by a direct shareholder.

The above-mentioned thin capitalization rules do not apply to shareholders who are financial institutions (as defined by the Croatian legislation). Therefore, to the extent that the Croatian company raises debt financing from its direct parent company, or if the Croatian company's direct parent company guarantees any such debt financing, then interest on any such debt financing that exceeds four times the Croatian company's capital (capital for the purpose of thin capitalization calculations also includes reserves and retained earnings) will not be a tax deductible expense for the Croatian company.

Transfer pricing rules
In accordance with the PTA, interest that is paid or received by a profits taxpayer to or from a non-resident related party is considered to be at arm's length (i.e. deductible for profit tax purposes) up to the rate prescribed by the Minister of Finance. The default rate for the related party interest rate is set as the discount rate published by the Croatian National Bank, which is currently 7 % per year. Following from the above, any interest charged to a corporate profit tax payer by a non-resident related party which is in excess of the 7 % rate would not be deductible for Croatian corporate profit tax purposes.

Accordingly, if any related party provides debt financing to a Croatian company, any interest charged in excess of 7 % per year will not be a tax-deductible expense for the Croatian company.

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

Acquisition costs must be capitalized and for buildings such acquisition costs may be depreciated over the useful life. Fees incurred in the transfer are deductible.

Interest expenses for a debt-financed direct acquisition may be deducted from income of real estate if real estate is rented or used for its own business.

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

Tax Group
In general, each corporate entity is regarded as a separate entity for profit tax purposes. There is no possibility under Croatian tax law to be taxed on the basis of consolidated income or as a fiscal unity. Thus, neither profit and loss transfer agreements nor control agreements result in taxation as a fiscal unity.

Merger
The PTA provides for a specific treatment of mergers and demergers. In this regard, the PTA provides for basic definitions of mergers and demergers that are in line with the Croatian Commercial Law (hereinafter CCL). A merger is defined as a transaction by which one company ceases to exist by transferring all of its assets and liabilities to another existing company without liquidation, in accordance with the CCL.

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

In accordance with the CPT Law, a withholding tax of 15 % is generally required to be deducted in respect to the following payments to non-residents:

- → Interest on borrowings (excluding borrowings from financial institutions)
- → Royalties and other intellectual property rights
- → Market research services, tax and business consulting services and auditor services
- → Dividends at the rate of 12 %

However, a valid double tax treaty (hereinafter DTT) may reduce or eliminate any withholding tax liability if the foreign entity is seated in a jurisdiction with which Croatia has a DTT in effect.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Losses may be carried forward for a maximum period of five years, unless otherwise provided in the PTA. If the right to offset losses incurred in the process of mergers, acquisitions or divisions is transferred to legal successors during a tax period, the right to carry forward the loss begins after the expiry of the period in which the legal successor acquired the right to carry forward the loss.

During mergers tax losses carried forward by the transferring company can be taken over and utilized by the receiving company. However, the receiving company is not entitled to utilize the tax losses carried forward by the transferring company if

- transferring company did not perform any business activities for two tax periods before the merger; or
- receiving company significantly changes the business activities of the transferring company within a period of two years following the merger.

There are no anti-avoidance provisions that restrict the carry-forward of losses. No carry-back is allowed. Foreign losses are computed in the same way as domestic losses. However, such losses may be set off only against income from the foreign source to which they are related.

C. Real Estate Taxes

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

Croatia does levy a real estate transfer tax. Subject to real estate transfer tax are real estate transactions. The Croatian legislation defines every acquisition of ownership of property as a real estate transaction .
Under the Croatian legislation real estate is defined as:

- Land – whether used for business purposes and used for agricultural purposes
- Buildings – whether residential buildings, business buildings and other buildings

Real estate transfer tax is paid at a rate of 5 % and the taxpayer is the person who acquired the property (e.g. buyer or successor). The real estate transfer tax paid is not recoverable and represents a final tax for the real estate acquirer. The real estate tax is avoidable if a share deal vehicle is utilized.

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

Currently there is no real estate tax; however, there are plans to introduce real estate tax in 2013.

D. VAT

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

VAT is not payable on the transfer of land. As for buildings, it should be noted that the VAT Law makes a distinction between old buildings and new buildings. According to the VAT Law, “new buildings” are defined as buildings built and sold on or after January 1, 1998. New buildings are subject to VAT. The tax rate is 25 %. Buildings built and/or sold prior to that date are considered to be ”old buildings” and are only subject to real estate transfer tax. Therefore, VAT is paid on the acquisition of a new building erected after January 1, 1998 when the seller is registered for VAT purposes. If the acquirer of the building was not able to recover VAT upon acquisition, then each subsequent transfer of the new building will be subject to real estate transfer tax. The taxable base for VAT is defined as the ”consideration paid” for the building. The consideration for the building and land on which the building is constructed would be required to be detailed separately in a Sale and Purchase Agreement.

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

The VAT legislation makes a distinction between the renting of real estate that is used for business purposes as opposed to the renting of real estate that is used for residential purposes. Please note that the renting of real estate to tourists is deemed to be renting for business purposes.

Residential rentals
The Croatian VAT Law provides that the service of renting real estate that will be used for residential purposes is exempt from VAT. The rent charged on real estate used for residential purposes is not subject to VAT.

Business rentals
The rent charged on real estate used for business purposes is subject to VAT at the general VAT rate of 25 %. Renting of real estate is subject to the general tax rate of 25 %. With respect to hotel accommodation services the reduced tax rate of 10 % applies.

E. Other Taxes

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

N/A

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

Several different stamp duties are levied in Croatia. Stamp duties are levied on documents and dealings involving bodies of public administration, embassies and consulates, as well as local authorities.

Real Estate Investment in

Cyprus

A. Legal/General

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

Cypriots and EU individuals and/or companies are allowed to purchase real estate property without any restrictions.

Other foreign individuals or companies (Non EU) are only given permission to purchase one of the following:

- One apartment or
- One house or
- A building plot or land up to 4,000m²

Entities from third countries may also acquire premises for their business or for the residence of their non EU employees. In order to effect a transfer of real estate to an alien company or individual, a permission from the government is required.

This permission may be obtained provided that the property is not intended for commercial exploitation; however, an exception may be given by the government for projects that may enrich tourism and increase employment, on an ad hoc basis.

2. Which importance does the land register have?

The land registry is an important government department as all properties are recorded, deeds and other documents are issued and full record of past and current ownership as well as mortgages and encumbrances is maintained.

Rights over the property may be acquired either via the transfer of the title deed on the name of the new owner or by the registration with the land registry of a sale and purchase agreement for the particular property.

B. Income Tax

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

Gains from disposal of real estate

In regards to income from alienation of real estate, three types of taxation are applicable:

→ Corporate tax
The corporation tax rate is 10 % on the net profit of the company as adjusted for tax purposes. In order for a company to be taxed under corporation tax it has to prove that the company's line of business is dealing in land or developing real estate and therefore any gains are considered to be of a revenue nature and not of a capital nature (which fall under capital gains as explained below).

→ Personal tax up to 35 %
With the same rationale as above, an individual in the real estate business will be taxed under personal income tax for any profits generated. The current tax rates for individuals are as follows:

Chargeable Income (€)	Tax rate	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
Over 60,0000	35 %	-

→ Capital gains up to 20 %
In the case where the real estate transaction is not considered as of a revenue nature (e.g. disposal of a residence or transactions not falling under business activity), any gain would be subject to capital gains tax at 20 %.

The capital gains tax is also applicable in the case of disposal of shares in a company owning real estate in Cyprus.

It is important to note that only property situated in Cyprus is subject to capital gains tax. Disposal of property situated abroad is not subject to capital gains tax in Cyprus.

Rental Income
Rental income from properties is taxed according to A1 or A2 above depending on the legal form of the owner, plus an additional 2.25 % withholding tax on the gross rental income.

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

The tax depreciation (capital allowances) is 3 % for commercial buildings (e.g. shops, offices, etc.) and 4 % for hotels and industrial buildings (e.g. factories).

The straight-line method of depreciation is used to calculate the capital allowances figure.

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

A non-tax resident individual or company is subject to tax only on income derived from Cyprus, such as (i) income from a permanent establishment, (ii) income from an office or salaried services in Cyprus, (iii) rent, royalties or other income from property (including intangible property) in Cyprus, (iv) capital gains.

Therefore the gain from the sale of property or rental income from Cyprus will be subject to tax in Cyprus either under capital gains tax or income/corporate tax as above.

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

Real estate can be acquired either through direct purchase of the property (asset deal) or indirectly through acquiring shares in a company owning the property (share deal).

In both cases, disposal of property will lead to capital gains tax. Profit from the sale of shares is not taxable in Cyprus, unless the company whose shares are sold holds immovable property situated in Cyprus only, thereby triggering capital gains tax.

The reason is that disposal of shares in a company owning real estate triggers a capital gains tax calculation on the market value of the real estate on the date of disposal. The cost in the above calculation is the acquisition cost indexed for inflation.

In case of a two tier structure no capital gains tax arises, however the commercial rationale of having such a two tier structure has to be justified; otherwise the risk of considering the second company as a look-through entity exists and therefore capital gains tax may arise.

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

There are no thin capitalization rules applicable in Cyprus. In regards to limitation of interest deductions this may be applicable in cases interest expense relates to the acquisition of a non business asset.

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

In calculating the capital gains tax, the cost of acquisition (indexed to take inflation in consideration) and interest on loan to acquire the property are allowable.

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

Tax Group
Under the Cypriot tax legislation each company is considered a single tax entity; therefore there is no possibility to consolidate income. The possibility exists however for group relief by way of surrendering tax losses to another Cypriot company, member of the same group (two companies are deemed to be members of a group if one is the 75 % subsidiary of the other or both, each one separately, are 75 % subsidiaries of a third company).

Merger
A possible way to achieve debt push down is by a merger between the target company and the acquisition vehicle having the debt.

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

There is no withholding tax on interest payments although if the recipient is a tax resident person, such interest income will be subject to tax as follows:

- → If interest income arises from the ordinary carrying on of the business under corporation tax as business profit at 10 % after allowable deductions
- → Other types of interest income under special defence contribution at 15 % on gross income

Special defence contribution tax is a form of withholding tax on specific sources of income, i.e. interest, dividends and rental income. SDC is not applicable for non tax resident persons.

There is no withholding tax on interest payments from a tax-resident company to a non tax-resident person.

9. Is a Loss Carry Forward or Loss Carry Back granted and what are the restrictions?

For capital transactions a carry forward of losses is allowed against future capital gains. A carry back of losses is not allowed.

In case the transaction is considered of a revenue nature any loss for tax purposes is also carried forward.

In both cases the losses can be carried forward indefinitely.

C. Real Estate Taxes

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

In the case of transfer of immovable property, the land registry transfer fees are applicable at the following rates:

→ Value of property	Tax rate
Up to € 85,430	3 %
€ 85,431 - € 170,860	5 %
Over € 170,860	8 %

The above rates are applicable for direct transfer of ownership. Transfer of shares in a company owning real estate is not taxable.

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

Real Estate is subject to the immovable property tax based on the value of the property as at January 1, 1980.

→ Value of property	Tax rate
0 - € 120,000	0 %
€ 120,001 - € 170,000	0.4 %
€ 170,001 - € 300,000	0.5 %
€ 300,001 - € 500,000	0.6 %
€ 500,001 - € 800,000	0.7 %
Over € 800,001	0.8 %

D. Value Added Tax

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

In the case of supply of land there are no VAT implications, such a transaction being exempt from VAT. Buildings that obtained a building planning permit after May 1, 2004 are subject to VAT currently at 17 %. In the case the building is used in a business registered for VAT purposes, the purchaser can claim refund of the input VAT.

In the case where the building is a house, there may be the possibility of the reduced rate of 5 % subject to the use by the beneficiary as his/her main and permanent place of residence.

For an applicant to be considered a beneficiary, the following requirements must be met:

- Be a physical person of legal age (18)
- Be a citizen of Cyprus or EU Member State
- Be a permanent resident of Cyprus.

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

The leasing or letting of immovable property is not subject to VAT. In the case however where utilities are provided (e.g. electricity, water, cleaning, common services) as part of the lease, that would be considered use of space and VAT would be charged at the normal rate, currently 17 %.

E. Other Taxes

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

Authorized share capital is the total of the share capital which a limited company is allowed to issue at any time. Issued share capital is the part of the authorized capital actually issued to shareholders.

Capital duty is paid upon incorporation of a company at € 102.52 plus 0.6 % on the authorized share capital. In case of a future capital increase 0.6 % is due on the additional authorized share capital.

A company may choose to issue shares at a low nominal value (against authorized share capital) but with a high share premium which is only subject to € 17.09 irrespective of the amount of premium, in that way optimizing the capital duty paid.

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

All documents relating to “matters and/or things” (as per the wording of the legislation) taking place in Cyprus are subject to stamp duty.

Stamp duty is calculated on the value of the contract at a rate of 0.15 % for the first € 170,860 and at 0.2 % for any amounts over € 170,860. However, this is capped to a maximum of € 17,086 per contract.

Whether a contract is subject to stamp duty depends on various factors that have to be examined.

Real Estate Investment in

Czech Republic

A. Legal/General

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

The amendment to the Foreign Exchange Act No 206/2011 Sb., effective July 19, 2011, has created new rules for acquisitions of real estate by non-residents. By the amendment, Section 17 of the Foreign Exchange Act (which regulated the position of foreign nationals when acquiring real estate in the territory of the Czech Republic) has been repealed. By harmonising Czech national legislation and EU law, the Czech real estate market has entirely been liberalized. Now non-residents can acquire Czech real estate in the same way as Czech residents.

2. Which importance does the land register have?

The ownership of the real estate being transferred under the contract passes over to the buyer as soon as the ownership right is registered with the Land Registry („katastr nemovitostí"). The registration of the ownership will be made by the Land Registry Office based on its decision with retroactive effect from the day at which the application for the ownership´s registration (charged with the administrative fee of CZK 1,000) has been submitted.

B. Income Tax

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

- → Corporate income tax rate: 19 %
- → Personal income tax rate: 15 % / tax free income: 165,600 CZK

There is no special income tax rate for real estate.

Starting 2014, inheritance and gift tax are intended to be classified as income taxes. So far these taxes have been governed by a single act along with real estate transfer tax. The latter is going to be governed by a separate act on real estate transfer tax as from 2014 as a result of the exclusion of inheritance tax and gift tax.

Participation exemptions:
Under the domestic participation exemption regime, any income from a transfer of shares and profit distributions derived by a resident corporation (s.r.o. or a.s.) or a cooperative from a participation in another Czech corporation or cooperative

is exempt from corporate income tax, provided that it holds a share of at least 10 % (in share capital) for a minimum holding period of 12 months. The 12-month period may be fulfilled subsequently. However, the domestic participation exemption does not apply to income from a transfer of shares and to profit distributions where a Czech subsidiary is in liquidation.

The international participation exemption applies to specific income (see below) derived from a participation in a foreign company. The requirements differ depending on whether a foreign subsidiary is located in the EU or in a third country.

Requirements in the case of EU subsidiaries are:

- → Equity participation of at least 10 % in the EU subsidiary for a minimum holding period of 12 months
- → Listing of the legal form of the EU subsidiary in the Annex to the EC Parent-Subsidiary Directive, see Annex II
- → Czech parent company is a beneficial owner of the income

As regards EU subsidiaries, the participation exemption applies to dividends received by Czech parent companies and Czech permanent establishments of companies resident in another EU Member State. Further, income from a transfer of shares in EU subsidiaries derived by Czech parent companies is also tax-exempt.

However, the participation exemption does not apply to income from dividends, where the EU subsidiary is in liquidation.

The international participation exemption also covers profit distributions and income from the transfer of shares derived by an EU parent company in connection with its shareholding in a Czech subsidiary. In addition, the fact that a Czech subsidiary is in liquidation does not preclude the application of participation exemption rules to profit distributions (in contrast, income from transfer of shares may not be tax-exempt if the Czech subsidiary is in liquidation).

Additional requirements (to the above-mentioned) in case of third-country subsidiaries are:

- → Czech Republic has concluded a tax treaty with the third country
- → Legal form's comparability of the third-country subsidiary to Czech corporations (s.r.o. and a.s.) or cooperatives
- → Subsidiary is subject to corporate income tax of at least 12 % in its residence country and is neither tax-exempt nor eligible to opt for tax exemption

As regards third-country subsidiaries, the participation exemption applies to dividends and income from a transfer of shares derived by Czech parent companies. However, the participation exemption does not apply to income from dividends where the third-country subsidiary is in liquidation.

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

Permanent buildings are to be depreciated over 30 years. From January 1, 2004, certain buildings such as office parks, shopping malls and hotels are to be depreciated over 50 years. A taxpayer may choose to use either the straight-line or the accelerated depreciation method. The method chosen may not be changed over the entire period of tax depreciation. For permanent buildings, a taxpayer is not obliged to claim depreciation and may even interrupt tax depreciation. In the case of interruption of the tax depreciation, the useful life of the assets will be automatically prolonged. When the taxpayer starts writing off again, it must be done as if the tax depreciation had not been interrupted. Plots of land may not be depreciated for tax purposes. Once the plot of land is sold, the possible loss realized upon this sale may not be deducted from the tax base.

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

The foreigners (the non-Czech residents) who derive income from Czech sources are subject to limited tax liability in the Czech Republic. Income from Czech sources represents inter alia income from a Czech permanent establishment, capital gains from the sale of Czech real estate or from the sale of the share held in a Czech company and certain payments received from Czech resident taxpayers, e.g. lease payments.

This income derived by non-Czech residents (with limited tax liability) falls within the scope of the Czech Income Taxes Act. It must, however, be reviewed under the relevant double tax treaty, whether the right of taxation with respect to the particular cross-border transaction is attributable to the Czech Republic as the source state. If the right of taxation is vested in the Czech Republic, the Czech-sourced income of the non-residents will be subject to either the corporate income tax of 19 % or to withholding tax of 15 % (unless reduced under the relevant double tax treaty).

The final taxation in a foreign country depends on the method of preventing double taxation that is applied by the foreign country as the state of residence.

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

The real estate investor can acquire Czech real estate by way of an asset deal (e.g. a direct acquisition of real estate or the acquisition of a tax-transparent partnership owning real estate), unless this is not possible due to the restrictions for non-resident individual investors under Czech law. Czech real estate can also be acquired by way of a share deal (e.g. acquisition of a corporation owning real estate), whereby further reorganization steps to achieve a debt push-down may be required.

Asset deal

- Direct acquisition of real estate:
  A Czech corporation can directly acquire Czech real estate. Interest expenses for a debt-financed acquisition may be deducted from the real estate's income if the real estate is rented out or used for its own business. However, the tax-deductibility of interest is limited by the arm's length and thin capitalization rules.
- Acquisition of a partnership interest:
  If the seller holds the real estate via a Czech partnership (i.e. as a partner of a v.o.s. or a general partner of a k.s.), the acquirer can step into the Czech partnership in place of the seller. Czech partnerships are in general tax transparent (except for income attributable to a limited partner of a k.s.) and the partnership's income is taxed at the partner's level. Please note that income derived by a partner of Czech partnership is considered to be derived through a Czech permanent establishment and as such is subject to Czech taxation. Interest expenses for the debt-financed acquisition of a partnership interest should be deductible from the income of the partner being a legal entity. Partners who are individuals are not entitled to deduct any expenses related to their Czech permanent establishment constituted by reason of their participation in Czech partnerships.

Share deal

All financing costs, including interest on loans for the acquisition of shares, are not deductible for tax purposes. Any loan taken out six months prior to the acquisition of shares is considered to be a loan for acquisition of shares, unless it is proven that this loan has been used otherwise. Tax-deductibility of the interest can be achieved by implementation of any debt push-down strategy, whereby acquisition debt and business activity will be on the same level (see question 9). For other tax consequences (VAT, capital tax, property tax etc.) see the questions below.

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

Thin capitalization rules (non-tax deductible financial costs) shall apply to all financial costs (i.e. interest including, for instance, loan procurement and processing costs, guarantee fees, etc.) if the creditor is a related party to the debtor (due to capital or other relations) and if the aggregate of loans and credits from these parties exceeds six times the equity capital in case of banks and insurance companies or four times the equity capital in case of other recipients. Therefore, financial costs in the amount by which the aggregate of loans and credits in a tax period exceeds six times or four times the equity capital are considered not deductible for tax purposes.

Thin capitalization rules shall not apply to:

- Loans and credits the interest of which are included in the input price of property,
- Demonstrably granted interest-free loans and credits
- Individuals, non-profit organizations and organizers of regulated market (formerly Stock Exchange).

Apart from the thin capitalization rules the market price must be taken into account – i.e. arm's length interest in case loans and credits are granted/accepted between related parties.

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

In general, interest on a share acquisition loan (please note that any loan agreed within the six months preceding the acquisition is deemed to be an acquisition loan, unless proven otherwise) is not -deductible for tax purposes. According to the ITA, all direct as well as indirect costs incurred in connection with the shareholding in the subsidiary, including interest on an acquisition loan, are non-deductible only where corporations (a.s. or s.r.o.) act as the parent company under the Parent-Subsidiary Directive. The indirect costs related to the shareholding amount to 5 % of the dividends, unless lower costs are proven to the tax authorities. In other cases, where interest payments are related to the acquisition loan, interest is not tax-deductible due to the general provision stipulating the non-deductibility of expenses relating to income that is subject to a final withholding tax (i.e. dividends) or that is tax exempt (under the participation exemption).

Interest on an asset acquisition loan is in general deductible, unless the interest is non-tax deductible under the transfer pricing rules (applicable only to related persons) and/or the thin capitalization rules.

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

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

Merger
A NewCo receives an acquisition loan to acquire the target and afterwards these companies are merged. A merger is generally tax neutral for corporate income tax purposes and is not subject to VAT. A surviving company may deduct the interest from its taxable base (e.g. rental income), since interest on the acquisition loan is not linked to any shareholding after the merger (i.e. the business activity and the loan are at the same level). It is important that the merger can be supported by sound business reasons. However, the merger allows the assets of the target to be used for securing the acquisition loan, which might be seen as a business reason to justify the debt push down strategy.

There is no real estate transfer tax upon the acquisition of the target corporation. Mergers and other corporate reorganizations are exempt from real estate transfer tax.

Conversion
This alternative requires another company to join the target company as a second partner prior to the conversion of the target into a limited partnership (k.s.). Subsequently, the Target is converted into a partnership of which the NewCo is the general partner and the newly-entered company is a limited partner. Profits of a k.s. are divided into two parts for tax purposes. One part attributable to a limited partner is taxed at the level of a partnership (i.e. the standard tax regime for a corporation and a limited partner receiving dividends from a partnership). Usually the limited partner holds a minor share in the partnership. Another part attributable to the general partner is taxed in the hands of this partner (tax transparency). Interest on the acquisition loan is tax deductible, if this expense serves a general partner in generating taxable income derived from a partnership; which is applicable only for corporate investors.

There is no real estate transfer tax upon acquisition of the target. Under Czech civil law, a conversion is not treated as a transfer of any assets, and thus it is not subject to real estate transfer tax.

Group
Except for the VAT-group regime, there is no special corporate income tax regime for groups of companies.

The amendment to the Act on collective investment, effective since May 2006, has introduced a novelty into Czech law – the qualified investor funds (QIF). This is a form of collective investment which is subject to approval and supervision by the Czech National Bank. Their advantage compared to standard trading companies lies above all in a lower tax rate, i.e. 5 % corporate income tax (compared to 19 % for standard trading companies). This aspect makes QIF quite attractive.

Currently QIF structure is used in particular by developers seeking an alternative to standard ways to fund their projects. However, the use of QIF is not limited to real estate; for instance receivable traders, emission allowance traders, precious metal, art or security traders can make use of this instrument as well.

QIF can be founded as open end or closed end unit trusts or investment funds (i.e. regulated joint stock companies). Unit trust has no legal personality; it is a mere set of assets. It is founded by an investment company administering its assets and selling unit certificates to investors. As far as practical use is concerned, the option of an investment fund is recommended rather than unit trusts since investment funds have legal personality, may acquire (and depreciate) property and are subject to income tax.

QIF are not intended to be offered to public, only institutional investors (such as banks, insurance companies, pension funds, etc.) and experienced qualified investors on the basis of a declaration (so-called opt-in principle) may invest into these funds. Funds may not have more than 100 investors. According to the law, the minimum investment into QIF must exceed CZK 1 million (both monetary and non-monetary contributions are possible). Within one year of its formation the fund must have achieved a minimum equity capital of CZK 50 million. If the investor is a trading company which is tax resident in the Czech Republic or another member state of the EU and which has been holding a share of at least 10 % during at least 12 months (this requirement can be met subsequently), payments of shares in profit of the investment fund can be exempt from income tax. This, along with the corporate income tax rate of 5 %, makes investment funds an attractive tool of collective investment.

QIF may be founded for a period of 10 years as a maximum which cannot be extended. If, however, the fund merges with another „younger“ fund, it can continue to exist even for more than 10 years.

Qualified investor funds are not compatible with UCITS, which means that their securities may not be offered outside the Czech Republic unless the respective licence is issued to the fund abroad.

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

Interest income of a non-resident taxpayer (corporations and individuals) is subject to Czech withholding tax at a rate of 15 %. However, double tax treaties usually prevent Czech taxation. The withholding tax rate on interest is 0 % applying the EU Interest and Royalty Directive for group purposes (minimum participation 25 %, minimum holding period 24 month). The withholding tax rate for dividends is 15 %, but may be reduced under an applicable double tax treaty or even avoided by application of the EU Parent Subsidiary Directive for group purposes.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Generally, losses from business and independent (professional) activities and losses from rental activities may be set off against other income categories, but not against employment income (Sec. 6 ITA) and other income (Sec. 10 ITA). Remaining losses may be carried forward, provided that the loss was not only entered in the tax return but also assessed, i.e. the tax administrator approved the tax loss in the tax return. A loss carry forward is limited to five years; for losses generated prior to January 1, 2004 this period is seven years. Losses incurred in other categories may neither be set off nor carried forward.

The tax loss can be deducted from the tax base which arose and was assessed for the previous tax period or a part thereof, within not more than 5 tax periods following the tax period for which the tax loss is assessed.

The tax loss cannot be deducted from the tax base if there was a significant change in the structure of persons having direct share in capital or control („significant change"). A change of members or a change of their share in capital or control over the company shall be deemed a change in the structure of persons.

A significant change shall mean the acquisition or increase in the share concerning in total more than 25 % of the registered capital or voting rights or changes by which the member gains decisive influence.

Whether there was a significant change has to be checked by comparing the conditions in the period for which the tax loss shall be deducted and the period for which the tax loss was assessed.

If, however, the company in which there was a significant change proves to the Tax Authority that at least 80 % of revenues from own performances and goods showed as revenues in this period have been generated by the same activity which the company carried out in the period for which the tax loss has been assessed, the tax loss can be deducted from the tax base.

In general, a tax loss cannot be carried over to third parties. The only exception to this rule is the possibility of carrying forward the tax loss that arose in a legal entity during a transfer of business or a separate part thereof to the company or during mergers and splitting of the company (if the mentioned conditions are fulfilled).

Loss Carry Back is not possible in the Czech Republic.

C. Real Estate Taxes

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

Transfer or real estate and comparable rights
Real estate transfer tax is levied on transfers of immovable property (land and buildings) located in the Czech Republic. Taxable transactions include – inter alia – the sale and exchange of immovable property.

The taxable base is computed as either the real estate value under the Valuation Act or the purchase price, whichever is higher. The taxpayer is the seller. The buyer is, however, the guarantor of the tax. The transfer of real estate (plots of land, buildings and structures) is subject to a real estate transfer tax of 3 %. There are various tax exemptions, e.g., the first transfer (for consideration) of newly-constructed buildings or apartments, if not used, or contributions of real estate in the share capital of any company that is a resident of an EU Member State.

Transfer of shares
There is no real estate transfer tax levied upon a sale of shares, unless the real estate was contributed to the share capital of a company and the sale of shares occurs within five years after such contribution.

Starting in 2014, real estate transfer tax shall be governed by a separate act. An increase of the tax rate is planned (now 3 %), the purchaser being the taxable person. Step by step, expert opinions for the purpose of determining the tax base shall be eliminated (if there is a need of an expert opinion, the tax payer can deduct the costs for its preparation from the tax base).

As a result of the amendment to the Civil Code, constructions should be considered part of land (so far a building could be owned even on another party's plot of land). Also, the Civil Code reintroduces the former institute of „building right" as immovable property. Under the new Act, creation of a building right for a consideration, transfer or passage of a building right for a consideration as well as extinction of a building right for a consideration shall be subject to tax.

For the purpose of preventing tax evasion it is proposed to extend the object of real estate tax, as it is in other European countries, to transfers of shares (participations) in trading companies owning real estate property.

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

The real estate tax (the land tax and the building tax) covers lands, buildings, residential apartments and non-residential (business) premises. The taxpayer is in general the owner registered in the Land Registry. For the purposes of the tax calculation, the status as per January 1 of the relevant calendar year is to be taken into account as the decisive date.

All Czech land registered in the Land Registry (except for the built-up lands) are subject to the land tax. The building tax is levied on Czech buildings as well as apartments and non-residential premises provided that these are registered in the Land Registry and the building permit has been issued for their construction. For the purposes of the land tax, the tax base is derived from the land type and the land area (in square meters). The highest tax rate applies to building lands and amounts to CZK 1 per sqm multiplied by the municipal coefficient (ranging from 1 to 5).

For the purposes of the building tax, the tax base of buildings is determined as the built-up area in square meters (sqm). The building tax rate ranges from CZK 1 to 10 per sqm depending on the type of the building. The highest tax rate of CZK 10 applies to buildings which are used for business activities. The basic tax rate is to be increased by CZK 0.75 per each floor. The increased tax rate must further be, as in the case of the land tax, increased by the above-mentioned municipal coefficient.

The highest tax rate applies to paved areas of plots of land, used to carry out business activities in industry, building industry, transport, power industry and others. It amounts to CZK 5 per sqm. The tax rate in case of building plots also ranks to the higher ones and amounts to CZK 2 per sqm multiplied by the municipal coefficient (ranging from 1 to 5).

D. Value Added Tax

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

The transfer of buildings, apartments and commercial premises is VAT-exempt after three years from the issuance of first occupancy approval or from the date of initial actual occupancy, whichever moment occurs first. Should the transfer occur within a 3-year period, it would be subject to VAT of 20 % or 14 % in the case of family houses and/or residential buildings with the given size. The supply of the building construction or its parts together with the transfer of the land is VAT exempt provided that the supply takes place after the 3-year period. The transfer of the undeveloped land except of building land is exempt from VAT. Accordingly, the building land, i.e. undeveloped land meant for construction, is always subject to the tax (20 % VAT).

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

The lease of real estate is VAT-exempt, however, some exceptions exist, e.g., the lease of premises for car parking. Nevertheless, the lessor has the option to levy the lease with VAT (20 %) provided that the tenant is liable to pay Czech VAT and uses the leased real estate for his/her economic activities. This option can only be exercised by the lessor. If the lessor opts for VAT, the approval by the tax authority is not necessary. Since 2009, the option for VAT does not have to be notified to the tax authorities.

E. Other Taxes

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

N/A

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

Stamp duties are levied on certain legal transactions during administrative or court proceedings. Court fees vary between 1 % and 4 % of the amount in dispute, whereas the minimum and maximum fees are stipulated or levied as fixed amounts. Administrative fees are usually levied as fixed amounts.

Real Estate Investment in

Denmark

A. Legal/General

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

Non-residents are restricted in their access to acquire real estate in Denmark. The Danish legislation on real estate states that non-residents in Denmark, who have not had residency in Denmark earlier, are only allowed to acquire real estate located in Denmark with permission from the Danish Minister of Justice.

This also applies for companies, associations e.g. which do not have residency in Denmark.

2. Which importance does the land register have?

Rights relating to real estate in Denmark have to be registered in the Danish land register.

The registration is not a requirement for the sales agreement to be valid but the acquirer is not protected against third party rights until an ownership registration in the Danish land register has been made. Thus, the registration of ownership is considered a perfection of security interest.

The registration fee for a deed is 0.6 % of the purchase price or the public property value (the highest). Furthermore, a fixed duty on DKK 1.400 is imposed.

For the registration of rights regarding ownership reservation and mortgage a registration fee of 1.5 % of the ensured amount + DKK 1.400 is imposed.

For the registration of other property rights than owner and mortgage rights (easements, right of use e.g.) a registration fee of DKK 1.400 is imposed.

B. Income Tax

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

→ Corporate income tax rate
The Danish corporate income tax rate is 25 %.

- Personal income tax rate
  - Up to DKK 42,900: 0 %
  - Up to DKK 389,900: between 22.7 % and 27.8 % depending on municipality of residence
  - Above DKK 389,900 (2012-level): additional 15 %
  - A tax ceiling of 51.5 % exists whereby the marginal tax rate cannot exceed 51.5 %

These rates also apply to real estate. There are no special tax rates for real estate.

- Participation exemptions
  For corporate shareholders, a distinction is made between "subsidiary shares," "group shares" and "portfolio shares" with respect to taxation of dividends and gains on shares:
  - "Subsidiary shares" are generally defined as shares held by a shareholder holding 10 % or more of the share capital of a company;
  - "Group shares" are generally defined as shares in a company in which the shareholder of the company and the company are jointly taxed or meet the criteria for international joint taxation, usually implying that the shareholder controls, directly or indirectly, more than 50 % of the votes or are otherwise deemed to have a controlling influence; and
  - "Portfolio shares" are shares not falling within the definitions of "subsidiary shares" or "group shares", for example if the shareholder holds less than 10 %.

Special rules apply to certain holding companies (in Danish: "mellemholdingselskaber") to prevent avoidance of the 10 % holding requirement.

Dividends and capital gains on portfolio shares are subject to full taxation at the rate of 25 % irrespective of the length of the ownership period. Dividends and gains on subsidiary shares and group shares are tax exempt irrespective of the length of the ownership period.

Losses on portfolio shares are tax deductible. Losses on subsidiary shares and group shares are not tax deductible.

If an investor holds portfolio shares, gains are taxable according to the mark-to-market principle. According to the mark-to-market principle, each year's taxable gains and losses are calculated as the difference between the market value of the shares at the beginning and the end of the tax year. Thus, taxation will take place on an accrual basis even though no shares have been disposed of and no gains or losses have been realised.

It should be noted that a change of status from subsidiary shares/group shares to portfolio shares, and vice versa will be treated as a disposal and reacquisition of the shares at the market price of the shares at such time.

Tax group

The Danish rules on national joint taxation are mandatory and will apply for all Danish companies, associations and permanent establishments etc. under the same group. The Danish parent company will have to include Danish subsidiaries and Danish permanent establishments in the Danish national joint taxation. Only entities in which the parent company has a controlling interest on the financial and operational decisions are to be included in the joint taxation. Such controlling interest is deemed to exist if the parent company directly or indirectly holds more than 50 % of the voting rights in the entity unless it can be established that such ownership interest does not constitute controlling interest.

If a parent company holds less than 50 % of the voting right in an entity, controlling interest will still exist provided the parent company has

- access to more than half of the voting rights through agreement with other shareholders,
- authority to control financial and operational decisions under the articles of associations or agreement,
- authority to appoint or dismiss the majority of the members of the supreme decision-making body which holds a controlling interest, or
- access to more than half of the voting rights at the general meeting or a similar body and thus in fact holds a controlling interest.

The most supreme Danish entity will be under an obligation to act as administration company and will be responsible for the filing of the income tax return and the payment of the tax payment for the entire group under the joint taxation.

Each entity under the national joint taxation is only liable for payment of taxes relating to the entity and can pay such taxes for full and final settlement to the administration company. The tax authorities may pay tax refunds to the administration company for full and final settlement though such taxes relate to another entity under the joint taxation. Please note that a bill is currently being debated in the Danish parliament proposing joint liability for taxes for all entities under national joint taxation.

It is possible to select to include the entire global group in a Danish international joint taxation whereby all upstream and downstream entities will be included in the Danish joint taxation.

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

The Danish rules on depreciations only allow for depreciation on building and installations in buildings used for commercial purposes. Certain exemptions apply and as a main rule, depreciation is not allowed on office buildings, buildings used within certain financial activities, buildings used for postal service activities, buildings used for accommodation, certain hotel activities and buildings used within certain areas of the healthcare sector.

Depreciation is not allowed on the land.

Depreciation may be made at a rate of up to 4 % of the acquisition costs using a linear depreciation method. Thus, the standard depreciation period for Danish real estate is 25 years.

A higher depreciation rate may be used if it can be established that the building etc. will despite normal maintenance in any event have lost its value within 25 years of construction.

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

An individual is considered a non-resident of Denmark if the individual has no domicile or habitual place of abode in Denmark and does not stay in Denmark for at least 6 months during a calendar year.

A corporation is considered a non-resident of Denmark if the corporation is not a registered Danish company and provided the foreign corporation does not have its place of management in Denmark.

Non-residents are subject to limited tax liability in Denmark as provided for in section 2 of the Danish Act on Taxation at Source (individuals) and section 2 of the Danish Corporation Tax Act (corporations). Non-resident investors of real estate in Denmark will be subject to limited tax liability in Denmark provided

- → Activities are carried on through a permanent establishment in Denmark (Denmark generally interprets the term "permanent establishment" in accordance with the OECD Model Tax Convention), or
- → Non-resident investor holds Danish real estate and has income related to the real estate, including capital gains on a sale.

Several other rules on limited tax liability for non-resident individuals exist, including limited tax liability on salaried work performed in Denmark, hiring-out of labour, dividends, consultancy fees and royalties. There is no Danish limited tax liability on interest payments to non-resident individuals.

Non-resident corporations will also be subject to limited tax liability on certain dividend payments, certain payment of controlled debt, consultancy fees, royalties and gains on certain claims and debt.

Non-resident corporations will as a main rule not be subject to limited tax liability on dividend payments from Danish companies provided the foreign investor holds so-called subsidiary shares or group shares, cf. section B.1 above. The tax-exemption presupposes that taxation of the dividends must be waived or reduced under the provisions of the Parent/Subsidiary Directive (Directive 90/435/EEC) or under a double tax treaty with the Faroe Islands, Greenland or the state in which the corporation is resident. With respect to group shares, it is also a condition that the corporation receiving dividends is resident in the EU/EEA.

Dividends in respect of portfolio shares, cf. section B.1 above, are always subject to taxation irrespective of the length of the ownership period. The company paying the dividends is generally obligated to withhold tax at the rate of 27 %.

If the corporation is resident in a state which has a double tax treaty with Denmark or any other agreement on the exchange of information between the tax authorities of the countries, and if the corporation holds less than 10 % of the shares, the withholding tax rate may be reduced to 15 % on request. The rate of withholding is still 27 %, but a refund of the tax withheld is available.

Danish limited tax liability always presupposes a Danish source of payment.

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

In Denmark real estate can be acquired both as an asset deal and a share deal.

Asset deal
If the real estate is sold out separately from the business this is seen as a cession of the real estate and taxable.

Share deal
If real estate is acquired as a share deal there is no sale of real estate at the level of the target company.

Capital gains on the shares are only taxable if the seller is a Danish individual or a Danish company holding less than 10 %. All foreign investors can sell shares in real estate companies without Danish tax, if the shares are not part of a permanent establishment.

No registration duty on the real estate is imposed.

It is therefore often beneficial to acquire real estate as a share deal.

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

Interest payments made by a Danish company are generally deductible for Danish corporate income tax purposes.

However, Denmark has imposed rules entailing that deduction of interest in some cases are reduced. These rules also apply for real estate.

Thin capital rules

The rules on thin capitalization apply to related-party debt whereby a 4:1 debt-to-equity ratio has to be met for interest on such related party debt to remain deductible. In that respect, third party bank debt will be deemed as related-party debt if such debt is guaranteed by a party related to the Danish borrowing company.

The limitation only applies to the part of the debt that should have been equity in order to avoid limitation, and if the controlled debt exceeds DKK 10 million at year-end.

To determine the 4:1 ratio, "debt" is defined as the aggregate of related-party debt and debt to third parties, and "equity" is defined as market value of assets less the market value of debt provided, however, that the equity injected by shareholders is only taken into account if such equity remains in the company for at least 2 years.

In the case of two affiliated Danish companies, the calculation of the debt-to-equity ratio must be made on a consolidated basis. The calculation of the debt-to-equity ratio must be made at the end of each income year.

Other limitations of interest deductions

Besides the rules on thin capitalization Denmark has other restrictions on tax relief for interest payments. In addition to the thin capitalization rules, the following two tests have to be made to determine the actual level of deductibility of interest payments:

- "Interest ceiling" test; and
- "EBIT model" test.

These tests only apply if net financing costs exceed DKK 21.3 million in 2010 (adjusted annually, i.e. currently approximately € 3 million) per fiscal year. In the case of two (or more) affiliated Danish companies, the amount of DKK 21.3 million applies to the aggregate net financing costs of the affiliated companies (i.e. the tests apply if the companies' aggregate net financing costs exceed DKK 21.3 million).

If the net financing costs exceed DKK 21.3 million per year, there will be an interest cap limiting the tax deductibility of any net financing cost exceeding the taxable value of the qualifying company's (or jointly taxed companies') assets at year-end, multiplied by a standard interest rate (in 2011, 4.5 %). The part of the net financing costs that are in excess of the interest cap are lost and cannot be carried forward.

The EBIT rule applies alongside the above interest cap rule. Even if the interest ceiling test (4.5 % test) is met, net financing costs can only reduce taxable income with 80 % of taxable EBIT (earnings before interest and taxes). Any excess net financing cost can be carried forward to reduce taxable EBIT in subsequent years. Please note that only net financing costs exceeding DKK 21.3 million (2010) will be capped.

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

If real estate activity qualifies as business income, the general principles of business taxation apply. Expenses such as interest are in general tax deductible.

Acquisition costs must be capitalized as part of the acquisition price and for buildings such acquisition costs may be depreciated.

Financing fees are also deductible if the costs are used for business purposes.

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

The possibilities for the company structures to use a debt push down method is restricted by the Danish rules on thin capital, the "interest ceiling" test and the "EBIT model" test. See question 5.

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

As a general rule, a Danish resident company is not required to withhold Danish tax in respect of interest payments on loans granted by a third party. Interest payments on loans granted by a group company may give rise to a 25 % withholding tax, but generally only if the recipient of the interest is a resident of a tax haven country (a recipient is taxed at a rate considerably lower than the Danish tax rate, i.e. three fourths of the Danish corporate tax (at least 18.75 %)).

Payments to group companies in the EU or a country with which Denmark has concluded a tax treaty are normally not liable to withholding tax.

The specific rules are that a 25 % withholding tax on interest payments should be paid if the following conditions are not met:

- Interest payment is related to a permanent establishment in Denmark;
- Taxation of interest is comprised by the EU interest/royalty directive, and the paying company and the receiving company have been affiliated for a continuous period of not less than 1 year, and the payment takes place in this period;
- Taxation of interest is reduced under a tax treaty; or
- Danish company owns directly or indirectly at least 25 % of the share capital or has more than 50 % of the votes in the receiving company.

Moreover, Danish companies are not subject to withholding tax: (i) if a parent company resident in a state which has a double tax treaty with Denmark has a controlling interest in the receiving company; and (ii) if, under the rules of that state, the receiving company is subject to CFC (controlled foreign corporation) taxation on interest payments, provided that the conditions are met under these rules.

Moreover, Danish companies are not subject to withholding tax if the receiving company etc. substantiates that the foreign corporate tax on interest payments constitutes at least three fourths of the Danish corporate tax (i.e. at least 18.75 %), and that such interest payments are not transferred to another foreign company, etc. being and therefore subject to a corporate tax rate on such interest payments which is lower than three fourths of the Danish corporate tax (i.e. 18.75 %).

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Losses from business activities that could not be deducted from other positive income in the same year may be carried forward without time limit. Denmark has however imposed new rules on loss carry forward, which entails a reduction in the access to carry forward. Companies can deduct losses for DKK 7.5 million from previous income years in the income, but the rest of the income can only be reduced with 60 % of the remaining loss from previous income years.

Carry back cannot be granted in Denmark.

C. Real Estate Taxes

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

Gains and losses realized by sale of real estate are included in the taxable corporate income or taxable individual income.

If the real estate has been subject to depreciation and the selling price of the real estate exceeds the written down value of the real estate when it is sold, the depreciation carried out has been greater than the actual decrease in the value of the real estate in question. This gain (recaptured depreciations) is subject to taxation.

Any further gain realized by sale of real estate is subject to taxation as laid down in the Act on Taxation of Profit from Disposal of Real Property (ejendomsavancebeskatningsloven). The gain is calculated as the difference between the acquisition price and the sales price. It should be noted that these two amounts (the acquisition price and the sale price) are calculated and modified in accordance with a detailed set of rules and regulations in the act.

Furthermore shares are not taxable.

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

In Denmark real estate is generally subject to two types of taxation, namely: (1) municipal land tax (grundskyld) at a rate of 1.6 to 3.4 % of the taxable value of the land varying from municipality to municipality, and (2) real estate tax (ejendomsværdiskat) at 1 % of the taxable value up to DKK 3,040,000 and 3 % of the taxable value exceeding DKK 3,040,000. Only private individual owners of residential real estate have to pay the real estate tax.

The municipality can apply a special property tax on commercial property up to 1 % of the value of the buildings.

D. Value Added Tax

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

Firstly it is necessary to figure out what kind of real estate is being sold. Danish law distinguishes between old buildings and new buildings. Sale of an old building is not subject to Danish VAT. However, sale of 1) a new building, 2) a building site and, 3) separate sale of a developed lot are subject to Danish VAT.

The Danish VAT rate is 25 %.

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

Generally, renting of real estate is not subject to Danish VAT except in the case of:

- → Commercial renting of real estate on hotel-like terms
- → Renting of real estate located on company property for less than one month
- → Renting of camping area
- → Renting of parking space
- → Renting of advertising space
- → Renting of storage space

A landlord may voluntarily register for VAT for commercial renting of real estate. This does not apply if the real estate is to be used for residential purposes

E. Other Taxes

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

No

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

There is no stamp duty on loan documents, however as mentioned above duty is imposed on mortgage deed.

Real Estate Investment in

Estonia

A. Legal/General

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

Generally, residents of the EU/EEA may freely acquire real estate in Estonia. Exceptions include:

- Forest or agricultural land exceeding 10 hectares (except if the acquirer has conducted forestry or agricultural activities during the three years preceding the acquisition).
- Land on islands located in the sea (excluding four biggest islands Saaremaa, Hiiumaa, Muhu and Vormsi) and mainland border areas.

Other foreigners generally require the permission of the Estonian Government.

2. Which importance does the Estonian land register have?

The Estonian land register is a register of real rights in immovable property. Rights in immovable property are created, amended or extinguished by making a respective entry in the land register and they can be relied on upon making transactions.

B. Income Tax

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

- Corporate income tax rate:
  21 % (to be lowered to 20 % in 2015)
- Unique corporate income taxation system:
  resident companies do not pay income tax for retained or reinvested earnings. The income tax obligation is deferred to the moment of distributing the profits. The corporate income tax is levied on the profit distributions (dividends and gifts, fringe benefits and other non-business expenditures) made by companies at the rate of 21/79 on the net amount (~26.6 %).
- Personal income tax rate:
  - Flat rate of 21 %
  - Tax free allowance EEK 27,000

→ Participation exemptions:
An Estonian company is exempted from Estonian CIT on a distribution of dividends that are received from a qualifying legal person and the payer is a resident of EU or Switzerland and subject to corporate income tax; or the dividend received was taxed or subject to withholding. Qualifying legal person is a resident or non-resident, in which the Estonian company holds at least 10 % of the shares or votes, and which is not located in a low tax territory.

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

Thanks to the Estonian unique CIT system there is no need for tax depreciation/amortization rules. However the outcome is the same as if there were unlimited depreciation for tax purposes.

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

A limited tax liability of 21 % may arise to non-residents on sale or rent of immovable property located in Estonia. In case of individuals, residency rules are similar to those described in OECD model tax convention. Corporations are resident in Estonia if they are entered into the Commercial Register (incorporated) here.

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

Both an asset deal and a share deal are possible in Estonia.

Asset deal
Capital gain realized upon the sale of real estate would be subject to Estonian income tax. The applicable income tax rate for a natural person is 21 %. The business income of a sole proprietor is tax exempt. No income tax is payable on gains from transfer of immovable property if an essential part of the immovable is a dwelling which was used by the taxpayer as his or her permanent or primary place of residence until transfer (Estonian Income Act § 15 (5)). Estonian legal persons and non-resident legal persons who have a permanent establishment in Estonia do not pay income tax on income or annual profits.

Share deal
The capital gain derived by natural persons or sole proprietors from the alienation of shares in a company are subject to an income tax rate of 21 %. Estonian legal persons and non-resident legal persons who have a permanent establishment in Estonia do not pay income tax on income or annual profits.

As a general rule, capital gains derived by a non-resident from the sale of shares in an Estonian company are not taxable here. An exception to this rule is income derived from the sale of shares in a real estate company. A real estate company is a company, investment fund, or any pool of assets where at any time over the period of two years prior to the sale, at least 50 % of all assets have been comprised of real estate located in Estonia. The precondition for taxation is at least a 10 % participation in the real estate company. The capital gain thus derived is taxable at 21 %.

If an Estonian company buys its own shares, then payments that exceed contributions are taxed (rate 21/79) at the level of the company making the payments (the taxable proceeds). On the level of a shareholder, income tax (rate 21 %) is charged only on the amount by which the payment exceeds the acquisition cost and the taxable proceeds. For other tax consequences (VAT, capital tax, property tax, etc.) see the questions below.

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

In Estonia there are no thin capitalization rules. Transfer pricing rules mainly follow the OECD guidelines and the most common methods used are comparable uncontrolled price, resale price, cost plus, profit split, and transactional net margin.

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

The Estonian CIT system does not use the concept of tax deductibility for the acquired property. Acquisition costs, as long these are related to business, do not increase the tax base. There is no income tax obligation as long as financing fees and interest are related to business. Individuals may set off acquisition costs as well as costs related to the sale, against gains directly without depreciation.

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

Merger
A debt push down can be achieved by merging companies. Mergers are regulated by the Commercial Code. There are no transfer taxes applicable other than smallish registration duties.

Group
In Estonia each corporate entity is regarded as a separate entity for corporate income tax purposes.

There is no possibility under Estonian tax law to be taxed on the basis of consolidated income or as a fiscal unity.

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

Payment of dividends triggers tax at 21/79 of the dividend amount at a rate of 21 %. Withholding of income tax on dividends has been abolished from January 1, 2009.

As a general rule, the interest paid by an Estonian company will not be subject to withholding tax in Estonia as long as the interest rate does not substantially exceed the market rate.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Thanks to Estonian unique CIT system there is no need for special Loss Carry Forwards or Carry Back for tax purposes. However, the outcome is the same as if losses could be carried forward for an unlimited period of time in a conventional CIT system.

C. Real Estate Taxes

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

There is no real estate transfer tax in Estonia.

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

The rate of annual land tax ranges from 0.1 % to 2.5 % of cadastral value of land and buildings. The tax rate is set by municipalities by January 31 each year.

Value Added Tax

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

The asset deal with real estate is VAT exempt. The VAT exemption is not applied to
- → a new building (building that has not been taken into use),
- → an immovable if an essential part thereof is a construction which has been significantly improved and
- → to a plot within the meaning of the Planning Act if the plot does not contain any construction works.

If supply is VAT exempt, the seller may also opt for 20 % VAT taxation if the tax authority is notified in writing beforehand. In case of option to tax, reverse charge VAT may apply. VAT cannot be added to used dwellings.

A share deal is usually VAT exempt. Shares of a real estate company might be subject to VAT if there is no economic activity in that company which owns the immovable property. It is advisable to seek a preliminary ruling for the sale of shares of real estate SPVs until there is sufficient amount of practice due to court decisions and explanations from the tax board and the ministry of finance that selling such shareholding is not subject to VAT.

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

The renting/leasing of real estate is generally exempt from VAT. The lessor may opt for 20 % VAT taxation in case of rent/lease of real estate, following the same rules and requirements as in case of real estate transfer. The option to tax is not applicable to renting/leasing of dwellings.

E. Other Taxes

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

No.

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

No.

Real Estate Investment in

Finland

A. Legal/General

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

Non-residents are entitled to acquire real estates in Finland. The acquisition can be carried out by an individual or a corporation. No restrictions exists for non-residents regarding purchase of real estate in Finland (unless the real estate is situated in the Aland islands).

2. Which importance does the land register have?

The ownership of the real estate is registered in the land registers maintained by National Land Survey of Finland. The mortgages related to certain real estate are registered in the land register, as well.

The basic information related to the real estates located in Finland is registered in the real estate register maintained by the same authority as the land register. The real estate register includes identification information of a real estate, such as identification number, location, formation, area etc.

B. Income Tax

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

Tax Rates
The corporate tax rate is 24.5 %.

The individual capital income tax rate is 30 % up to taxable capital income of € 50,000. The applicable tax rate is 32 % on the taxable capital income exceeding € 50,000. The individual earned income tax rate is progressive varying from 6.6 % till 47 %.

There is no special tax rate for real estate income.

Participation Exemption
Generally, for corporations capital gains and losses are taxed as part of ordinary business income. However, certain capital gains arising from disposal of fixed asset shares are considered tax-exempt, provided that preconditions laid down in legislation are met. Correspondingly, losses from disposal of such shares are non-deductible.

Tax exemption provides that:

- Disposed shares entitle ownership of at least 10 percent of the share capital in the target company;
- Disposed shares have been owned for at least one year; and
- Disposed shares are determined as fixed assets of the vendor.

Tax exemption of fixed asset shares is only applicable to corporations with certain limitations, e.g. the tax exemption does not apply to equity investors or to the sale of the shares in a housing company or real estate company. In addition, the target company must be either a Finnish company or a company to which the EC Parent–Subsidiary Directive (90/435/EEC) is applied or there exists a double tax treaty between Finland and the resident state of the target company which is applied to the dividend payment of the company to be disposed of.

If the preconditions laid down for tax exemption are not met, capital gains are taxable and correspondingly losses are deductible. However, losses may only be deducted against capital gains on disposal of shares during the five years following the year of loss-making disposal.

An individual is exempted from capital gains taxation only in a situation where he/she sells his/her own house after using it continuously for two years as a permanent home. In other situations the capital gain is taxed with the applicable capital income tax rate. The losses are deducted only against the capital gains generating during the loss year or five following years.

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

Land and securities/shares are no depreciable property (i.e. no depreciation on the acquisition value during the ownership but only at the time of the sale of the property).

The legal owner of the buildings is allowed to make annual depreciations on the acquisition price for tax purposes. The tax depreciations should not exceed the depreciations made in the accounts. The applicable depreciation rate is depending on the purpose of use of the building. The depreciation is made by using the declining balance method and calculated separately for each building.

- Shops, warehouses, factories, workshops, power stations or similar buildings 7 %
- Residential buildings, office buildings or other similar buildings 4 %
- Tanks for storage of liquid fuel and acids and other similar storage buildings and constructions made of metal or other similar material 20 %
- Light constructions of wood or other comparable material 20 %
- Building or constructions of parts of buildings or constructions used exclusively for research and development 20 %

The acquisition price of the machinery and equipment is depreciated annually as a combined item (in Finnish "menojäännös") using the declining balance method. The depreciation base consist of the net book value of all such assets added with the acquisition value of new items less sales proceeds, insurance compensation etc. The maximum annual tax depreciation is 25 % of the remaining tax base value.

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

Non-resident investor is subject to limited tax liability on his/her/its income derived from Finland. The Income Tax Act includes an exemplary list of the items regarded to be Finnish source. Certain items may be tax exempt according to a special provision even though they were Finnish-source items, such as for example Finnish-source interest income of a non-resident which is largely tax exempt. Typically, a foreign investor investing in real estates (directly or indirectly) is imposed to withholding tax on dividend income, corporate or capital income tax on lease income and capital gains tax at the time of exit. Valid double tax treaties with various countries may restrict Finland to exercise its taxing rights.

Dividends

Payments of dividend to a (non-resident) foreign company are exempt from tax only in the following circumstances:

- Recipient of the dividend is appearing on the list of companies referred to in Article 2(a) of Council Directive 90/435/EEC of July 23, 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states. Furthermore, the recipient also directly owns at least 10 % of capital in the company paying out dividend. Or alternatively:
- Recipient´s tax domicile is in EU/EEA (except Liechtenstein) and
  - Legal entity form is similar to a Finnish incorporated legal entity,
  - Similar dividend would be exempt from tax if paid to a Finnish corporate entity under § 6a Business Income Tax Act (EVL),
  - No full credit can be made in the recipient´s country of tax domicile, as explained by the recipient, under the provisions of the double tax treaty between Finland and the recipient´s country of tax domicile.

If the above mentioned tax exemptions do not apply, the applicable withholding tax rate for a non-resident corporate entity is 24.5 %. Generally, in treaty situations a lower rate is applicable.

Payments of dividend to a (non-resident) individual are taxed as capital income when received from a listed company. The applicable withholding tax rate on dividends paid to a non-resident individual is 30 %. Generally, in treaty situations a lower rate is applicable. When the dividend is received from the non-listed company the tax authorities accept, on request by the non-resident individual concerned, that the taxation can be carried out in a similar way as if the dividend recipient were a Finnish resident, under the following preconditions:

- → Non-resident individual´s tax domicile is EEA (except Liechtenstein), and
- → No full credit for the Finnish source tax could be available (Note 3) in the country of tax residence.

For the Finnish individual the dividend taxation is the following:
70 % of dividends paid by a listed company to an individual is considered as capital income of the recipient, while the remaining 30 % is tax-exempt.

A dividend paid by a non-listed company may be split to be partly exempted and taxed partly as capital income and partly as earned income. The division is made on the basis of the mathematical value (net asset value) of the shares owned by the shareholder. The amount of the exempted dividend is first determined to correspond to 9 % of the mathematical value of the shares owned by the shareholder. The capital dividend is considered tax exempt up to € 60,000 per year. The remaining amount may be divided to capital income (70 % taxable and 30 % exempted) and earned income (70 % taxable and 30 % exempted).

Lease Income

The tax treaties which Finland has signed with foreign states allow the state in which immovable property is situated, to tax all income from the immovable property. The same treatment applies to income derived from the direct use, letting, or use in any other form of immovable property. Many Finnish tax treaties include a special provision allowing Finland to tax income from such shares in a Finnish real estate company, which entitle to the use of the company's immovable property (so called mutual real estate company) even though the shares do not constitute immovable property. If such a special provision is not included in the applicable treaty, Finland is not allowed to tax for example a non-resident's income from letting an apartment or an office held by virtue of shares in a Finnish mutual real estate company.

Capital Gain

According to Finnish internal tax legislation, capital gains on the sale of immovable property situated in Finland are Finnish-source gains and, consequently, taxed in Finland. The same treatment applies to capital gains from the sale of shares in a Finnish residential housing company or in other limited liability companies, if more than 50 % of the current value of the company's assets consists of real property situated in Finland.

Gains from the sale of immovable property may be taxed in the state in which the property is situated also in a tax treaty situation. Many tax treaties of Finland include a special provision allowing Finland to tax capital gains also from the sale of such shares in a Finnish real estate company. In certain tax treaties the entitlement to tax may be limited to shares in a real estate company, which entitle the shareholder to possess the company's immovable property (so called mutual real estate company), even though the shares do not constitute immovable property. Additionally, in certain tax treaties the taxation right may be attached to the sale of the shares in an ordinary real estate company, where the shares do not entitle the shareholder to possess the company's immovable property. If no special provision is included in the applicable treaty, Finland is not allowed to tax the capital gains of a non-resident from the sale of the shares in a Finnish real estate company. The exemption related to the capital gain imposed on the sale of the real estate company (mutual or ordinary) is granted in very few tax treaties, however.

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

Both asset deal and share deal are possible in Finland.

A purchase of assets usually results in an increase in the base cost of the acquired assets (i.e. step-up in the value of the assets). This increase is, generally, taxable gain for the seller. Additionally, historical tax and contractual liabilities generally remain with the seller and are not transferred with the assets. The seller can, however, use the tax losses against any capital gain realized on the sale of the assets. The purchase price of the assets should be allocated to separate asset items. This allocation is the basis for future tax depreciations. The part of the purchase price that is not attached to a certain asset item is considered goodwill. Goodwill is depreciable during its economic life up to maximum 10 years. The transfer tax is payable if the assets include real estates located in Finland or shares in a Finnish limited liability company.

The purchase of the shares in a target company does not result in an increase in the value of that company's underlying assets. No depreciation is available on the value of the shares acquired during the ownership. The acquisition price is deducted only at the time of the sale of the shares. Loss carry forwards see under B.9 and transfer taxes under C.1.

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

Finnish tax legislation does not include any specific thin capitalization provisions or rules relating to limitation of interest deductions. Interest expenses are generally deductible in the borrower's taxation, provided that the interest rate is at arm's length and the loan is taken for business purposes. The arm's length requirement as well as anti-avoidance clauses can become applicable if there is no economical basis for the transaction.

At the time of authoring this report, the Finnish Government has published a draft law proposal including plans to limit the tax deductibility of interest expenses in Finland. According to the draft proposal the limitation would be general in nature and be linked to the EBITDA of the interest-paying company. Net interest expenses exceeding 30 % of the EBITDA would cease to be tax deductible. This possible amendment will affect all companies, partnerships and permanent establishments of foreign companies situated in Finland which have loan instruments. However, the non-deductible part of interest expenses would be limited to the interests paid to related parties. Based on the draft proposal, the limitations would only apply if the interest expenses exceed € 500,000 per fiscal year. The government proposal regarding this issue is expected in autumn 2012, and the legislation will likely enter into force during year 2013.

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

Acquisition costs are added to the acquisition price and depreciated according to the applicable depreciation regulations related to that property.

Financing fees are, generally, deductible cost in taxation.

Currently, the interest of a loan taken for business purposes is widely deductible. The applicable interest rate should be, however, at arm's length. See under 5.

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

Generally speaking, it is safer to introduce debt financing at the time of the acquisition than afterwards, because the Finnish tax authorities have recently tried to challenge post-acquisition debt push downs. There is no specific legislation denying post-acquisition debt push down, however, it should still be possible. But careful tax planning is required and local advice should be sought.

For example, Finnish companies may offset deductible interest against taxable profits through group contributions. However, this option is not available for real estate companies.

In addition, tax neutral reorganizations (such as merger) are available provided that certain requirements set out in the Finnish company and tax legislation are met.

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

No withholding is applied when the interest is paid on a loan not regarded as equity.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

In Finland companies have the right to carry forward tax losses for subsequent 10 years succeeding a loss year provided that the company continues its normal business activities. A right to utilize tax losses will however be forfeited if there is a direct change in the ownership that exceeds 50 % of the shares in the company. Also an indirect change in the ownership will forfeit the tax losses. If a change of ownership that exceeds 50 % of the shares takes place in a company holding more than 20 % of the shares in the Finnish loss carrying company, the right to carry forward the losses is forfeited. Corporate restructuring (e.g. merger) may also forfeit tax losses. No carry back of losses is available in Finland.

Exemption to carry forward tax losses despite ownership changes may be applied by the company. In order to receive dispensation, the company should be able to demonstrate in its application that there are specific reasons for the ownership change and the continuance of company's operations precludes that the company should be entitled to carry forward tax losses regardless of ownership changes. Lately tax authorities have often declined exemptions applied by real estate companies by claiming that specific reasons may not exist in case of a real estate company. Currently, there are several appeals pending at the Supreme Administrative Court.

C. Real Estate Taxes

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

The acquirer is liable to pay transfer tax in Finland on a transfer of real property or securities. The amount of the transfer tax in a share deal is 1.6 % of the purchase price. If a real estate is acquired directly, the transfer tax is 4 % of the purchase price.

Generally, if none of the parties to a share deal is resident in Finland for tax purposes no transfer tax is levied. Shares in a Finnish real estate or housing company are, however, always subject to Finnish transfer tax. Subscription of shares at the time of establishment of a limited liability company or in a share issue is not subject to transfer tax. In a share purchase, the transfer tax must be paid within two months after the completion of the deed of sale. In addition, a special form shall be filed to the tax authorities within two months from the signing.

In a direct ownership of the real estate, a purchaser having received title to a real estate is liable to apply for legal confirmation of title within six months of the completion of the deed of sale. The transfer tax on real estate must be paid at the latest when filing an application for title or if an application for the title has not been applied or under certain circumstances it must not be applied within six months from the completion of the deed of sale.

At the time of the authoring this report, a law proposal is published where the transfer tax related to the purchase of the shares in a housing company or in a real estate company is expected to be increased from the current 1.6 % to 2 %. Additionally, the law proposal includes an expansion to the tax base. If the proposal is accepted by the parliament, the transfer tax is payable not only on the agreed purchase price but on the amount of company's debts attached to the purchased shares. The new regulations should be applicable to the acquisitions made on or after January 1, 2013.

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

A real estate situated in Finland is subject to real estate tax and the tax due is determined by the taxable value of each property (determined on the basis of the Act on the Valuation of Assets for Taxation by local tax authority). The tax rates are set annually by each municipality. The taxable value of real property usually is below the market value, but there is no applicable calculation model originating from the market value. Municipal councils determine annually the applicable tax rates within statutory limits and set at least two rates: a general tax rate and a rate for buildings used primarily as permanent residences. General tax rates in different municipalities currently vary between 0.60 - 1.35 % of the tax value. The rates for permanent residences currently vary between 0.32 - 0.75 %. The rates may be raised of 1 - 3 % for non-built construction sites.

The tax is payable for those who own taxable property or who occupy it in a position that is comparable to that of an owner at the beginning of the calendar year. In case of residential housing companies and other companies which are legal owner of real estates, the company is liable for the tax.

Water areas, forests and agricultural land are exempt from real estate tax.

D. Value Added Tax

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

VAT is not payable on the sale of immovable property. In addition, VAT is not payable on the sale of shares in a real estate company.

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

Generally, leasing of premises is not subject to Finnish VAT. However, a lessor may voluntarily register for VAT for leasing activity provided that the premises are continuously used for an activity which entitles to VAT recovery or the premises are used by the state.

By voluntarily opting for registration the lessor may deduct the VAT incurred on building, renovation and maintenance costs of buildings. If the lessor does not opt to voluntarily register for VAT for leasing the premises, the costs attached to the leased premises are not deductible and there is no VAT paid on the lease income, either.

E. Other Taxes

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

There is no capital tax applicable for equity injections.

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

There is no stamp duty applicable on debt.

Real Estate Investment in

France

A. Legal/General

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

Non residents are entitled to acquire real estate in France without restrictions. The acquisition does not have to be effected by a corporation.

2. Which importance does the land register have?

There is no land register in France (livre foncier) except in regions in the east of France (Alsace and Moselle). In these two regions, rights with respect to real estate are to be recorded in the land register. In the rest of France, property and other rights result only from the contractual situation. Documents stating a transfer of property have to be registered with the mortgage office (Bureau des Hypothèques) in order to become effective in relation to third parties.

B. Income Tax

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

Corporations

- Corporate income tax rate:
  - 33 1/3 %;
  - 15 % for small and medium sized enterprises up to a maximum benefit of € 38.120.
- Additional contribution to the corporate income tax amounting to 3 % of the benefit distributed.
- Withholding tax applies on capital gains realized by non resident companies in the frame of the sale of French real estate amounting to 33 1/3 %. If the corporation is resident of a tax haven, i.e. countries that do not cooperate with the FATF, the tax rate is increased to 50 %.
- Social contribution (contribution sociale additionnelle) of 3.3 % of the corporate tax exceeding € 763,000. Exceptions apply for small and medium sized companies.
- Exceptional contribution (contribution exceptionnelle) of 5 % if turnover is higher than € 250 million.
- Participation exemptions:
  Dividends received by French corporations are – upon option – exempt from taxation if (1) the participation rate is minimum 5 % and (2) the par-

ticipation is held for a minimum of 2 years. However, an amount equivalent to 5 % of the received dividend is deemed to be a non-deductible business expense. So, 95 % of the dividend is effectively tax-exempt.

French corporations paying dividends must deduct withholding tax if dividends are paid to non-resident shareholders at a rate of 21 % for individuals residing in the EEE, 15 % for non-profit organizations, 55 % for residents of countries that do not cooperate with the FATF, or 30 % for all others if not reduced under the applicable double tax treaty. Exemptions apply for instance under the EU parent subsidiary directive.

Capital gains resulting from the sale of shares held by a French corporation are exempt from corporate income tax. 10 % of the capital is treated as non-deductible business expense, so that 90 % of the capital gain is effectively exempt. The application of the exemption depends on the accounting qualification of the shares and applies only if the shares are held since more than two years.

→ Tax group
French companies can opt for a tax group under the following conditions:
› Participating companies are subject to French corporate income tax;
› Controlling company is not held at a minimum of 95 % by a French corporation;
› Participation quotes between the participating companies are directly and indirectly at a minimum of 95 %;

The income and losses of the group members are offset on the level of the controlling company which is the only company liable for corporate income tax. Some intra-group operations are neutralized.

A tax group can also be formed for VAT purposes. The controlling company has to hold directly or indirectly a minimum of 50 % of the share capital of the participating companies. Each company belonging to the group has to file VAT-returns. In addition, the controlling company has to file a recapitulatory VAT-return. Payments or reimbursements are made only on the base of this recapitulatory VAT-return.

Individuals

→ Personal income tax rate:
› Up to € 5,963: 0 %, more than € 5,963: between 5.5 % and 41 %;
› Minimum tax rate for non-residents: 20 %;

→ Special contribution payable on high income (Contribution exceptionnelle sur les hauts revenus):
Up to € 250,000: 0 %, more than € 250,001: 3 % to 4 %;

→ Capital gains from the sale of real estate

Gains made on the disposal of real estate by individuals are taxed with flat-rate definitive withholding tax (prélèvement forfaitaire libératoire) at 19 %. In the case of residents in tax havens, i.e. countries that do not cooperate with the FATF, the tax rate is increased to a fixed rate of 50 %.

This income tax covers gains from private disposal transactions carried out by individuals either directly or indirectly by means of civil property companies (sociétés civiles immobilières, SCI) or property funds.

Real estate in which the transferor resides himself as his main residence (résidence principale) at the time of transfer can be disposed of tax-free as regards taxation on gains. Disposal of a second residence might be tax exempt under certain conditions.

Discounts for the duration of the taxpayer's ownership of the real property that is disposed of, apply in the case of properties held for more than five years:
› 2 % discount per year for ownership from 6 to 17 years,
› 4 % discount per year for ownership from 18 to 24 years,
› 8 % discount per year for ownership for more than 25 years.

Disposal after full 30 years of ownership is 100 % exempt from tax.

→ In addition to personal income tax/withholding tax, special social security contributions of currently 15.5 % apply.

Contribution based on the added value (Côtisation sur la valeur ajoutée) applies to companies and individuals with a professional activity and a turnover higher than € 500,000. It is based on the adjusted turnover; the rate is from 0.5 % to 1.5 %.

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

Depreciation period for real estate depends on the useful life of the real estate. The following depreciation periods are generally accepted:

- Commercial buildings: 20 to 50 years;
- Industrial buildings: 20 years;
- Residential buildings: 50 to 100 years;
- Office buildings: 25 years.

Depreciation is based on the acquisition or production cost of the real estate except for land which is not depreciable. In general, the straight-line method is the allowed depreciation method.

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

Individuals
According to French domestic law, individuals are considered to be subject to unlimited taxation in France if one out of the four following alternative situations is given:

- The person himself or his family disposes of a permanent home (foyer) in France.
- The person has his habitual place of abode in France, that is to say he stayed in France more than 183 days in a given calendar year.
- The person carries out a professional activity in France.
- The person has the centre of his economic interests in France.

Persons which are not in one of the situation above are considered as non-residents and are only liable to French tax for French sourced income, like income from French real estate (current income and capital gains).

Corporations
Corporations are liable to French corporate income tax only on income deriving from a French business or if a French double tax treaty attributes a right to tax on other income.

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

The investment of real estate in France is possible either by asset deal (direct acquisition) or share deal (acquisition of a company holding real estate).

Asset deal
In case of an asset deal the seller realizes a capital gain. The book value of the assets transferred in the buyer's balance sheet corresponds to the relevant purchase price. Depreciable assets are depreciated over their useful lives (see above section b. 2).

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

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

The deductibility of interest expenses are limited in application of two thin-capitalization-rules which may apply cumulatively:

1. Interest paid to direct shareholders is only deductible:
   - If the capital is paid in fully and
   - As far as the interest charged does not exceed the mean interest rate practiced by French banks on variable-rate business loans with a fixed duration of more than two years. This rate is published by the tax authorities on a quarterly basis, for instance the rate for the calendar year 2011 was 3.99 %. The interest which is not deductible may under certain circumstances be treated as a dividend distribution (triggering withholding tax).

The limitation under this point (1) applies only to loans from direct shareholders and the rule has no safe haven.

2. Interest paid to directly or indirectly related companies are only deductible:
   - As far as the interest charged does not exceed the interest rate described under point (1) above and
   - If they don't exceed the highest of the following three amounts by more than € 150.000:
     - Interest income paid to the concerned company by related parties
     - 150 % of the net equity at the beginning or at the end of the fiscal year
     - 25 % of net income before corporate tax, extraordinary items plus depreciation on fixed assets, plus a portion of lease rates, plus interest expenses to related parties.

The non-deductible interest portion is carried forward over the next fiscal years without limitation in time. The interest carried forward may be deducted in the following fiscal years as far as the limits above are not used up by the interest charges of the current year.

There are two safe havens:

- → The already mentioned limit of € 150.000: the interest charge in excess must be lower than € 150.000. If the interest charge in excess is € 150.000 or higher the total interest in excess is not deductible.
- → The total interest charge is deductible if the company can prove that its debt-equity-ratio is not higher than the debt-equity-ratio of the group it belongs to.

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

Acquisition costs must be capitalized and are depreciated over the useful life of the building.

Financing fees are deductible. They can also be spread over the duration of the loan.

Interest is in general deductible (subject to thin capitalization rules described under section B.5 above). If it is related to the acquisition of a participation to which a participation exemption applies, it is only deductible if the tax payer proves that the company is controlled by it or a group company.

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

In case of a share deal (acquisition of a target corporation holding the real estate), a debt push down may be achieved by a merger of the French target into a French corporation acquiring the shares of the target financed by loans or the setting up of a tax group between the two companies (see above section B.1.)

Profits arising from the merger are tax exempt under certain conditions. Loss carry forward at the level of the transferring company may be transferred to the absorbing company upon approval by the tax authorities. Restrictions in case of considerable modifications of activity and/or staff apply.

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

Interest payments to foreign nationals trigger withholding tax amounting to 50 % only if the creditor is resident in a tax haven (countries that do not cooperate with the FATF).

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Corporate income tax
Tax losses may be carried back one year upon option and up to the amount of € 1 million.

Tax loss carry forward is possible for an unlimited period in time but capped at € 1 million plus 60 % of the exceeding amount.

A change of ownership of a corporation does not affect the loss carry forward. Nevertheless, in case of a considerable change of activity and/or staff of the loss-making corporation, the loss carry back and forward will generally be lost.

Income tax
Tax loss carry forward is possible for an unlimited amount but limited in time to six years. Tax losses resulting from income from real estate may only be offset against future income from real estate.

Tax loss carry back is not possible.

C. Real Estate Taxes

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

Transfer of real estate
Transfer of real estate located in France triggers stamp duty based on the acquisition price of the real estate at a tax rate of 5.09 %.

Transfer of shares in corporations holding mainly real estate
Transfer of shares in companies holding mainly real estate triggers stamp duty based on the acquisition price of the shares at a tax rate of 5 %.

Both, the seller and the purchaser are jointly and separately liable for stamp duty but in practice generally the buyer bears the duty (subject to the contractual dispositions).

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

Property tax (taxe foncière) depends on the location of the property. Several factors are used for its calculation, thus at this point it is not possible to illustrate this individually. In addition, in France there is a home tax (taxe d'habitation), which also depends on the location of the home. Homeowners who live in their own house or apartment must pay both property tax and home tax.

Enterprises with professional activities are subject to a real estate contribution (Cotisation foncière des entreprises) based on the rental value of the real estate. The rate depends on the location of the real estate.

D. Value Added Tax

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

The transfer of real estate in the frame of an economic activity of an entrepreneur for VAT purposes (assujetti) is subject to VAT. The transfer of real estate which is not construction land or a building younger than five years is exempt but the seller may opt for VAT. If VAT applies, the purchase price is subject to French VAT at a rate of 19.6 %. The purchaser can claim a refund of the input VAT if he uses the real property for purposes that are subject to VAT.

The transfer of shares in corporations is VAT-exempt.

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

The lease of not furnished real estate is VAT-exempt. In the case of the lease of not furnished real estate for business purposes, it is possible to opt for VAT at the current rate of 19.6 %.

E. Other Taxes

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

Stamp duty applies in the case of a capital contribution to an existing company amounting to € 375 to € 500.

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

N/A

3. Wealth tax

Individuals whose assets exceed € 1.3 million on the respective reference date of January 1 of the relevant tax year are liable to tax. For residents the tax is based on their global assets; for non-residents, only the assets located in France are included. Deviations can result from double tax treaties.

Net assets are used for the basis of the assessment, i.e. liabilities that are linked to the assets can be deducted.

Tax rates are as follows:

- → Assets until € 3 million: 0.25 %
- → Assets exceeding € 3 million: 0.50 %

If wealth tax is applicable, i.e. assets exceed € 1.3 million; the rates of tax listed above apply accordingly from the first Euro.

If both thresholds are exceeded slightly, a tax reduction takes place according to a special calculation formula.

An exceptional contribution is due for 2012 by tax payers with net assets of more than € 1.3 million.

Real Estate Investment in

Germany

A. Legal/General

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

In Germany there is no restriction with regard to the acquisition of real estate. Residents as well as non residents can purchase real estate.

Therefore, the acquisition of German real estate does not have to be effected by using a German acquisition company.

2. Which importance does the land register have?

Rights with respect to real estate are to be recorded in the German land register as such rights only come into existence upon registration.

In general the expenses of acquisition (i.e. notary costs, land register costs, registration of land charge) should amount to about 1 % to 1.5 % of the purchase price.

B. Income Tax

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

→ Corporate income tax rate:
15 % corporate income tax plus 5.5 % Solidarity surcharge
(15 % plus 5.5 % of 15 % = 15,825 %)

→ Trade tax rate:
- The trade tax rate is on average 14 % but varies from municipality to municipality depending in which municipality the resident company is located or where a permanent establishment of the non-resident corporation is located (8 % to 17 %). Since January 1, 2008 trade tax is no longer a tax deductible business expense.
- Trade income is determined by the taxable income for corporate income tax purposes modified by certain add-backs and deductions. The add-backs include 25 % of the sum of the following items (the list is not complete) when computing income for trade tax purposes:

- Interest payments,
- 20 % of rental and leasing payments for movable fixed assets,
- 50 % of rental and leasing payments for immovable fixed assets,
- 25 % of license payments.

The deductions include for example 1.2 % of 140 % of the assessed fiscal value of real property for companies owning real property.

› Real estate companies being subject to trade tax can apply for the extended trade tax exemption for mere real estate companies, if the following applies:
The extended trade tax exemption is applicable for companies exclusively administrating own real estate property. This means that these companies may only conduct pure property administration (real estate letting) activities. These companies may not have additional activities other than income from capital. In particular no fixtures or movable assets must be let, these companies must not act as real estate trader and the real property must not be used by any shareholder for his business. Furthermore the landlord must not render (commercial) services such as cleaning, surveillance or running a public parking garage. The requirements must be met by the taxpayer throughout the entire fiscal year.

If the requirements are met, the taxpayer may deduct the real property income (i.e. rental income) from the trade tax base. Thus, rental income will finally be tax free for trade tax purposes for mere real estate companies.

→ Personal income tax rate:
Marginal tax rate (since 2010):
› Up to € 8,004: 0 %
› From € 8,005: between 14 % and 45 %

→ Participation exemptions
The distributed profits received by German corporations are exempt from taxation. However, an amount equivalent to 5 % of a corporation's dividend income is treated as a non-deductible business expense. Therefore, 95 % of the dividend income received is effectively tax-exempt. Costs incurred are deductible without limit. This regulation applies to dividends that are paid by domestic or foreign corporations.

The German corporation paying the dividend must deduct withholding tax on the dividend paid to German corporations, generally at a rate of 26.375 %, and transfer this tax to the tax authorities. The shareholder can offset the amount withheld against its ultimate corporate tax liability in the annual tax return.

Capital gains from the sale of shares held by a corporation are also exempt from corporate income tax. Similar to the treatment of dividends 5 % of the capital gain is treated as a non-deductible business expense.

Losses on the sale of shares and write-downs to impaired values are likewise not tax deductible. The same applies for loans granted to subsidiaries.

→ Tax group
Under the German tax group system the income or loss of a controlled company (Organgesellschaft) is attributed to a controlling company (Organträger). In order to qualify as a tax group, the controlling and the controlled company must, amongst others:
› Enter into a profit and loss pooling agreement (for a minimum period of five years)
› The controlled company must financially be integrated into the controlling company
› The controlling company can be a corporation with its place of management in Germany or a registered branch of a foreign corporation.

Corporate income tax and trade tax:
The tax group system applies to corporate income tax and trade tax. The corporate income and the trade income of controlled and controlling entities are combined. The corporate income tax and the trade tax are assessed at the level of the controlling entity.

Earnings stripping rules (limitation of interest expenses)
For purposes of the earnings stripping rules the controlling company and controlled companies of a tax group are treated as one single entity.

VAT:
For German VAT purposes a tax group can be formed of several VAT taxpayers. The prerequisites for a VAT group are financial, organizational, and economic integration of the controlled company into the controlling company. In this case the controlling company is considered to be the sole entrepreneur for VAT purposes. Intra-group supplies of goods and services are disregarded for VAT-purposes.

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

Depreciation is based on the acquisition or production cost of the asset. Depreciation rates for the buildings are fixed by statute.

According to current tax law, the depreciation rate (straight-line method) for business real estate generally is 3 % p.a. The depreciation rate for real estate held in private property generally is 2 % p.a. Land is not depreciable. Tax effective write down to the lower market value if market value is below tax book value is possible but the requirements are very strict. The impairment for fixed assets is only possible if at the balance sheet date the fair market value is lower than the future book value after 50 % of the remaining useful economic life and the impairment thus qualifies as durable.

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

An individual having neither a domicile nor habitual place of abode in Germany (hereinafter non-resident) is subject to limited tax liability only. Tax liability is limited to German-source income as listed in Sec. 49 ITA (Sec. 1 (4) ITA).

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

Income derived from the activities listed in Sec. 49 ITA is subject to income tax at the same rates as applicable for resident taxpayers. Trade tax is only levied if the non-resident individual has a permanent establishment in Germany.

Non-resident corporations (i.e. neither the place of management nor legal seat is in Germany) are subject to limited German corporate income tax liability if a business is carried out in Germany through a German permanent establishment or a German partnership. In this case, tax liability is limited to the income attributed to that permanent establishment or partnership. Further, income from German real estate is subject to the limited tax liability if it belongs to the business of the foreign corporation.

Trade tax is only levied if the non-resident corporation has a permanent establishment in Germany. Non-resident corporations are subject to limited German corporate income tax liability for rental income generated by the letting of German real estate according to domestic law. The German tax treaties allocate the right of taxation to the situs country of the property. This income will only be subject to trade tax if the non-resident company has a permanent establishment in Germany. The real property itself in general does not constitute a permanent establishment in Germany. Therefore, rental income will then only be subject to corporate income tax and solidarity surcharge.

Assumed the respective double tax treaty allocates the right of taxation to Germany, a non-resident investor will be limited subject to tax in Germany. In this case, the sale of real estate is subject to regular corporate income tax. Capital gains realized by a non-resident corporation are only subject to German trade tax if the corporation has a permanent establishment in Germany or in case the investor does not qualify for the extended trade tax exemption for mere real estate companies (see above).

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

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

Asset deal
In case an investor purchases a German property, the book values of the assets transferred are stepped up to the acquisition cost of the investor. The seller realizes a capital gain equivalent to the difference between the purchase price and the tax basis of the assets. Depreciable assets are depreciated over their useful lives (based on the official tax depreciation tables). Land is not subject to scheduled depreciation.

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

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

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

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

The previous German thin capitalization rules were replaced by the interest barrier rule, effective January 1, 2008. The new rules apply to all types of debt financing (shareholder or third party debt) and for all kind of entities.

Under the interest barrier rule, net interest expense is deductible only up to a percentage of 30 % of EBITDA for tax purposes. Interest expense is fully deductible to the extent positive interest income is available. The rules do not apply if the net interest expense does not exceed € 3 million.

The definition of interest here is "remuneration for granting a loan". However, it seems worth mentioning that all payments linked to financing should be checked in detail and may result in controversial discussions with the tax authorities (e.g. in a tax field audit).

Unused EBITDA as well as non-deductible interest expenses can be carried forward.

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

If the acquisition is funded by debt, the interest expenses can be offset against the target's future profits.

Dividends distributed by a corporation to another corporation are generally tax exempt. 5 % of the dividend income is deemed to constitute a non-deductible business expense directly related to the tax-exempt income. In return expenses actually incurred related to the income (interest expenses) are fully deductible.

The full offset of interest expenses against positive income is possible in the following ways:

- → To achieve deductibility of business expenses it is possible to establish a tax group (Organschaft) between the target and the acquiring corporation. The target company's positive income may be offset against any negative income at the level of the parent company.
- → Another possibility to offset interest expenses is to push down the debt incurred into the acquired company itself. This can be done by a downstream merger of the acquiring company into the target corporation.

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

As mentioned above, the full offset of interest expenses against positive income is possible by creating a tax group or performing a down-stream merger.

The applicable tax law for mergers is the German Reorganization Tax Act. Generally, mergers are executed at fair value. Upon application, a tax-neutral transfer of book values or any value between fair market value and book value is possible. Germany's right to tax any built-in gains of the assets transferred must be preserved.

Profits arising from the merger of corporations at the level of the absorbing corporation are in principle 95 % tax exempt. Loss carry forwards at the level of the transferring company are not transferred to the absorbing corporation. The absorbing corporation steps into the legal position of the transferring corporation, especially with regard to the book values of the assets transferred, depreciation and unrealized gains.

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

Interest paid to non-resident companies is generally not subject to withholding tax. The 26.375 % including solidarity surcharge final interest withholding tax (Abgeltungssteuer) applies only to interest paid to residents.

Dividends, other profit distributions and income from silent partnerships are subject to withholding tax at a rate of 26.375 % including solidarity surcharge. Payments to non-resident corporations are generally subject to taxation at a rate of 15.825 % including solidarity surcharge. Under German national tax laws German withholding tax on dividends distributed by a corporation currently amounts to a tax rate of 26.375 %.

In general, non-resident corporate shareholders would be entitled to a 2/5 WHT refund on this rate so the effective WHT rate for corporate shareholders should effectively be reduced to 15.825 %. Therefore, an effective WHT rate reduction to 15 % plus 5.5 % solidarity surcharge is applicable for dividends in favour of foreign corporations. The idea behind the 2/5 refund is an equal treatment of national and foreign corporations and a respective harmonization of WHT rates on the one hand and the German Corporate Income tax rate of 15 % plus 5.5 % solidarity surcharge on the other hand.

However, the refund is subject to the German substance requirements as per Sec. 50d ITA. According to this regulation, an investor – in case of its own shareholders being non-EU-companies – would need to fulfil a number of requirements in order to achieve a WHT-free dividend distribution.

Due to the previous potential violation against EU law, the German Sec. 50d (3) ITA has been amended as of January 1, 2012. According to the amended Sec. 50d (3) ITA, a foreign company shall only be entitled to (full or partial) relief from withholding tax under a EU Directive / Double Tax Treaty, to the extent

- → the company is owned by shareholders that would be entitled to a corresponding benefit if they earned the income directly (shareholder test), or
- → the gross receipts generated by the foreign company in the relevant year derive from the company's genuine own business activities (business income test).

If the foreign entity fails both the shareholder test and the business income test, it will only be entitled to the withholding tax relief if both of the following additional tests are passed

- → there are economic or other relevant (i.e. nontax) reasons for the interposition of the foreign company in relation to the relevant income (business purpose test); and
- → the foreign company has adequate business substance to engage in its trade or business and it participates in general commerce (substance test)

The shareholder test, therefore, will determine the personal entitlement for withholding tax relief or reduction. The business income, business purpose and substance tests will determine the factual entitlement to withholding tax relief.

In case the taxpayer does not pass such test, withholding tax under the domestic provisions is due.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Tax losses that cannot be offset in the current year may be carried back one year up to an amount of € 511,500 for corporate income tax purposes. If the losses exceed € 511,500 or cannot be fully offset against the previous year's income, they may generally be carried forward indefinitely. These losses may be offset without restriction against profits only up to an amount of € 1 million. Losses carried forward in excess of this amount may only be offset by 60 % of the exceeding amount (minimum taxation). Trade tax losses can only be carried forward. They cannot be carried back. The minimum taxation also applies for trade tax purposes.

Changes of ownership (directly or indirectly) of a corporation can cause the forfeiture of tax loss carry forwards. If during a period of five years, more than 50 % of the loss entity's shares are transferred, all tax loss carry forwards are lost. If more than 25 % but not more than 50 % of the loss entity's shares are transferred within a period of five years, tax loss carry forwards will be lost in the same ratio as the transferred share capital. The rules also apply where shares are transferred to a group of purchasers with convergent interests.

In case of a harmful change of ownership, one exception applies according to the so-called built-in gain clause. According to this clause, losses can be offset to the extent the loss company has built-in gains whose realization would be subject to German taxes.

C. Real Estate Taxes

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

Transfer or real estate and comparable rights

Acquisition of real estate in Germany generally triggers real estate transfer tax (RETT). The tax base is the purchase price of the real property. The current tax rate is in the range of 3.5 % and 5 %. Both, the seller and the purchaser are jointly and separately liable for RETT unless otherwise specified in the sale and purchase agreement. It is common practice that the purchaser bears 100 % of the RETT.

Transfer of shares in corporations

In general, the acquisition of shares in corporations owning German real estate is only subject to real estate transfer tax in case of a direct or indirect unification of 95 % or more of the shares in the hand of one shareholder or in the hands of a group of affiliated shareholders. The tax rate of 3.5 % to 5 % is applicable on the separately assessed value of the target's total real property portfolio.

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

Real estate tax is levied on German real estate. The tax is assessed at a basic federal rate (generally 0.35 %) and is multiplied by a municipal multiplier (depending on municipality); therefore, the tax rate amounts to about 0.5 % to 3 %. The tax base is the assessed value of property for tax purposes. This value should in average be about 60 % of the market value.

Real Estate Tax is a tax deductible business expense.

D. Value Added Tax

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

The transfer of real estate is generally not subject to VAT. The seller may opt for VAT treatment if both the seller and the buyer are entrepreneurs for VAT purposes. If the option is exercised, the purchase price is subject to German VAT at a rate of 19 % (reverse charge). The purchaser can claim refund of the input VAT if he uses the real property for purposes that are subject to VAT. Any change in the use of the real estate property within a 10-year period requires a pro-rata adjustment of the input VAT claimed upon purchase.

The option for VAT is not possible if the purchase of the real property constitutes a transfer of an ongoing business ("Geschäftsveräußerung im Ganzen") according to Sec. 1 (1a) German VAT Code, since the transfer of an ongoing business is not subject to VAT. In such cases the buyer succeeds into the seller's legal position with regard to the input VAT correction and the relevant 10-year correction periods.

The transfer of shares in corporations is VAT-exempt. An option for VAT is not possible.

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

The lease of residential real estate is VAT-exempt. The lease of real estate for business purposes is, in general, VAT-exempt. However, if both parties are entrepreneurs for VAT purposes, it is possible to opt for VAT at the current rate of 19 %. The option for VAT is only possible if the tenant uses his part of the real estate leased to at least 95 % for services or deliveries subject to VAT. The advantage of opting is the ability to deduct any related input VAT charged.

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Greece

A. Legal/General

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

Generally in Greece, there is no restriction for the acquisition of real estate; both residents as well as non-residents can purchase real estate.

However, a special permission from the Ministry of Defense is required for the acquisition of real estate situated in border areas (even by Greek residents).

- → For Greek and EU residents such permission is granted by a special committee;
- → For non-EU residents, the definition of border areas is expanded and the procedure as well as conditions for obtaining permission is more burdensome.

The acquisition of real estate in Greece does not have to be carried out by a corporation.

2. Which importance does the Greek land register have?

The property rights are registered to the cadastre (so called "Ktimatologio" in Greek), which is not yet implemented for all regions of the country. Therefore, the acquisition of real estate is succeeded with the notary deed (for purchase, gift acceptance, parental or inheritance acceptance) under the austere requirement that this will be recorded either to the Hellenic cadastre "Ktimatologio", wherever applicable, or to the respective land register (so called "Hypothikofylakeio" in Greek, which has "parts" per property per region, to record the property rights), in cases where the cadastre is not yet applicable.

B. Income Tax

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

Legal Entities

- → The corporate income tax rate in Greece is set at 20.0 % for SAs and limited liability companies.
- → Dividends or distributed profits are subject to tax at 25.0 %.

→ Rental income surtax
An additional surtax for rental income is imposed at a rate of 3.0 %. This surtax cannot be higher than the calculated annual income tax amount, i.e. the maximum surtax amounts to 100 % of annual income.

Individuals

→ The current personal income tax rates for 2012 are illustrated at the below table:

Income (€)	tax rates (%)
0 - 5,000.00	0.0 %
5,000.01 - 12,000.00	10.0 %
12,000.01 - 16,000.00	18.0 %
16,000.01 - 26,000.00	25.0 %
26,000.01 - 40,000.00	35.0 %
40,000.01 - 60,000.00	38.0 %
60,000.01 - 100,000.00	40.0 %
More than 100,000.00	45.0 %

A special solidarity tax is also and on top imposed on personal income as per the following table (applicable annually for income generated until December 31, 2014 – fiscal year 2015):

Income (€)	tax rates (%)
0.00 - 12,000.00	0.0 %
12,000.01 - 20,000.00	1.0 %
20,000.01 - 50,000.00	2.0 %
50,000.01 - 100,000.00	3.0 %
More than 100,000.00	4.0 %

→ Rental income surtax
Rental income earned in Greece is taxed at the above normal progressive rates (added to the possible income from other sources).

An additional surtax is also imposed on rental income as per below:
› For houses up to 300 m^2 at a rate of 1.5 % ;
› For houses larger than 300 m^2 the tax rate is 3.0 %;
› For properties used for commercial or business purposes the tax rate is 3.0 %.

Income-generating expenses are deductible from the gross income.

Exceptions: Non-residents

In general, the fundamental difference in the Greek tax regime between Greek and non-Greek residents is summarized at the following table:

	Greek tax residents	**Non-Greek tax residents**
Income subject to taxation	Worldwide Income	Income arising in Greece
Entitles to avail of deductions and credits	YES	NO*
Tax-free income up to 5.000,00 €	YES	Liable to pay a surtax of 10.0 %

* Residents of EU member states are allowed to avail of deductions and credits and they are not liable to 10.0 % surtax, when the 90 % of their worldwide income is derived from Greek sources.

Other taxes / levies

Stamp duty
Rental income (from buildings except those used for residential purposes) is subject to stamp duty at a rate of 3.6 % of the actual rental value of the property. This tax is payable upon filing the annual income tax return of the fiscal year and is applicable for the individuals as well as the legal entities.

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

Depreciations are only recognized for the legal entities, based on the analytical fixed assets register kept. They are based on the acquisition value including any improvements and re-evaluations, however the chosen rate must be applied consistently.

Depreciation is compulsory and shall be performed annually. The method of depreciation is in principle a straight-line method. The legal entities have the possibility to choose an intermediate rate between the minimum and the maximum rate of each category. The depreciation period depends on the building category until it has been depreciated to 100.0 %, a remaining value of € 0.01 is proof of the building existence.

Depreciation is not applicable on land, fields, etc.

For the first 3 years of new legal entities, there is the possibility to apply a reduced depreciation rate at 50.0 % of the normal rates.

For buildings, the following table applies for minimum and maximum depreciation rates:

Description	MIN %	MAX %
Boarding schools, schools, cinemas, theatres, hospitals, sanitarium, offices and shops	5.0	8.0
Hotels	3.0	6.0
Bungalows or camping which are constructed from wood, as the relevant installations, which are constructed from wood	8.0	12.0
Bungalows or camping which are constructed from concrete, as the relevant installations, which are constructed from concrete	5.0	8.0
Buildings or departments of these, which are used for other uses	3.0	5.0
Off-hand manufactures (wooden, plastic etc) that are used for any use	8.0	12.0
Buildings that are used for industries, as understood from the provisions of case a of paragraph 2 article 21 Sim. E.O. E7: Cf. Kwd. N. 2238/1994 article 21 paragraph of 2 Code of imposition of income, the annexes, as well as the deposits that are adjacent with them and are used for the storage of feedstock or the first deposit of the industrial products	5.0	8.0
Buildings that are used for the elaboration and maintenance of tobacco in leaves	5.0	8.0
Buildings of airports that are used as terminals of passengers	2.0	4.0
For road networks inside space of factories or space where is found settlement of personnel	3.0	5.0

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

Individuals who fall under the following conditions are deemed to be Greek tax residents and therefore obliged to declare and be taxed on their worldwide income in Greece:

- Individuals whose domicile or place of habitual abode is established in Greece. Habitual abode is deemed to be in Greece when the taxpayer spends more than 183 days per calendar year therein, unless he proves otherwise.

Individuals who cumulatively:

- Transfer their domicile or habitual abode into a “preferential” tax jurisdiction,
- Were filing Greek tax resident returns during the five years preceding said transfer, and
- Have “substantial economic interest” in Greece are deemed to be Greek tax residents for a five-year period from the date they changed their tax residence status.

“Substantial economic interest” is considered to exist when the following are met:

- Participation by 25.0 % in a Greek partnership or by 5.0 % in a Greek SA or Ltd etc.
- Income arising in Greece that exceeds 30.0 % of the individual’s worldwide income or alternatively € 45,000.00.
- Ownership of Greek assets from which income that exceeds 30.0 % of the individual’s worldwide income, or alternatively € 150,000.00, arises.

Individuals whose domicile or habitual abode is not established in Greece but who gain Greek sourced income are subject to tax in Greece on income arising therein.

Individuals who file non-tax resident returns in Greece will be obliged to provide the required supporting documentation to the Ministry of Finance validating such a claim. If such documentation is not filed in a timely manner, then the individual will automatically be deemed a Greek tax resident, subject to tax in Greece on his worldwide income.

In order for a Greek tax resident to obtain a tax credit for income earned in a foreign country, this country will have to be double tax treaty affiliated with Greece and the tax withheld therein will have to be in line with the double tax treaty provisions. The deductible amount of tax may not exceed the one that would be normally due, if this income was subject to tax in Greece.

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

Asset deal

When the asset deal relates to real estate there is a real estate transfer tax.

Generally, any profit or loss realized by the seller from the sale of the assets will be recorded as such in the P&L account and subject to income tax accordingly. Notwithstanding the above, if among the assets being sold there are rights related to the carrying out of the seller's business (i.e. intellectual property, clientele, goodwill from the lease of premises etc), such sale will be subject to capital gains tax at a rate of 20.0 %. In the event the sale is made by a Greek société anonyme ("AE") or a limited liability company ("EPE"), the 20.0 % tax constitutes an advance tax and it does not extinguish the AE's or the EPE's income tax liability since this income will also be subject to taxation according to the general provisions of the Greek Income Tax Code. The capital gains tax liability is borne by the seller. The buyer is jointly and severally liable for this tax in the event the seller fails to pay it.

Share deal

In the case of transfer of shares or parts, depending on the legal entity form, the following applies:

- Limited liability company
  A tax of 20.0 % on the surplus values of transferred parts is imposed. The surplus value on which the tax is imposed is comprised of the following:
  I. Intangible value
  Five-year average of the gross income
  Minus:
  Interest of equity
  Finally, the result is readjusted by multiplication with an annuity published every year by the Ministry of Finance (e.g. for 2012 an annuity of around 4.3475 has been determined).
  Adding: Increment depending on the year's operating
  II.Equity
  As comprised at the time of transfer
  III. Difference of property value
  The difference is calculated by subtracting the book value from the "objective" value of the property.
  The sum of I. +II. +III. divided by the number of parts results to the new value of each part, which multiplied with the number of transferred parts shows the value of the surplus on which the tax of 20.0 % is imposed. If the parts are transferred to a person with an A' relationship of kin towards the seller then the surplus is taxed at a rate of 5.0 %.
  According to Greek law, the A' degree relationship of kin exists with a spouse, a child, a grand-child and a parent.

- Société Anonyme
  A Tax of 5.0 % is imposed on the value of the transferred shares. The share value on which the tax is imposed is comprised of the following:
  I. Equity
  As in the books at the time of transfer
  II. Return on Equity
  Gross profit divided by equity of the last five years.
  III. Difference of property value
  The difference is calculated by subtracting the book value from the "objective" value of the property.
  The sum of I. +II. +III. divided by the number of shares results to the real share value, which multiplied with the number of transferred shares shows the value on which the tax of 5.0 % is imposed.

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

According to Greek legislation, the following rules apply to:

- Accrued interest of loans paid or credited
- Between affiliated companies
- Is recognized as tax deductible when the debt to equity ratio of the company is no higher than the average ratio 3:1 for each accounting year
- The excess amount to the above is not recognized as tax deductible from revenues

Interest remitted to non-resident entities is subject to withholding tax at the rate of 40.0 % or to the rate applicable in the tax treaty for the avoidance of double taxation (wherever applicable).

As from July 1, 2009 until June 30, 2013, the withholding tax on interest paid by a Greek company to an EU affiliate entity or an EU (PE) permanent establishment is 5.0 % subject to any lower rate provided in an applicable tax treaty. From July 1, 2013 there will be full exception under requirements (EU directive 2003/49/EC). With such tax being withheld, there is no further tax liability for the foreign entities.

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

In principle, all business expenses are deductible to the extent they fulfill the criteria set by law. Notwithstanding the above, the Ministry of Finance issues every year a ministerial decision providing for a list of expenses that are deductible or non-deductible for corporate income tax purposes.

In Greece, under certain prerequisites, the acquisition cost and the interest on loans granted for the property acquisition as well as several expenses that follow its acquisition and financing (notary public, legal costs, etc.) could be tax deductible. These prerequisites relate to the person acquiring the real estate. Hence, the following applies:

- → Legal Entities:
  The acquisition costs may be deducted from the income (with the annual depreciation method or the loan amortization method). The financing interest and the acquisition expenses (notary public, legal costs, land registry, etc) may be deducted as well.
- → Individuals:
  The acquisition costs are not deducted from the individual's income but are declared as an element that proves economic ability. The financing interest may be deducted from his income (wholly or partially) only if the property is the first home for the individual and is used for his own housing. From the rest of the acquisition expenses, notary public and legal expenses can be deducted from income under the form of "expenses" for purchase of goods or services provision .

Expenses, including interest, are not deductible from income when they are payable by a Greek entity to an individual or legal entity being residents or having their registered seat or being established in a "non-cooperative" country or in a country with preferential tax regime, unless the Greek entity can prove that the expenses concern real company's expenditures.

According to Greek legislation, countries are divided as below:

- → "Cooperative" countries:
  - › Countries that have signed a double tax treaty with Greece;
  - › Countries that have signed an Administrative Mutual Assistance Agreement with Greece and 12 other countries
- → "Non-cooperative" countries:
  Countries that have not concluded an Administrative Mutual Assistance Agreement with Greece.
- → Countries with preferential tax regime:
  Countries in which the tax rate is equal to or less than 60 % of the Greek income tax rate (i.e. equal to or less than 12 %) are determined to be preferential tax regimes.

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

In Greece, there is no group taxation for tax purposes. Each company is regarded and taxed as a separate entity.

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

Interest remitted to non-resident entities is subject to withholding tax at the rate of 40.0 % or to the rate applicable in the tax treaty for the avoidance of double taxation, which Greece may have signed with another country.

As from July 1, 2009 until June 30, 2013, the withholding tax on interest paid by a Greek company to an EU affiliate entity or an EU (PE) permanent establishment is 5.0 % subject to any lower rate provided in an applicable tax treaty. From July 1, 2013 there will be full exception under requirements (EU directive 2003/49/EC). With such tax being withheld, there is no further tax liability for the foreign entities.

9. Is a Loss carry forward or Carry Back granted and what are the restrictions?

In Greece, tax losses which could not be offset within the fiscal year against profits from other sources (either because there are no profits or because losses exceed profits), may be carried forward to be offset against later profits for 5 consecutive years.

There is no possibility to carry back losses in Greece.

C. Real Estate Taxes

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

Real estate transfer tax

A real estate transfer tax is payable in Greece on the sale of real estate which is not subject to VAT. At the sale of a property, a real estate transfer tax is applicable depending on the property "objective value" analyzed as per below table:

Property "objective value" (€)	Transfer tax rate
0 - 20,000.00	8.0 %
More than 20,000.00	10.0 %

"Objective value" is the deemed value determined according to a formula set by the tax authorities. The "objective value" takes into consideration the different price zones of property in different areas/regions in Greece, the age of the property, etc. The "objective value" does not coincide with the book or market value.

However, it must be stressed that if the transfer value is higher than the "objective value" or the "market value" then this higher transfer value is to be taken into consideration for the calculation of the transfer tax. The buyer has to pay the real estate transfer tax which is payable before the notary deed can be actioned.

On the real estate transfer tax, a municipality tax of 3.0 % has to be paid.
The purchase of the "first-home residence", residential purposes in Greece, is exempted from the real estate transfer tax. The above exemption applies to purchases of a residence up to a value of € 200,000.00 by an unmarried person and up to a value of € 250,000.00 for a married person. The amount increases by € 25,000.00 for each of the first two children and by € 30,000.00 for each subsequent child. The above exemption is granted to Greek, EU-citizens, and citizens of Albania, Turkey and from the former USSR with Greek origin.

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

Individuals

Individuals are liable annually for property tax that is imposed on property with a value of at least 200.000,00 €. The tax is calculated on the "objective value" of the property with the following rates:

Property "objective" value (€)	Transfer tax rate
0.00 - 200,000.00	0 %
200,000.01- 500,000.00	0.2 %
500,000.01 - 600,000.00	0.3 %
600,000.01 - 700.000.00	0.6 %
700,000.01 - 800,000.00	0.9 %
More than 800,000.00	1.0 %

The Transfer tax rate for property with an "objective value" of more than 5,000,000.00 € is at 2.0 %.

Legal Entities

The real estate tax for legal entities is set at 6.0 ‰.
For owner-occupied property the tax rate is set at 1.0 ‰.

- Special tax on real estate ("Eidikos Foros Epi Akiniton")
  On real estate belonging to "off-shore" entities, from January 1, 2010 a tax of 15.0 % on the taxable value is imposed annually. There are exemptions where certain requirements should be met, e.g. the shareholders – the ultimate beneficiary owners – need to have a Greek tax identification number (AFM). There is no tax imposed on capital gains from Real Estate for individuals.
- Special Property Duty ("EETIDE")
  For 2011 and 2012, the government has imposed a "special property duty" to meet the Greek government deficit goals under the bailout-austerity measures. This duty varies from € 3 - 5 per sq.m. depending on the zone price and the property age. Until now, no announcement has been released for the extension of such measure after 2012.
- Municipality Real Estate Duty ("Telos Akinitis Periousias")
  The municipality authorities have imposed a real estate duty of 0.25 ‰ - 0.35 ‰ depending on the zone price and the property age.
- Tax on property revaluation
  Legal entities shall make a revaluation of the property value every 4 years. A tax at the below rates is imposed on the difference between the new value and the book value:
  - For land: 5.0 %
  - For buildings: 8.0 %

D. Value Added Tax

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

VAT is applicable on real estate sales only when:

- Seller is subject to VAT
- Transfer will be made against a price and in money.
- Property is a building
- This will be the first time that the property is used, with building permission after June 1, 2006.
- Property shall not be the first home for the buyer.

Transfers of below listed real estate are not subject to VAT:

- Land – fields
- Old property
- New property, where the seller is not subject to VAT

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

Renting or leasing of real estate is not subject to VAT.

Exemption from the above can be made when it is a rent/lease of sites exclusively or in terms of joint agreements, that is made by entities that operate shopping centers or freight centers, if the entity wishes to do so and submits an application for the chosen taxation.

E. Other Taxes

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

When there is a capital increase, the capital concentration tax is imposed on the increase amount and is set at 1 % and for SA entities an additional 1 ‰ competition committee duty.

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

Stamp Duty on loans/debts is set at 2.4 %.

Real Estate Investment in

Hong Kong

A. Legal/General

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

Non-residents are entitled to acquire real estate in Hong Kong. No restrictions apply. However, due to the fact that land is rare in Hong Kong the purchase of land in certain areas or by private treaty has to be applied at the Executive Council.

2. Which importance does the land register have?

The Hong Kong land registry has the following functions:

- → Registration of documents affecting land under the Land Registration Ordinance.
- → Provision of facilities for search and supply of copies of the land registers and related records.
- → Registration of owner's corporations under the Building Management Ordinance.

B. Income Tax

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

Hong Kong's taxation is based on a territorial system. Therefore, only income arising or derived from Hong Kong is subject to tax. Profits from trade or business are subject to profits tax (at a rate of generally 16.5 % or 15 % for unincorporated businesses).

Although Hong Kong does not tax capital gains, net gains on certain transactions deemed speculative might be liable for profit tax as trading income.

Income from employment or office is subject to salaries tax. The tax tariff is progressive. Optionally, a flat 15 % rate can be applied.

The progressive salaries tax rates are:

Up to HKD 40,000	2 %
Over 40,000 up to 80,000	7 %
Over 80,000 up to 120,000	12 %
Over 120,000	17 %

Owners of property (i.e. land, buildings) are assessed to property tax where the property is located in Hong Kong. The net assessable value of the property is subject to a standard tax rate of 15 %. If a company owns property and pays profits tax for income generated by the property it will usually be exempted from property tax.

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

There are two real estate asset classes which qualify for different types of depreciation allowances:

- Industrial buildings
- Commercial buildings

Industrial buildings

For the construction of industrial buildings, taxpayers are entitled to an initial allowance and an annual depreciation allowance of the capital expenditure:

- The initial allowance is 20 % for the year of assessment in which the expenditure was incurred. If the payment is split in more than one tax year the initial allowance will be granted for each payment separately.
- Additionally, an annual depreciation allowance of 4 % of the initial capital expenditure is allowed for each year, starting from the year in which the expenditure was incurred until the residue of expenditure is nil.

In the case of purchase of industrial buildings from a person who has previously used the building, the future allowances are based on residual value of expenditure. This is the historical cost of construction less allowances granted prior to acquisition plus balancing charges made.

Commercial buildings

For commercial buildings there is no initial allowance available.

A depreciation allowance of 4 % of the initial capital expenditure is allowed.

A taxpayer who applies the refurbishment deduction is not eligible for the above-mentioned capital allowances for industrial and commercial buildings. Capital expenditure on the renovation or refurbishment of business premises is deductible over a 5-year period in equal instalments (i.e. 20 % per year), commencing in the year in which the expenditure is made.

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

Under Hong Kong's territorial tax system it is not a question of limited or unlimited liability to tax, but rather a question of where income has been generated.

Every "person" carrying on a trade, business or profession in Hong Kong is chargeable to profits tax. "Person" thereby includes both corporations and partnerships. Residence status is therefore – generally – irrelevant for Hong Kong tax purposes.

Due to Hong Kong's territorial tax system, the critical question is whether or not business is being carried on in Hong Kong which is a question of fact to be determined based on the circumstances of each individual case. A company does not need to have extensive activities in Hong Kong before it is considered to be carrying on a business here. Furthermore, the activities of a company's agent in Hong Kong may also be relevant.

The broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he has done it. In other words, the proper approach is to identify the operations which produced the relevant profits and ascertain where those operations took place. The source of profits must be attributed to the operations of the taxpayer which produce them and not to the operations of other members of the taxpayer's group. The place where the day-to-day investment/business decisions take place is only one factor which has to be taken into account in determining the source of profits. It is not usually the crucial factor (as may be in some other jurisdictions).

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

Both a share deal and asset deal are possible in Hong Kong. Hong Kong does not have any specific regulations for mergers and acquisitions or restructuring activities.

Asset deal

For the vendor, there is no indirect tax (e.g. VAT) on the sale of assets. Stamp duty on immovable property of up to 3.75 % applies.

A step up of depreciable value of the acquired assets may be possible and would be preferred by the purchaser.

Share deal
There is generally no capital gains taxation for the vendor selling shares. The stamp duty applicable is 0.2 % and is to be borne half by each the vendor and purchaser.

A purchaser may prefer a share deal if losses can be carried forward. Also, if there is real estate in the target company, lower stamp duty applies under a share deal.

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

No thin capitalization rules are applicable in Hong Kong.

Interest deduction is only allowed under certain conditions and depends on the purpose of incurring the interest expense. Financing cost for the acquisition of shares is a non-deductible expense. Interest expenses for the acquisition of assets are generally deductible if the funding has been received from a financial institution. Deductibility is not allowed for interest paid to a non-financial institution, unless the interest income is taxable under Hong Kong profits tax, which generally would not be the case.

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

See above

Whether or not expenses are tax deductible depends on the following circumstances: generally, expenses are deductible only if they can be characterized as revenue in nature. This means, they have to be incurred for the purpose of generating taxable income in Hong Kong.

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

There is no possibility to be taxed on the basis of consolidated income or as a fiscal unity in Hong Kong.

As there are strict limitations on the deductibility of interest expenses, debt push down is not commonly practiced.

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

Hong Kong does not withhold any taxes on interest.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Business losses can be carried forward. No restrictions apply. They can be offset against future profits.

Losses may not be carried back.

C. Real Estate Taxes

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

There is no real estate transfer tax. Hong Kong levies stamp duty and special stamp duty.

Stamp Duty is levied on documents relating to the transaction of immovable property at fixed and ad valorem rates. The maximum rate is 4.25 % and applies to values of consideration from HKD 21,739,121.

Agreements for the sale and purchase of residential property are subject to a fixed stamp duty of HKD 100. The transfer of immovable property or shares between associated bodies can be tax exempt under the following conditions:

- → One of the associated bodies needs to be an owner of at least 90 % of the issued capital of the other
- → The transaction was not made in pursuance of or in connection with an arrangement under which:
  - › Both associated bodies are other than a body corporate,
  - › Transfer was previously made by such a person, or
  - › Transferor or the transferee cease to be associated within the meaning of No.1 only due to a change in the percentage of the issued share capital of the transferee in the beneficial ownership of the transferor or a third body corporation.

Stock transactions are subject to ad valorem duty of 0.1 % of the consideration on both the buyer and seller (i.e. total is 0.2 %). The collector of stamp revenue is empowered to impose duties based on the market value of the property conveyed or shares transferred if the consideration is inadequate.

The special stamp duty applies under the following circumstances:

- Transaction involves the sale and purchase or transfer of a residential property;
- Property is acquired by the vendor or transferor on or after November 20, 2010; and
- Property is disposed of by the vendor or transferor within 24 months from the date of acquisition.

The rates of the special stamp duty is valued from 5 - 15 % of to the stated consideration or the market value of the residential property, depending which amount is higher.

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

Real estate is subject to property tax. The owners of land or buildings are taxed at a rate of 15 % on the net assessable value of the real estate. Net assessable value is the remuneration received by the owner for granting the right of use of the real estate. If the owner is a company, then this company is subject to profits tax and can be exempt from property tax.

D. Value Added Tax

Hong Kong does not impose VAT or any other indirect tax.

E. Other Taxes

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

Until May 31, 2012 a capital duty applied on increase of equity. The capital duty has been abolished with effect from June 1, 2012.

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

No

Real Estate Investment in

Hungary

A. Legal/General

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

Currently non-resident private individuals and legal persons of the EU or EEA may generally acquire real estate in Hungary under the same conditions as Hungarian residents. Individuals and corporations being resident outside the EU/EEA may acquire real estate in contrast to agricultural land in Hungary if they meet certain conditions and request permission from the respective authority.

The acquisition of agricultural land by non residents is not possible until April 30, 2014 (the former 7-year transitional period was extended by 3 years). Based on the current standing, after the expiration of this transitional period, from May 1, 2014 agricultural land may be acquired by non-resident investors.

It is generally not stipulated that non residents can acquire real estate in Hungary only by way of a Hungarian registered company.

2. Which importance does the land register have?

The ownership right according to civil law of real estate may only be acquired with the incorporation of the property right in the land registry. The required documents have to be submitted to the land registry within 30 days after the conclusion of the contract.

For the incorporation of real estate an administrative fee amounting to HUF 6,600 has to be paid. Registration fee for a mortgage is HUF 12,600.

B. Income Tax

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

- → Corporate income tax rate:
  - › 10 % – up to a tax base of HUF 500 million (approximately € 1,660,000), which is applicable without any conditions;
  - › 19 % is payable for the rest of the tax base – this rate is applicable in the case of certain foreign companies having taxable profit from the sale of their quotas in a Hungarian company having domestic real estate;

"Expected" minimum tax base: 2 % of the total revenue (reduced by certain items, e.g. cost of goods sold and value of intermediated services). It can be applicable for companies having revenues but low level of pre-tax profit or corporate income tax base. Minimum tax payment if applicable can be avoided by submitting a declaration verifying that cost and expenditures recorded at the company are real cost and expenditures.

→ Personal income tax rate:
generally 16 % but tax base is different as follows:
› Normal tax base – up to personal income tax base of HUF 2,424,000
› 27 % tax base supplement has to be calculated for the part of the taxable income exceeding HUF 2,424,000 (on a yearly basis).

→ Personal income tax rate for income from sale of real estate: 16 % without any tax base supplementation (this income is not part of the consolidated tax base). Profit from the sale of residential properties is exempt from personal income tax after 5 years from the date of acquisition (this is 15 years in the case of real estate other than residential properties).

→ Participation exemptions:
› Hungarian Act on Corporate Income Tax provides for an exemption of dividends received from domestic or foreign shareholdings provided that the distributing company is not a controlled foreign company (CFC). This applies regardless of the amount and holding period of the participation.
› Generally, capital gains are taxable in Hungary under the general rules. Capital gains/foreign exchange gains realized as a result of certain investments are exempt from corporate income tax. If the taxpayer holds at least 30 % of the shares of a domestic or foreign company continuously for at least one year, and the acquisition of shares was reported to the tax authority (from 2012 within 60 days) following the acquisition, the corporate income tax base can be reduced by the capital gain/foreign exchange gain deriving from the sale or in-kind contribution of the registered stockholding in the year of disposal/contribution of the shares.

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

The tax depreciation rate for buildings varies from 2 % to 6 % p.a., whereby the acquisition cost serve as the basis. The depreciation rate for long-life structured building amounts to 2 % p.a. The Hungarian law provides for a shorter depreciation period for mid-life (3 %) and short-life structured building (6 %).

For tax purposes, a residual value should not be taken into account and therefore an entire depreciation has to be conducted. Land cannot be depreciated as per Hungarian law.

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

From 2010, if realising capital gains upon the sale of their shares in companies holding real estate (except for reported shareholding), foreign entities, under some circumstances, may be subject to Hungarian corporate income tax. Tax liability arises if the market value of the Hungarian property shown on the balance sheet date represents more than 75 % of the assets' aggregated value shown in the taxpayer's annual account). The corporate income tax rate is 19 %. This rule is not applicable if there is a favourable tax treaty between the country of residence of the foreign company and Hungary not allowing taxation of such gains in Hungary.

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

The real estate investor can acquire Hungarian real estate in the course of an asset deal (i.e. the direct acquisition of real estate) or share deal (i.e. the acquisition of shares in an entity owning real estate).

Asset deal
By performing an asset deal, the investor directly acquires the real estate from a Hungarian company. The capital gain realised upon the sale of this real estate would be subject to corporate income tax at the level of the Hungarian company formerly holding the real estate.

Share deal
In a share deal, instead of a direct acquisition of a real estate, a share in a company holding the real estate is obtained.

Up to a tax base of HUF 500 million (approximately € 1,660,000), the corporate income tax rate is 10 % which is applicable without limitation while 19 % are payable for the rest of the tax base.

On the part of the seller company, corporate income tax implications of an asset deal and a share deal may be different in certain cases (i.e. in the case of the sale of a reported shareholding, any gain realized on the sale of quotas may be exempt from corporate income tax). Transfer tax implications of an asset deal and share deal are described in point C.1.

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

Thin capitalization rule

The thin capitalization rule is even more stringent than the limitations contained in the OECD model. If a Hungarian company or branch takes out a loan that exceeds its equity by a factor of more than three during any given business year, the interest charged on the excess is non tax-deductible. A further limitation is that these provisions are applicable for all loans (except for those from financial institutions), including non-public bonds and certain notes. The provisions are also extended to interest paid by companies in a cash pool structure.

From January 1, 2012, pursuant to the modification of thin capitalization regulations, in the course of applying the rules on transfer pricing the liabilities that are to be taken into account when identifying thin capitalization include not only liabilities for which the taxpayer must pay interest to the charge of its profit, but also interest-free liabilities, if the taxable entity reduces its tax base with the amount of arm's length interest in accordance with the transfer pricing rules ('deemed interest adjustment'). When calculating thin capitalisation, the daily average volume of liabilities is reduced by the total daily average volume of financial receivables reported among invested financial assets, receivables or securities.

Transfer pricing rule

Transfer pricing documentation has to be prepared for contracts between related parties to support the market price. Accordingly, interest payable on loans between related parties has to be at arm's length.

Generally, in some cases, there is no need to prepare transfer pricing documentation at all from 2012 while certain transactions qualifying as low value intercompany services can be documented by way of simplified content documentation.

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

As a general principle, costs and other expenditures are deductible for corporate income tax purposes as far as they are incurred for business purposes. Interest on loans and other debts are generally deductible for tax purposes, but the 3:1 debt-to-equity ratio has to be taken into account. Other costs relating to acquisition including transaction costs and interest expenses of debt financed acquisitions are deductible provided that the business purpose test is fulfilled regarding the acquisition.

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

The Hungarian income tax legislation does not provide for the possibility of taxation of two entities as a single fiscal unity. Each company is regarded as a separate entity for corporate income tax purposes. In Hungary, group taxation only exists for VAT purposes under certain circumstances.

If the real estate is held by a Hungarian corporation (target) and the purchaser acquires the target company, Hungarian law allows the merger of the Hungarian target company holding the real estate with the purchaser company. Costs and expenditures in connection with the acquisition of the shares of the target are tax deductible, provided that the business purpose test is met.

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

Hungary does not levy withholding tax on cross-border payments provided that the recipient is a corporation (regardless of whether the recipient is resident in the EU, OECD or treaty country or not). This applies to dividend distribution, royalty and interest payments to corporations abroad. Private individual recipients may be subject to personal income tax – even in such cases where the respective treaty may reduce or eliminate withholding taxation if certain administrative requirements are met (e.g. availability of a tax residence certificate, beneficial ownership declaration prior the payment and a residence certificate by the end of the year at the latest).

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Tax losses may be carried forward for an unlimited period of time to relieve the company's profits provided that losses are established in accordance with the good faith business principle. However, when offsetting the current tax year's positive taxable income by losses brought forward, the earliest losses must be used first (according to the first-in, first-out principle).

Moreover, according to a new modification to the Act on Corporate Income Tax effective from 2012, taxpayers are able to use the accrued losses of previous years only up to 50 % of the current year tax base not including accrued losses. This provision only affects the schedule of the utilisation of accrued losses brought forward from earlier tax years and does not have impact on the amount of losses in total.

As another change from 2012, utilization of tax losses in the case of legal succession or transformation as well as changes in the company's ownership structure is limited.

Generally tax loss carry back is not allowed in Hungary. However, special taxpayers engaged in the agricultural sector are allowed to benefit from loss carry back. For these taxpayers, losses can be used to offset profits of the preceding 2 years under certain conditions.

C. Real Estate Taxes

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

The acquisition of a participation in a company holding properties in Hungary may be subject to transfer tax (and a reporting obligation) if the total participation in the target company (having a registered main activity listed in the law) reaches or exceeds 75 % of all participations in that company. Any participations in the target company that are held by the acquirer's relatives (parents, children, spouse, registered common-law spouse) or by the acquirer's business interests have to be added together for the purpose of calculating this percentage value.

Acquisition of such participations as well as real estate properties between parties qualifying as 'related parties' under the interpretation of the Hungarian Act on Corporate Income Tax is free from transfer tax/stamp duty. In the case of a transfer of real estate, the related party recipient's main business activity should be lease, operation of own, rented properties or transfer of own properties to qualify for exemption from transfer tax.

Exemption also applies if the acquisition takes place by way of a preferred transformation as per the Act on Corporate Income Tax.

The general rate of transfer duty payable on property transfers is 4 %. If the market price of the property (before allowing for any encumbrances) exceeds HUF 1 billion, the rate of duty will be 2 % on the portion in excess of this, although the total amount of transfer duty payable per property cannot exceed HUF 200 million. In the case of companies engaged in the sale of properties in a business manner, the rate of duty is 2 % provided that the company complies with the related legal conditions.

In the case of an acquisition of a residential property, the rate of transfer duty is 2 % up to HUF 4 million, and 4 % for the excess part of the market value. Accordingly, the base for calculating the amount of the duty is the market value of the residential property.

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

The municipalities may levy taxes on property (plots and buildings) located in their territory. Undeveloped land plots within the territory of the municipality (with some exceptions) are subject to the tax on land plots. The tax base can be determined either by the size or the adjusted market value of the land, depending on the decision of the municipality. The tax rate may be fixed by the municipality, but may not exceed HUF 200 per m^2 or 3 % of the adjusted market value of the land.

Buildings situated within the territory of the municipality are generally subject to a tax on buildings, but there are some exemptions applicable. The tax base can be determined either by the size or the adjusted market value of the building, while the tax rate may not exceed HUF 1,100 per m^2 or 3.6 % of the adjusted market value of the building.

D. Value Added Tax

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

Generally, the sale of real estate occupied more than two years ago and of undeveloped land (except for construction lands) is tax exempt (while the alienation of real estate occupied for less than two years and construction land is always subject to VAT at a rate of 27 % with no exception). Notwithstanding the general tax exemption rule, the taxpayer may opt for taxation upon submitting a reporting form to the tax authority – such decision cannot be changed for the next five consecutive years.

With respect to certain (generally tax exempt) real estate sale transactions, taxpayers may opt to be taxable. Based on Hungarian VAT law, such taxable transactions under certain circumstances are subject to tax under the reverse charge mechanism. In this regard the VAT is payable (and deductible if general conditions of VAT deduction are met) by the customer.

Under certain circumstances listed by VAT law, the sale of construction lands or real estate qualifying as new based on the VAT law by private individuals originally not qualifying as taxpayers for VAT purposes may also be subject to VAT.

The sale of a quota is exempt from VAT regardless of the fact that the main asset of the entity acquired may be a real estate. Additionally, providing a contribution in-kind to a company is not subject to VAT if the companies involved in the transaction fulfill legal regulations on their taxation status.

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

See D.1.

In brief, rental or lease of real estate is also tax exempt in general (with certain exceptions like rental of a parking place). However, if the party renting out the real estate has opted for taxation, 27 % VAT should be charged (reverse-charge mechanism does not apply in the case of rental).

E. Other Taxes

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

No capital tax obligation arises in Hungary; initial capital injection or further increase of registered capital is free from tax. Only registration duties apply (initial incorporation stamp duty varies between HUF 15,000 and HUF 600,000 while 40 % of the above fees applies in the case of reporting any amendment in the company's capital at the Court of Registration).

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

No stamp duty applies in this case.

Real Estate Investment in

India

A. Legal/General

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

The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by certain persons domiciled outside India.

Acquisition by persons domiciled outside India, non-resident Indians (individuals resident outside India who are a citizen of India or a person of Indian origin) and persons of Indian origin (citizen of any country other than Bangladesh or Pakistan, if (i) he at any time held Indian Passport or (ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or (iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii)) of agricultural land/ plantation property / farm house in India is generally prohibited.

Purchase of immovable property in India by a foreign national of non-Indian origin resident outside India

- Foreign nationals of non-Indian origin domiciled outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding five years, without the prior permission of the Reserve Bank.
- Foreign nationals of non-Indian origin, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, can acquire immovable property in India on becoming resident in India in terms of Section 2(v) of the Foreign Exchange Management Act, 1999. In this connection, such a person has to satisfy the condition of period and purpose of stay in India as provided under FEMA
- Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank cannot transfer such property without the prior permission of the Reserve Bank.

Prior permission to the citizens of certain countries for acquisition or transfer of immovable property in India

A citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, whether resident in India or outside India, cannot acquire or transfer immovable property in India without the prior permission of the Reserve Bank. This restriction is not applicable where the immovable property is taken on lease for a period not exceeding five years.

Acquisition of immovable property by foreign embassies/ diplomats/ consulate Generals

Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 permits a foreign embassy/ diplomat/ consulate general to purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided

(i) clearance from the government of India, Ministry of External Affairs is obtained for such a purchase/sale, and

(ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

Acquisition of immovable property by person domiciled outside India for carrying on a permitted activity

A person resident outside India (corporation or individual) who has established a branch, office or other place of business, excluding a liaison office, for carrying on in India any activity in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 may

(i) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity, provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with and the person files with the Reserve Bank a declaration in the form IPI (Annex-2), not later than ninety days from the date of such acquisition; and

(ii) transfer by way of mortgage to an Authorised Dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (i) above.

Foreign direct investment ('FDI') in construction development sector

FDI up to 100 % is permitted under the automatic route in the construction development sector including townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure). The said FDI is permitted subject to specified conditions inter alia including the following:

- Minimum area to be developed under each project would be as under:
  - In case of development of serviced housing plots, a minimum land area of 10 hectares
  - In case of construction-development projects, a minimum built-up area of 50,000 m^2
  - In case of a combination project, any one of the above two conditions would suffice
- Minimum capitalization of US$ 10 million for wholly owned subsidiaries and US$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the company.
- Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. The lock-in period of three years will be applied from the date of receipt of each instalment/ tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior government approval.
- At least 50 % of each such project must be developed within a period of five years from the date of obtaining all statutory clearances.

2. Which importance does the land register have?

Registration is compulsory for the following transactions if one of the Indian Registration Acts (Act 1908/ Act No. XVI of 1864/ Act 1866/ Act 1871/ Act 1877)is applicable ((i.e. the property is situated in a district covered by one of the named acts and the transaction have been executed when the respective act has already come into force) (sec. 17 Registration Act 1908):

- Instruments of gift of immovable property;
- Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;
- Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

- → Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Documents relating to the transfer of immovable property – including the transaction's underlying agreement – are to be presented for registration in the office of a sub-registrar of that sub-district in which the whole or some portion of the respective property is situated (sec. 18 Registration Act 1908).

Sec. 49 Registration Act 1908 states that if documents required by a Registration Act or by the Transfer of Property Act 1882 are not registered then such documents shall not

- → affect any immovable property comprised therein, or
- → confer any power to adopt, or
- → be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered

The agreement should be registered with the sub-registrar of assurance within four months from the date of execution of the document. If due to any reason, the document is not registered within the time limit the document can be registered only on making an application to the sub-registrar of assurance within a further period not exceeding four months and on payment of appropriate fine.

B. Income Tax

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

Individuals

Income range	Indiv/HUF	Age 60 - 80 years	Above 80 years
Up to 200,000	NIL	NIL	NIL
200,001 - 250,000	10 %	NIL	NIL
250,001 - 500,000	10 %	10 %	NIL
500,001 - 1,000,000	20 %	20 %	20 %
Above 1,000,000	30 %	30 %	30 %

No surcharge; above rates to be increased by education cess (government's initiative to collect additional funds to support the education of poor people) of 3 %

Corporates

Tax rates for a domestic company having a total income exceeding ten million rupees is 32.445 % and 30.90 % where total income does not exceed ten million rupees.

Tax rates for every company other than a domestic company having a total income exceeding ten million rupees is 42.024 % and 41.2 % where total income does not exceed ten million rupees.

There is no special rate of taxation for income from real estate but income from residential property shall be reduced to a standard deduction of 30 % of the income.

Tax rates on capital gains arising on transfer of real estate being held for more than three years is 20.60 % plus surcharge for education cess if applicable as stated above, while its 30.90 % where the real estate is held for less than three years.

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

Depreciation is based on the acquisition cost or production costs as follows:.

- → Buildings which are used mainly for residential purposes except hotels and boarding houses 5 %
- → Buildings other than those used mainly for residential purposes 10 %
- → Purely temporary erections such as wooden structures 100 %

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

Limited tax liability occurs when the total income of a tax payer being a non-resident Indian includes (sec. 115E Indian Income Tax Act)

a) Any income from investment or income from long-term capital gains of an asset other than a specified asset;
b) Income by way of long-term capital gains

The tax payable shall be the aggregate of:

- → Income tax calculated on the income in respect of investments referred to in clause (a), if any, included in the total income, at the rate of twenty percent

- → Income tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, included in the total income, at the rate of ten percent; and
- → Income tax of total income reduced by the amount of income referred to in clauses (a) and (b)

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

Asset deal

Asset deals are possible in India. The valuation of assets will then have to be done as per valuation rules wherever prescribed. For example, valuations of immovable properties are done by registered chartered engineers.

There are no specific provisions in the Income Tax Act on asset deals, but wherever an asset deal takes place, the market value of the assets on the date of transfer is the consideration for the transfer and the capital gains tax is thus determined.

Share deal

Such deals happen under schemes of arrangement such as amalgamation, demerger etc.

The long term capital gains tax is 20 %, where shares are held for more than one year and are shares of an unlisted company. The short term capital gains are taxed at normal rates of taxation (30 %).

Section 47(via) of the Income Tax Act exempts any transfer in an amalgamation, of a capital asset by the amalgamating company to the amalgamated company from capital gains tax if the amalgamated company is an Indian company.

Sec 47(via) exempts any transfer in an amalgamation, of a capital asset being a share or shares held in an Indian company from capital gains tax, by the amalgamating foreign company to the amalgamated foreign company, if

- → At least twenty-five percent of the shareholders of the amalgamating foreign company continue to remain shareholder of the amalgamated foreign company
- → Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated

Sec 47(vib) exempts any transfer in a demerger, of a capital asset by the demerged company to the resulting company from capital gains tax, if the resulting company is an Indian company.

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

Currently there are no thin capital rules. But GAAR, the general anti avoidance rules, are made applicable from calendar year 2013 and onwards which shall cover the thin capital rules.

Operating expenses are deductible as long as they are at arm's length and they are for business reasons.

Interest on loans borrowed for residential houses, can be deducted from income arising from house property provided it does not exceed one hundred and fifty thousand rupees and subject to certain conditions (property is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and construction is completed within three years from the end of the financial year in which capital was borrowed).

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

Companies

Acquisition costs are added to the cost of the asset acquired and hence are deductible due to depreciation. Financing fees and interest are deductible as business expenditure if the asset is used for the purposes of business.

Individuals

It is also available as deduction against rental income subject to certain conditions. Acquisition costs are added to the cost of the asset acquired and hence deductible due to depreciation if the property is used by the individual for purpose of his own business or profession. If the property is given on rental, no depreciation is available. Finance fees and interest are available as deduction against rental income in full provided that the property is actually let during the whole or any part of the year or any other benefit therefrom is derived by the owner.

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

Each entity is regarded as separate entity. If a group of companies own a property and thus they are co-owners, income from property may be computed as a consolidated statement, and the share of each corporate will be shown individually in their tax return.

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

Yes at 10.30 %

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Loss relating to short-term capital asset is to be set off against gains from any other long-term capital asset in the same assessment year and unabsorbed loss, if any, shall be allowed to be carried forward for set-off against both short term and long term gains for next eight years.

Loss relating to long term capital asset can be set off against long term capital gains only and can be carried forward for set-off against capital gains from transfer of long term capital asset in the next eight years.

There are no loss carry back provisions in India.

C. Real Estate Taxes

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

Stamp duty is levied on real estate transfers based on its market value.

It may be noted that capital gains tax is also payable on the transaction in case there is any gain made on such a transfer.

The rates of stamp duty on transactions relating to transfers of immovable property are broadly regulated by the Indian Stamp Act and are based on the location of the immovable property and the respective regional state stamp acts as well as the nature of the transaction and concessions available, if any. For e.g. the rates are specified in Article 25 of Schedule 1 appended to the Bombay Stamp Act, 1958 and are between around 3 % - 8 % based on the nature of the transaction. However, Article 25(d) which deals with the instruments of transfer of residential premises in a Co-operative Housing Society or where the provisions of Maharashtra Ownership Flats Act 1963 and the Maharashtra Apartment Ownership Act, 1970 apply, provides for levy of concessional rates of stamp duty. In areas where the provisions of the aforesaid acts apply, residential premises up to a market value of Rs. 100,000/- attract such concessional rates reducing the tax rate by around 25 % - 50 %. Transactions relating to the transfer of residential premises with a market value of more than Rs. 100,000/- attract normal rates of stamp duty for values over and above Rs. 100,000/- as applicable in that area. Such normal rates are 8 %, 6 %, 3 %, 5 %. etc. depending on where the property is situated.

In general, the parties may decide among themselves who shall pay the stamp duty, if nothing is mentioned in the agreement.However, as per section 30 of the Bombay Stamp Act, 1958, if the transaction relates to resale of flats the stamp duty will have to be paid by the purchaser.

In India there is another tax known as service tax which is levied on service activities involved in construction of real estate. This levy is imposed by the central government. The rate of service tax is 12.36 %. The same rate is imposed on a fixed prescribed portion related to services in the total value of the real estate's value. In case total value includes the value of land also to be sold by a constructor to the buyer, 25 % of total value is considered as "service portion" on which 12.36 % (i.e. effective rate 3.09 %) is chargeable as service tax. In case however, the value of real estate does not include land, 12.36 % is charged on 40 % of the value of real estate (effective rate 4.944 %).

One important thing to be noted for service tax applicability on real estate is that it is only applicable if the purchase price or parts of it is paid before obtaining a completion certificate of the referring property involved. In other words, in case a person buys a property from a constructor who has already obtained a completion certificate from the responsible authorities, and the purchase price is completely paid after the date of procurement of the completion certificate, no service tax will be chargeable on the transaction of the real estate.

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

The property taxes are levied by the assessment and collection department of the local municipal corporation. Property taxes are based on the capital value of the property. The capital value is the present market value of the property determined by considering that the property is fully possessed by the owner without any encumbrance.

The property tax is calculated based on the above mentioned stamp duty and the property tax rate. Both the stamp duty and the property tax rates are revised by the government every year with the new budget. Depending on the type of property, its construction, user and age property is classified into different categories which can be transferred into different weightings by using a stamp duty conversion table. These weightings have to be multiplied by the capital value of the property and the current property tax rate to calculate the property tax.

- → Market value of the property multiplied by the total carpet area multiplied byweights for type of construction multiplied by-weights for age of the premise = Capital value of your property
- → Capital value of the property multiplied by current property tax rate multiplied by weight for user category = property tax due for the specific year.

D. Value Added Tax

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

In India sales tax (i.e. tax which is levied on sale of goods) is known as VAT. This is a State subject meaning that sales tax can be imposed only by state governments and not by the central government. Alltogether, there are 28 states which are empowered to levy VAT on sale of "goods". Real estate being an immovable property is not considered as "goods" and therefore no VAT is applicable thereon in any state except in the State of Maharashtra. In this state any transaction involving the sale of real estate is subject to 1 % VAT which is levied on the ground that sale of immovable property is a works contract and VAT can be levied on goods involved on those works Contracts.

Thus only in Maharashtra State 1 % VAT on gross value of real estate as shown in the sale agreement is levied. At the moment, other states do not levy this type of tax but in future it is possible that other states may also follow this procedure.

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

No VAT (i.e. state tax on sale of goods) is applicable on renting/leasing of real estate.

However, a service tax at 12.36 % is applicable on renting/leasing of real estate provided properties involved are given on rent/lease for commercial purposes. Thus if any property is given on rent/lease for residential purposes, no service-tax is applicable. In case of renting of commercial properties a service tax of 12.36 % is chargeable on the gross amount of rent recovered by the owner of property from the lessee. However, in case the gross amount of rent includes property tax levied by the Municipal Corporation of State Government, the service tax base is reduced by the property tax

E. Other Taxes

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

Though there is no capital tax, the Indian stamp act imposes a stamp duty is levied regarding a right or title to any shares scrip or stock of an incorporated company or other body corporate or a letter of allotment of shares (Art 36) in any company or proposed company.

Transfer of shares (whether with or without consideration) held in an incorporated company or other body corporate attracts a stamp duty of 0.25 % on the value of the share.

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

The Indian Stamp Act requires a debt instrument to be stamped. Stamp duty is a state subject and rates vary. It averages from 3 % to 5 % with a maximum of a million rupees in Mumbai.

Instruments evidencing debt may be an agreement or a mortgage deed. A mortgage deed is defined to secure money to be advanced by way of loan or an existing or a future debt, or the performance of an engagement one person transfers or creates to or in favour of another a right over or in respect of specified property.

As regards immovable property, Article 6 applies to mortgage by deposit of title deeds and Article 40 to regular mortgage. The Stamp Act makes no distinction between a legal and an equitable mortgage.

In order that Article 6 may apply, the document should merely contain the bargain between the parties with regard to the deposit of title deeds and conditions subsidiary or ancillary to the deposit of title deeds. However, if a document contains all the provisions which one would normally find in a mortgage deeds the mere fact that the document also contains the bargain with regard to the deposit of title deeds will not make it an agreement for deposit of title deeds.

Real Estate Investment in

Italy

A. Legal/General

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

In Italy there are no restrictions with regard to the acquisition of real estate. Residents as well as non-residents can purchase real estate, so that no acquisition vehicle incorporated under the laws of Italy is required for the acquisition of land by non-residents.

2. Which importance does the land register have?

The way real estate properties are included in the Land Register has a number of very influential consequences on the taxation of the real estate income as well as on the registration tax and/or VAT regimes applicable to transactions involving real estate.

Namely, the Land Register is the source from which it is generally possible to retrieve the deemed cadastral income of a given item of real estate property. Such deemed cadastral income may be relevant under many respects: first of all, it constitutes the taxable base for the Real Estate Tax as well as for income taxes, in case the property is not rented.

B. Income Tax

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

The corporate income tax rate for 2012 is 27.5 %. Companies active in oil-related activities as well as in the production and sale of electric energy and whose revenues in the previous year have exceeded 25 million € are subject to a 33 % corporate income tax rate.

The personal income tax rates for 2012 are expressed in the following chart:

→ Income brackets	Rate
Up to 15.000 €	23 %
Beyond 15.000 € and up to 28.000 €	27 %
Beyond 28.000 € and up to 55.000 €	38 %
Beyond 55.000 € and up to 75.000 €	41 %
Beyond 75.000 €	43 %

The effective personal income tax rate on income exceeding € 300,000 is 46 %, due to a 3 % temporary solidarity contribution on income exceeding that threshold. On the top of the above exposed rates, municipal (up to 0.8 %) and regional surcharges (in the range of 1.2 % to 2.03 %) may apply.

Companies, businesses and professionals are subject – on a tax base wider than net income – to a regional tax on productive activities (IRAP) at a general rate of 3.90 %, This rate may vary regionally within a 1 % range (special rates apply to banks and agricultural enterprises).

In general terms, there are no special tax rates for real estate. However, if a natural person leases a residential property to another natural person, a final 21 % substitute tax (so called "cedolare secca") may apply. Even though the substitute tax is not local in nature, a reduced 19 % rate is foreseen in relation to some high density urban areas (this would apply in particular to the major Italian cities such as, inter alia, Florence, Genoa, Milan, Naples, Palermo, Rome, Turin and Venice. Participation exemption is foreseen. In particular, capital gains deriving from the alienation of participations (both in Italian and foreign entities) that have been uninterruptedly owned for at least 18 months are 95 % exempt as long as the following requisites are met:

- → Participations shall be originally (at the time of acquisition) classified in the Balance Sheet of the seller as long term financial investments;
- → Entity in which a shareholding is owned should carry out a business activity;
- → Entity in which a shareholding is owned shall not be a resident of a tax haven.

The application of the participation exemption rule to the sale of shares in real estate companies is subject to specific conditions. Companies whose assets predominantly comprise of non commercial real estate investments are presumed to be companies that do not carry out a business activity.

However, "operating" real estate companies, i.e., companies whose assets predominantly comprise of real estate around which the activity of the company revolves (i.e. companies that carry out building activities, that alienate real estate properties, that professionally lease real estate companies or that own land on which they carry out agricultural activities) are presumed to be companies that carry out a business activity.

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

Items of real estate are only depreciable as long as they are inherent to the business activity conducted by the company. In this respect, a distinction can be made between "inherent" commercial buildings (which are grouped under specific cadastral classifications, such as office buildings) and buildings destined to be used within the business activity of the company although they do not qualify as "inherently" commercial. Land is not depreciable.

Commercial buildings are depreciated excluding from the depreciable amount of the share attributable to land. If 20 % (for office buildings) or 30 % (for industrial buildings) of the overall value of the real estate complex exceeds the value of the underlying land entered in the balance sheet, the former shall be assumed as the value of the land and correspondingly subtracted from the depreciation base. In case the real estate complex has been erected subsequently on building land acquired by the company, the land purchase price shall be considered non-deductible.

The maximum depreciation rate and – correspondingly – the minimum depreciation period, depends on the depreciation category. The rates are determined by law (Ministerial Decree December 31, 1988) in accordance with the kind of costruction and the industry of the company. The rates typically vary between 3 % and 6 %. The depreciation period may be extended, thus resulting in lower depreciation rates.

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

Based on Art. 23 Income Tax Code, non-residents are subject to tax liability in Italy only with respect to the income deriving from the Italian territory. Real estate income is deemed to be sourced in Italy if the item of real estate is located in Italy.

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

Both asset deals and share deals are possible.

In case of an asset deal (i.e. real estate located in Italy is purchased by a non-resident person) ongoing income is subject to tax on the part of the non-resident owner. In case of alienation, the capital gain is subject to tax in Italy, unless it is agricultural land or a construction owned for more than five years at the time of the sale.

In case of a share deal, (i.e. real estate located in Italy and owned by an Italian company, its shares are purchased by a non-resident person) ongoing income is subject to tax on the part of the resident company. Taxable income may be higher than actual income, due to the application of the special regime for non-operative companies. Such regime foresees taxation based on a deemed income determined by means of the following formula, which applies a rather high fixed rate of return to various company assets:

+ 1.5 % of the value of participations
+ 4.75 % of the value of business real estate
+ 3 % of the value of residential properties
(0.9 % if the property is located in small municipalities)
+ 12 % of the value of other assets.

The applicable tax rate is also increased by a 10.5 % corporate income tax surcharge.

In case of alienation, the capital gain is subject to tax in Italy, unless a double tax treaty is applicable, which provides exclusive taxation of the capital gain in the country of residence of the alienator.

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

An "interest barrier" rule applies. Interest expenses that exceed interest income are deductible only within the threshold of 30 % of EBITDA. The portion of interest expenses which qualifies as non deductible in a given year as well as the excess EBITDA can be carried forward with no temporal limitations,.

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

With reference to individuals, interest expenses deriving from mortgage are tax-deductible only in relation to the primary dwelling of the taxpayer and within an annual threshold of € 4,000.

With reference to companies, in general terms, deductibility is admissible within the threshold of interest deductibility limitations foreseen by the earning stripping rule.

Interest arising from debts undertaken in order to finance the building/acquisition of assets, including real estate properties, can be capitalized.

With respect to construction companies, interest arising from debts undertaken for construction and renovation works can be capitalized, while such an option is not viable if debt has been undertaken in order to acquire buildings destined to sale. In the latter case, no deductibility limitation applies.

Interest arising from debts supported by mortgages undertaken in order to acquire properties destined to rental are deductible without any limitation. Clarifications from the Tax Administration have underlined that the mortgage must have been undertaken only in order to acquire or build a property destined to rental, while it is irrelevant whether the property is of commercial or residential nature (see Circular Letter dated July 22, 2009, No. 37/E).

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

If the share acquisition is funded by debt, it is possible to offset interest expenses against the target's profits only if debt is on the part of an Italian company and this company is either merged with the target or both elect the group tax consolidation regime.

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

Law Decree 138/2011 has harmonized the applicable withholding tax rates on investment income introducing a unified 20 % withholding tax rate instead of the previously foreseen differentiated rates, comprised between 12.5 % and 27 % depending on the juridical qualification of the payee and on the nature of the underlying debt.

The new 20 % withholding tax rate is applicable to interest paid starting January 1, 2012. Lower double tax treaty rates may apply.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Law Decree 98/2011 has amended the applicable regime for loss carry forward with regard to companies and entities (with the exclusion of non-commercial entities that predominantly carry out a business activity). The new regime foresees that losses can be carried forward with no temporal limitation but only within the threshold of 80 % of the corporate income tax base of the fiscal year in which the losses would be offset; any exceeding portion can be further carried forward. With reference to start-up losses, the same mechanism applies but the threshold is 100 % of the corporate income tax base in which the losses would be offset.

In Italy, losses may not be carried back at all.

C. Real Estate Taxes

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

Registration Tax
The transfer of real estate or shareholdings is typically subject to registration tax. However, in case the transfer falls within the purview of VAT (see Section D), registration tax is applied as a fixed levy, amounting to € 168.

The tax base of the registration tax is the purchase price of the real estate property.

The applicable tax rates depend on the residential or commercial nature of the property, which is mirrored by the Land Register.

The transfer of agricultural land is subject to an 8 % registration tax.

The transfer of building land is subject to a 1 % registration tax if the seller is a natural person and the building land is destined to a public housing plan and to a 8 % registration tax rate in other cases.

The transfer of residential buildings is subject to a 7 % registration tax if the seller is not a building contractor which has completed construction works within the previous four years. In case the property represents a person's primary dwelling or is a building of architectural and historical heritage, the applicable rate is 3 %. In case the property is part of a public housing plan a 1 % rate applies. In case the buyer is a real estate agency and the transfer fulfills the requisites for being VAT exempt, a 1 % registration tax rate applies.

The transfer of commercial buildings is subject to a 7 % registration tax if the seller is not a building contractor which has completed construction works within the previous four years. In case the property is a building of architectural and historical heritage, the applicable rate is 3 %.

Mortgage Tax and Cadastral Tax
Additional transfer taxes on real estate and related shareholdings are referred to as mortgage tax ("imposta ipotecaria") and cadastral tax ("imposta catastale"). Mortgage tax is triggered by the sale, gift and inheritance of real estate as well as by the inscription of mortgages on real estate properties and it is normally paid upon the registration of the aforementioned transactions under the supervision of a public notary.

Mortgage tax is levied at a fixed levy of € 168 on transfers concerning properties that constitute a person's primary dwelling, real estate transfer subject to VAT (with the exclusion of the transfer of commercial buildings alienated by VAT taxable persons) and acts of conferral involving real estate properties. In other cases, mortgage tax is levied as a proportional levy as a percentage of the value of the property transferred at the following rates:

- → 3 % on transfers of commercial property alienated by VAT taxable persons;
- → 2 % on transfers of property other than those subject to the € 168 fixed levy or those subject to the 3 % rate;
- → 0.5 % for mortgage amendments or cancellation.

Cadastral tax is triggered by the transfer of property registered in the Public Register. Cadastral tax is levied at a fixed levy of € 168 on corporate mergers deeds, conferral deeds, transfers already subject to VAT, transfers of property rights concerning properties that constitute a person's primary dwelling.

In all other cases, cadastral tax is levied at a 1 % proportional rate applied on the value of the transferred property.

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

Starting from 2012, a new municipal real estate tax (I.M.U.) has been introduced.

The tax is non-deductible from income taxes and it is triggered by the ownership of buildings, building lots and agricultural land situated in Italy and regardless of the residential or business purpose.

Unlike the previous forms of municipal real estate taxation, the new tax will apply also to the primary dwelling of persons, even though a deduction comprised between € 200 and € 400 will be granted in this case.

The tax rates are the following:

- → 0.76 % general rate also applicable to agricultural land (each municipality can heighten or lower the tax within a 0.3 % range);
- → 0.4 % in relation to primary dwellings (each municipality can heighten or lower the tax within a 0.2 % range);
- → 0.2 % for rural buildings (each municipality can heighten or lower the tax within a 0.1 % range);
- → 0,76 ‰ for agricultural land;

D. Value Added Tax

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

As a general rule, transfers of real estate property are VAT exempt. Nonetheless, some transfers may optionally or mandatorily be subject to VAT depending on the nature of the property which is transferred and the qualification of the buyer and of the seller.

In particular, the transfer of building land is obligatorily subject to VAT.

With reference to the transfer of buildings, a distinction should be made between residential buildings and commercial buildings.

The transfer of residential buildings is mandatorily subject to VAT if the alienator is a building contractor which has completed construction or renovation activities in the previous four years. In this case, the generally applicable VAT rate is 10 % (the VAT rate is reduced to 4 % if the building constitutes the primary dwelling of the buyer, while the VAT is increased to 21 % in case the building is considered as a luxury building).

The transfer of commercial buildings is mandatorily subject to VAT if:

- → the alienator is a building contractor which has competed construction or renovation activities in the previous four years. In this case, the generally applicable VAT rate is 21 % (whereas only renovation works have been conducted, the VAT rate is reduced to 10 %); or
- → the alienator is a VAT taxable person and the buyer is a non VAT taxable person or a VAT taxable person subject to VAT deductibility limitations. In this case, the generally applicable VAT rate is 21 %.

The transfer of commercial buildings is optionally subject to VAT if both the seller and the buyer are VAT taxable persons. This option is frequently adopted in business practice as VAT would be deductible as long as the pro-rata deductibility limitations are met.

Whereas VAT is not applied, registration tax as well as mortgage and cadastral tax generally apply at the ordinary proportional rates applicable in relation to the concerned typology of building and counterparts. On the other hand, where VAT is applied, registration tax is due only as a fixed duty amounting to € 168. The same applies to mortgage and cadastral tax, even though some exceptions are foreseen. In particular, mortgage tax and cadastral tax apply at the ordinary proportional rates (respectively, at the rates of 3 % and 1 %) if the transfer involves commercial buildings.

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

As a general rule, the rental/leasing of real estate is VAT exempt. Nonetheless, under some circumstances, VAT may apply.

In particular:

- → Rental/leasing of building land is mandatorily subject to VAT (at a 21 % rate) if the landlord is a VAT taxable person.
- → Rental/leasing of residential buildings is mandatorily subject to VAT (at a 10 % rate) if the landlord is a building contractor that has completed construction operations on the rented property in the previous four years and the buildings are subsidized residential buildings.
- → Rental/leasing of commercial buildings is mandatorily subject to VAT (at a 21 % rate) if the landlord is a VAT taxable person and the tenant is either a non VAT taxable person or a VAT taxable person subject to VAT deductibility limitations.

The rental/leasing of commercial buildings is optionally subject to VAT if both the landlord and the tenant are VAT taxable persons.

On one hand, where no VAT applies, the rental agreement of real estate property is subject to registration tax at at a 1 % rate with respect to commercial buildings and at a 2 % rate with respect to residential buildings.

On the other hand, where VAT applies, registration tax is due only as a fixed duty amounting to € 168 with respect to building land and residential buildings, while it is still levied at a 1 % proportional rate if the rental agreement involves commercial buildings.

E. Other Taxes

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

No.

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

Stamp duties in the measure of a fixed levy of negligible value apply on a broad range of documentation which may be drafted with respect to financing agreements. In most cases, the stamp duty obligation can be overcome by resorting to commercial correspondence as a mean to conclude contracts, as the latter lies outside of the scope of application of stamp duty.

Registration tax of 3 % is due on formal financing contracts. In case the financing is provided by a bank and some conditions concerning the long-term nature of the financing (longer than 18 months) and the absence of specific mortgage agreements are met, a substitute tax would apply on the financing. The applicable rate is 2 % in case the financing relates to the acquisition, building or renovation of a residential property. In other cases, a general 0.25 % rate would be applicable.

Real Estate Investment in

Latvia

A. Legal/General

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

In Latvia, the acquisition of buildings is possible without restrictions.

Land in urban areas may be freely acquired by EU and EEA nationals/companies provided that:

- More than 50 % of the company's share capital is owned by the nationals of Latvia and/or nationals of another EU Member State, and/or Latvian state or local government; or
- More than 50 % of the company's share capital is owned by individuals and/or legal entities from countries, which have concluded an investment protection treaty with Latvia; or
- Company is a publicly traded joint stock company on the Latvian stock exchange.

Direct acquisition of land by other individuals and legal entities is subject to permission of the local municipality. However, such individuals and legal entities are not entitled to acquire land in certain specific areas, e.g., state border territories, special protection zones, agricultural and forest land pursuant to local territorial planning.

Additional restrictions exist with respect to EU nationals and companies registered in an EU Member State wishing to acquire agricultural or forest land. However, upon the expiry of transitional period on May 1, 2014 they will be entitled to acquire land in these areas on the same conditions as the nationals of Latvia and companies registered in Latvia.

2. Which importance does the Latvian land register have?

Latvian immoveable property is entered into the central land register called the Land Book. The Land Book ensures publicity and the protection of the rights of the property owners with respect to third parties.

B. Income Tax

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

→ Corporate income tax rate 15 %

→ Personal income tax rate:
› Standard rate: 25 %
› Dividends: 10 %
› Capital gains: 15 %

→ Participation exemptions:
Outbound dividend payments to qualifying EU/EEA companies are tax exempt whereas 10 % withholding tax generally is levied in other cases. As from January 1, 2013 all outbound dividends will be exempt from tax unless the payment is made to "black list" jurisdictions and inbound dividends are tax exempt unless received from "black list" jurisdictions.

→ Withholding tax on sales price of immoveable property or shares in "real estate companies": 2 %, can be avoided (regarding shares in real estate companies), if held in certain jurisdictions with favorable tax treaties.

→ As of 2013, capital gains from the sale of shares held by a Latvian company in any other company (unless held in companies in "black list" jurisdictions) will be tax exempt. It is expected that 2 % withholding tax on the sales of shares in "real estate companies" will be abolished with respect to the resident companies of the EU and EEA Member States in order to ensure equal treatment of local and EU/EEA companies.

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

Land is not depreciable for taxation purposes. Buildings and constructions are depreciated at 10 % using the declining-balance method.

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

As a matter of principle, non-residents are subject to limited tax liability in Latvia.

Non-resident companies are subject to corporate income tax at a 15 % rate in respect of income and capital gains that are attributable to a permanent establishment in Latvia. Both domestic and foreign income is attributable to a permanent establishment (see answer to question 4 regarding taxation of capital gains). Non-resident companies other than those with a permanent establishment in Latvia are – in certain circumstances – subject to limited withholding tax at source (see answer to question 1).

Non-resident individuals deriving income (other than capital gains) from immovable property are taxable by assessment at a 25 % rate. Capital gains derived from the sale of immoveable property or shares in "real estate companies" are generally subject to tax at a 15 % rate (for exemption with respect to residential property see answer to question 4). If a non-resident individual derives dividend income from a Latvian company, final 10 % withholding tax is applicable.

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

Both share and asset deals are possible in Latvia. Capital gains arising from an asset deal or a share deal are treated equally for income tax purposes. Capital gains derived by an individual from the sale of immoveable property generally are subject to the flat income tax rate of 15 %. The sale of residential property that is owned for a period exceeding 60 months out of which it is the declared residence of the taxpayer for at least 12 months is tax exempt.

Capital gains derived by legal entities and non-resident legal persons who have a permanent establishment in Latvia are subject to corporate income tax at the rate of 15 %. As of January 1, 2013 there will be no corporate income tax on capital gains from sale of shares held by a Latvian company, unless held in a "black list" jurisdiction.

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

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

Under Latvian thin capitalization rules two limitations are applicable: interest exceeding 1.2 times the annual short-term credit rate will be re-characterized as income (i.e. the excessive interest is non-deductible) and a 4:1 debt-to-equity ratio is applied. Non-deductible interest cannot be carried forward and is lost for a deduction. However, thin capitalization rules are not applicable to loans received from and interest paid to banks registered in the EU/EEA or companies which are incorporated in jurisdictions with which Latvia has concluded a double tax treaty.

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

The costs related to an acquisition are immediately tax deductible. The major exception to this principle exists when, for example, an unfinished construction object is purchased and its completion requires additional costs. These costs are included in the value of the real estate (capitalized). Financing fee and interest normally are immediately tax deductible. Interest expenses and financing fees for refinancing of existing debt are tax deductible as long as it is attributable to the business of a company deducting such expenses.

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

A usual model is to effectuate a merger between the target company and the SPV. Apart from negligible stamp duties there are no transfer taxes for the implementation of the debt push down.

Latvia generally does not allow debt push down and consolidation for tax purposes but a group relief is possible. A group company incorporated in Latvia may surrender its tax losses to another Latvian company within the same group, provided that certain preconditions are met.

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

Interest payments to unrelated parties are exempt from corporate income tax.

The remaining withholding taxes on payments to related parties are gradually phased-out until January 1, 2014. A withholding tax of 10 % applies to interest paid by Latvian resident companies to related non-resident companies. Interest payments to related EU resident companies are subject to 5 % withholding tax until June 30, 2013; thereafter a tax exemption will be applicable.

As of January 1, 2014, there will be no withholding tax on any outgoing dividend, interest or royalty payments unless paid to "black list" jurisdiction.

There is no withholding on profits remittance from a branch.

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

Losses which arose prior to and including 2007 tax year can be carried forward for eight years. Losses arising in 2008 and later tax years can be carried forward indefinitely. Taxpayers registered in special economic zones or free ports incurring losses before 2005 may carry them forward for up to ten years while the losses that were incurred after 2005 may be carried forward indefinitely. Losses can be transferred between qualifying group companies.

There is no loss carry back granted in Latvia.

C. Real Estate Taxes

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

There is no formal real estate transfer tax.

However, the registration of the new owner of a real estate generally is subject to the stamp duty of 2 % from a transaction value. Stamp duty may not exceed LVL 30,000 (approx € 42,700). A 1 % stamp duty applies to investments in kind of real estate in the share capital of a company, capped at LVL 1,000 (approx € 1,400). For gift transfers of real estate the stamp duty generally is 3 %. Stamp duty does not apply to mergers or similar restructurings, and if the shares in a company holding real estate are sold instead of the sale of property itself.

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

Real estate tax (RET) is payable by corporate owners or entities having legal ownership or control over the use of real estate and individuals on their land and residential property.

RET is levied at a rate of 1.5 % of the real estate's cadastral value and is due and payable annually by corporate owners and individuals. A 1.5 % rate is applicable to buildings other than residential houses, engineering structures and land. Subject to municipal regulations, derelict or unsafe buildings may be subject to 3 % tax.

As of January 1, 2013, local municipalities will be entitled to set a RET rate ranging from 0.2 % to 3 % in their regulations. If the respective municipality has not issued such regulations by November 1 of the prior tax year, 1.5 % RET continue to apply.

Individual property owners are subject to the following progressive tax rates on their residential homes and apartments. A LVL 5 (approx € 7) minimum is payable for each registered item of real estate.

- 0.2 % – for cadastral value not exceeding LVL 40,000 (approx € 56,900);
- 0.4 % – for cadastral value from LVL 40,000 to LVL 75,000 (approx € 106,700);
- 0.6 % – for cadastral value exceeding LVL 75,000.

Local municipalities are vested with the power to grant tax reductions for specific categories of individuals.

D. Value Added Tax

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

A sale of land is VAT exempt, as is the sale of immoveable property in use.

However, sale of unused immoveable property (inter alia recently renovated, reconstructed and restored buildings) and development land (land granted a building permit) is subject to 21 % VAT. The combined sale of unused immoveable property and all or part of the underlying land cannot be separated for VAT purposes.

A share deal is VAT exempt.

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

The renting of commercial property is subject to 21 % VAT, whereas renting of residential premises to individuals is VAT exempt.

E. Other taxes

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

There is no capital tax in Latvia. For stamp duties levied on the investment of an immoveable property in the equity of a company see answer to question 1 of Section C.

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

As a general rule, debt transactions are not subject to a stamp duty. However, a stamp duty of 1 % from the amount of a loan is levied upon the registration of a mortgage in the Land Book. The stamp duty is capped at LVL 1,000 (approx € 1,424). In all other cases, registration of a mortgage in the Land Book is subject to a stamp duty of LVL 20 (approx € 28.5).

Real Estate Investment in

Lithuania

A. Legal/General

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

In general, non-resident individuals and legal persons can freely acquire real estate situated in Lithuania. However, foreign natural and legal persons which do not comply with European and Transatlantic criteria, are not entitled to acquire agricultural and forestry land until the expiry of a transitional period which, after extension, should end on 1 May 2014.

Foreign legal entities are deemed to comply with European and transatlantic criteria if established in:

- Member States of the European Union or states being parties to the European Treaty with the European Communities and their Member States; or
- Member Countries of the Organisation for Economic Cooperation and Development (OECD), states being parties to the North Atlantic Treaty Organisation (NATO) or the European Economic Area (EEA) Agreement.

Foreign natural persons are deemed to comply with European and transatlantic criteria, if they are:

- Citizens or permanent residents of any of the states specified above; or
- Permanent residents of Lithuania although not holding Lithuanian citizenship.

It is generally not required for non-residents to acquire real estate in Lithuania through a Lithuanian company. However, if a foreign person who does not comply with the criteria above is willing to buy land in Lithuania according to the existing practice, such acquisition is usually carried out through a legal entity incorporated in Lithuania (e.g. such person may establish a company in Lithuania which would acquire the land). Please also note that certain additional restrictions still apply in respect of the right to acquire agricultural and forestry land in Lithuania.

2. Which importance does the Lithuanian land register have?

Real estate as well as contracts on the transfer of real estate are being registered with the Lithuanian Real Estate Register. A failure to register a real estate sale-purchase agreement does not cause its invalidity but it precludes the parties from invoking the agreement against third parties.

B. Income Tax

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

Corporate income tax rates: The standard rate is 15 %. A reduced 5 % rate is applicable to certain small and medium-sized entities.

Personal income tax rates: The standard rate is 15 %; however, certain income earned from individual business activities is taxable at a reduced rate of 5 %.
A 20 % rate is applicable to dividends and other profit distribution.

Participation exemption: dividends will not be taxed in Lithuania if the recipient of dividends (resident or non-resident entity) holds no less than 10 % of shares in the payer of dividends for a period not shorter than 12 consecutive months, including the moment when the dividends are distributed.

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

The tax depreciation period for new and renovated buildings is 8 years. Either the straight-line method or the double balance depreciation method may be used. For residential buildings the depreciation period is 20 years. Only the straight-line method may be used for this type of real estate.

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

A foreign investor is subject to limited tax liability in Lithuania if he either has a Lithuanian permanent establishment or earns certain type of income in Lithuania which is subject to withholding tax therein. In the first case, personal income tax or corporate income tax may be levied in Lithuania on profits earned through that permanent establishment. In the second case, personal income tax or corporate income tax may be levied on the income sourced in Lithuania, e.g. income from the sale or lease of real estate situated in Lithuania may be subject to a 15 % withholding tax.

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

Both an asset deal and a share deal may be concluded in Lithuania.

Asset deal
Capital gain realized upon the sale of real estate is subject to 15 % income tax for both individuals and legal entities.

Share deal
Capital gains upon the sale of shares are generally subject to 15 % income tax for both individuals and legal entities.

However, capital gains realized by an individual on the shares sold after 1 year after their acquisition are exempt from taxation if an individual has owned not more than 10 % of the capital of the entity at any time during the 3-year period preceding the end of the year during which the disposal takes place (except when the shares are sold back to the issuer). Furthermore, capital gains that are realized from a transfer of shares of a Lithuanian company or a company registered in an EEA member state or of a state which has signed a tax treaty with Lithuania are tax exempt, provided that the seller is a Lithuanian company that has been holding more than 25 % of the shares during a 2-year period or a 3-year period in case of certain reorganizations or transfers (except when the shares are sold back to the issuer).

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

Lithuanian thin capitalization rules apply to restrict tax deductions on borrowings from related parties, including third party debt that is guaranteed by a related party. The debt-to-equity ratio governing otherwise permitted interest deduction is limited to 4:1.

The relevant Lithuanian transfer pricing regulations can be listed as follows: requirement to (i) apply arm's length prices in related party transactions; (ii) supply information to the Lithuanian tax authorities on related party transactions; and (iii) maintain a sufficient documentation of the related party transactions.

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

Yes, acquisition costs are immediately deductible for short term assets. For long term assets depreciation (amortization) is applicable.
Financing fees and interest are deductible if they are incurred for the earning of income or for deriving economic benefit for the company.

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

A debt push down can be achieved by merging companies. No transfer tax is applied.

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

Interest paid to non-resident companies is generally subject to 10 % withholding tax. However, exemptions apply to interest on government securities, deposit interest and interest on subordinated loans meeting the criteria prescribed by the Bank of Lithuania.

Interest paid to non-resident companies registered or otherwise established in an EEA Member State, or in a country, with which Lithuania has an effective tax treaty, is exempt from tax.

Interest paid to non-resident individuals is subject to 15 % withholding tax. However, exemption applies in respect of: (i) interest on securities issued by the government or other public authority of Lithuania or another EEA country; (ii) interest on deposits with banks and other credit institutions established in Lithuania or another EEA country; (iii) interest on loans if the repayment of the loan commences not earlier than 366 days after its issuance (except shareholder loans or employee loans with an interest rate above the market level); and (iv) interest on securities if their redemption commences not earlier than 366 days after their issuance (except securities issued by the recipient's employer bearing an interest rate higher than that on similar securities held by others).

Double tax treaties might provide for additional exemptions.

9. Is a Loss Carry Forward or Loss Carry Back granted and what are the restrictions?

Carry back of losses is not allowed in Lithuania.

Ordinary losses may be carried forward for an unlimited period of time if the entity continues to carry on the activity that resulted in losses. However, losses on the disposal of securities and financial derivatives may be carried forward only for 5 successive tax years, beginning with the tax period following the tax period during which the losses were incurred. Furthermore, only the taxable profit from transactions of securities can be reduced using this kind of losses.

Transfer of tax losses is available among the entities of the same group. An entity can transfer tax losses (or a part of the losses) incurred in the tax year of 2010 or later to another entity of the same group which has the right to reduce the taxable profit of the same tax period. Such possibility is available only if the following conditions are met: (i) the parent entity controls at least 2/3 of the shares of all entities participating in the transfer of the tax losses on the day of the transfer; and (ii) the tax losses are transferred among such entities which have been members of the same group for at least 2 years without interruptions until the date of the transfer; or (iii) the tax losses are transferred by or to the entity or entities which are members of the same group starting from their registration date and will be members of the group for at least 2 years without interruptions starting from their registration date.

A non-resident entity can transfer tax losses (or a part of the losses) to a resident entity only if the following conditions are met: (i) the non-resident entity is a tax resident of an EU Member State; and (ii) the tax losses of the non-resident entity cannot be carried forward to another tax year (or deducted from its income or profit) according to the laws of its residence country; and (iii) the tax losses to be transferred are calculated according to the provisions of the Lithuanian Law on Corporate Income Tax.

C. Real Estate Taxes

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

No, there are no transfer taxes in Lithuania.

However, please note that real estate transfer transactions (if carried out as asset deals) must be certified by a notary and involve notary fees. The fee for notarisation of an agreement for real estate acquisition amounts to 0.45 % of transaction value, with a maximum of € 5,792 for transactions involving one real estate object and a maximum of € 14,481 for transactions involving two or more real estate objects. The stamp duty for legal persons to register title to real estate ranges from € 23 to € 1,448 for each object depending on the average market value of the property. Additional expenses such as brokerage fees, real estate valuation, bank fees, etc. may also be incurred during a transaction.

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

Real estate tax
Real estate other than land owned by Lithuanian and foreign legal entities and individuals is subject to real estate tax. Tax is collected by the municipalities which are also entitled to set the tax rate applicable to the real estate situated in that municipality. The rate cannot be lower than 0.3 % and higher than 1 %. Municipalities are also allowed to set different tax rates depending on the purpose of use of the buildings, maintenance condition thereof, categories of taxpayers (size or legal form or social situation) or location of the building in the territory of the municipality. Furthermore, as of January 1, 2012 a 1 % tax rate is applied to the value of real estate of residential, garden, garage, farm, greenhouse, household, auxiliary household, science, religious, recreational use, as well as to fishery and engineering constructions, exceeding LTL 1 million. When calculating the threshold, real estate owned by an individual, as well as by his spouse and/or children up to 18 years old is taken into account. This tax is paid to the state budget.

Land tax
Land owned by resident and non-resident companies and individuals is subject to land tax. The annual tax rate is 1.5 % of the taxable value which is calculated according to the rules established by the Government of Lithuania. However, according to the new Law on Land Tax as of January 1, 2013 the land tax base will be the market value of the land determined by mass evaluation every five years. Municipalities' counsels will be entitled to set the annual tax rate applicable to land situated in its territory at a rate between 0.01 % and 4 %.

D. Value Added Tax

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

The sale of land (except the land transferred together with new buildings or structures or parts thereof as well as land for construction) and the sale of buildings, structures or parts thereof (except new buildings and structures, new parts of buildings and structures) are VAT exempt.

In case a transaction is subject to VAT, a standard rate of 21 % is applied.

The seller may also opt for taxation of the generally exempt transaction at 21 % VAT, provided that both the seller and the buyer are subject to VAT..

The sale of shares is exempt from VAT.

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

Similarly as in case of sale of real estate, the lease of real estate is generally exempt from VAT. However, short-term lease of residential premises, as well as lease of parking lots, garages or other items of similar purpose is subject to 21 % VAT.

E. Other relevant business-related taxes

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

No, there is no capital tax in Lithuania.

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

No, stamp duties are not levied in case of granting of debt to a local company.

Real Estate Investment in

Luxembourg

A. Legal/General

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

There are no restrictions on foreign ownership of real estate property in Luxembourg. Such investment can be carried out either by individuals or corporations.

2. Which importance does the land register have?

The main purpose of the land register is to ensure the enforceability of real estate property transfers towards third parties.

Luxembourg land register is competent for land mortgages and lien registration. Registration duty is subject to duty of 0.05 %.

Land register also deals with the recording of real estate conveyances and seizure reports, which are subject to duty of usually 1 % (0.5 % in some uncommon cases).

B. Income Tax

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

With regard to individuals, the tax rate ranges from 0 % to 39 %, with a surcharge of 4 % for the employment fund below € 150,000 (ceiling doubled in case of spouses taxed jointly), and 6 % above € 150.000 (€ 300,000 for married spouses), so that the marginal income tax rate is 40.56 % below € 150,000 € and 41.34 % for the part of the taxable income exceeding € 150,000.

The first exempted income bracket goes up to € 11,400 for single individuals and up to € 22,650 for married spouses.

The marginal tax rate is reached with a level of taxable income of € 41,793 for unmarried individuals and of € 83,586 for married spouses.

The tax rate on the income depends not only on the applicable tax table but also on the civil status of the taxpayer.

With regard to companies, a corporate income tax at a rate of 21 % applies to companies with a taxable income exceeding € 15,000; and 20 % to companies with a taxable income not exceeding such threshold. Corporate income tax is increased by a contribution to the unemployment fund of 5 %.

Companies are also usually liable to a municipal business tax at rates ranging from 6 % to 12 % (6.75 % in Luxembourg city).

Dividends and capital gains arising out of a qualifying entity (entity deriving the income is holding the participation since 12 months at least and the shareholding is at least 10 % of the share capital or has an acquisition price of € 1.2 million - € 6 million for capital gains-) may be exempt from Luxembourg corporate income tax and municipal business tax.

Finally, companies liable to corporate income tax are subject to a net wealth tax at the rate of 0.5 % of their adjusted net asset value.

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

From a general perspective, the tax depreciation period is determined based on the useful lifetime of the assets, taking into consideration the specific features of the assets and the specific conditions of their use.

For Luxembourg real estate, the tax depreciation period varies between 20 and 50 years (as a result, annual depreciation rates vary between 5 % and 2 %).

The only depreciation method available for Luxembourg real estate is the straight-line depreciation method. However, it is possible to use an accelerated depreciation method for Luxembourg real estate leased to individuals for their residence provided its construction was finalized for less than 6 years. The depreciation rate for accelerated depreciation method is 6 % per year during the first 6 years following the construction of the real estate.

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

Any income or capital gains deriving from Luxembourg real estate are subject to tax in Luxembourg.

For individual foreign investors, real estate income is subject to the same tax liability as for resident investors (i.e. progressive tax rate from 0 % to 39 % or specific rates for capital gains in certain circumstances).

For foreign investors established under the form of a capital company, real estate income is subject to the same tax liability as for resident companies. However, provided that the activity performed in Luxembourg is not considered as a commercial one (for instance, the activity is limited to the passive leasing of only one real estate property), real estate income derived by foreign investors established under the form of a capital company will not be subject to municipal business tax (the rate varies depending on the municipality, from 6.75 % to 12 %) but only to corporate income tax at the rate of 22.05 % (including contribution to the unemployment fund), so that their global tax liability is limited compared with resident investors established under the form of a capital company.

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

Both asset deal and share deal are possible in Luxembourg.

The profits realized pursuant to an asset deal are in principle fully subject to tax (except in case of a roll-over relief under specific circumstances). Moreover, Luxembourg asset deals are in principle subject to Luxembourg real estate transfer tax.

Provided that the Luxembourg real estate company is not tax transparent (i.e. incorporated under the form of a civil company or a partnership), profits realized upon the sale of shares in a Luxembourg real estate company by a Luxembourg investor established under the form of a capital company may be exempt under the participation exemption regime (see B1 above).

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

Although the law does not provide for specific rules, Luxembourg tax administration requires a minimum debt-to-equity ratio of 85:15 for shareholding activities and 90:10 for the holding of real estate property (only applies in the scope of intragroup operations). Excess interest deductions could be denied and subject to 15 % withholding tax as constructive dividends.

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

Accounting law allows the amortization of acquisition costs/financing fees over a maximum period of five years or to deduct them during the year in the course of which they have been paid. Tax administration generally follows the accounting treatment chosen.

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

Luxembourg tax law allows the tax free merger of Luxembourg companies provided that certain conditions are met (implementation of EU merger directive).

As a result, all assets and liabilities of the absorbed/merged company are transferred to the absorbing company without triggering any taxation.

The outstanding debt of one of the companies merged will thus be transferred to the surviving entity, the interest on this loan remaining in principle fully tax deductible.

Moreover, please note that a tax consolidation regime is provided for by the Luxembourg tax law under certain conditions (e.g. the entities must be Luxembourg resident, fully taxable, and the participation must be at least 95 %). As a result, the interest charges of the Luxembourg parent entity could be deductible against the income of the Luxembourg subsidiary for Luxembourg tax purposes.

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

There is generally no withholding tax on interest paid to both residents and foreign creditors.

However a withholding tax can apply in the following cases:

- → Interest payments re-characterized as hidden dividend distribution (excessive amount or rate)
- → Income derived from participating loans or profit sharing bonds can be subject to withholding tax at a rate of 15 %

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

A loss realized by a company can be carried forward without time limitation for both corporate income tax and municipal business tax purposes. A tax loss carry-back is not permitted.

C. Real Estate Taxes

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

A transfer tax is levied upon the sale of real estate property and upon the sale of shares in a partnership when the partnership holds real estate property (proportionally). No transfer tax is usually levied upon the sale of shares in corporations holding real estate property.

Transfer tax is levied at a rate of 6 % plus 1 % recording duties (see A2 above). When the real estate property is located in Luxembourg city urban district, an additional tax of 50 % of the transfer tax is due.

Therefore, the overall duty can be summarized as follows:

- → 6+3+1 % for real estate located in Luxembourg-city urban district;
- → 6+1 % in other cases

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

Municipalities in Luxembourg can levy a land tax at a rate ranging from 0.7 % to 1 % on the unitary value of the real estate property increased by a coefficient depending on the district in which the real estate property is located.

D. Value Added Tax

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

Sale of real property is subject to transfer tax. However, the seller is entitled to opt for VAT if several conditions are fulfilled, the main one of which being that the purchaser carries out an activity subject for at least 50 % to VAT . In that event, the entire sale price will be subject to VAT at a rate of 15 %.

The purchaser can claim a VAT deduction if the real estate is used for the purposes of an activity subject to VAT.

In this case, changes in the use of the real estate property within 10 years will trigger an adjustment of previous VAT deductions.

Sale of real estate property to be built is subject to VAT at a rate of 15 % (3 % if the building is mainly for residence purposes). In that event, transfer tax and recording duty are only levied on the value of the ground.

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

Real estate renting is a VAT exempt activity. However, if the lessor rents the real estate property to a lessee carrying out an activity subject for at least 50 % to VAT, he can opt for VAT. In that event, lessor is able to claim deduction of the input VAT paid.

Option for VAT is only granted pursuant to a specific request filed with tax administration.

Whereas a registration duty of 0.6 % of the rents to be paid is levied on VAT exempt renting, renting being subject to VAT only bears a fixed registration duty of € 12.

E. Other Taxes

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

In principle, only a fixed capital duty of € 75 is due upon contribution made to Luxembourg companies.

However, in case of contribution in kind of Luxembourg real estate, a capital duty of 1.1 % calculated on the market value of the Luxembourg real estate contributed is due.

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

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

However, in case of a mortgage loan, registration duty is due on the Luxembourg real estate at the rate of 0.05 % of the principal of the receivable benefiting from the guarantee.

Real Estate Investment in

Malta

A. Legal/General

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

Non-residents, both individuals and legal entities, are allowed to acquire real estate in Malta. Non-residents of Malta exclude Maltese citizens and EU citizens who have been residing in Malta for a minimum continuous period of five years as well as Maltese entities and EU entities.

However, non-EU citizens or entities that are beneficially owned by non-EU citizens require written authorization granted by the Minister of Finance prior to acquiring real estate in Malta. Nevertheless, the acquisition of real estate in a 'special designated area' does not require a permit even if acquired by a non-resident. Special designated areas consist in high-end residential areas usually located in coastal areas.

2. Which importance does the land register have?

There are some areas in Malta which are declared by the responsible Minister as registration areas, which are called as compulsory registration areas. Any document (whether contract, judgment or any other document) involving any transaction relating to immovable property situated in any compulsory registration area is not operative until and unless the title to the relative land is registered in the land register. The Land Registrar may in his discretion also register title to any land situated outside a registration area, whereby such land may be regarded as if it were situated in a registration area.

B. Income Tax

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

The chargeable income of a company, which includes its taxable income and capital gains, is taxed at 35 %, which is the corporate tax rate in Malta.

Individuals are subject to tax in Malta at progressive rates. There are different scales of rates for different categories of individuals, with the maximum rate being 35 %.

Income derived from real estate situated in Malta (such as rents, royalties and premiums) is subject to tax in Malta, irrespective of whether such income arising in Malta is remitted to Malta or not. The same rules are applicable in the case of capital gains derived by a person from the transfer of real estate including shares in a company or entity that owns real estate.

As a general rule, a transfer of real estate is subject to 12 % final tax of the 'transfer value', which is the higher of the price paid for the transfer and the market value. However, there are certain situations where the transferor has the right to opt to be taxed on the capital gain (taxable at applicable rates, see above), which is the difference between the transfer value and the cost of acquisition. Certain deductions are also allowed including the cost of improvements, inflation and maintenance. Such instances include:

- A transfer of property that is made not later than seven years from the date of the acquisition;
- A transfer of property that had been used in a business for at least three years and that is replaced within one year by property used solely for a similar purpose of the business;
- A transfer of property by a non-resident person who proves that the gains or profits derived from the transfer will be taxable in the country of residence.

Gains and profits derived from the transfer of real estate in certain situations are exempt from income tax. These include:

- Transfer of real estate between companies within the same group;
- Transfer of an asset used in a business for a period of at least three years, which are replaced within one year by an asset used solely for a similar purpose in the business.
- Transfer by an individual of his or her own residence where the property has been owned or occupied for at least three years.

Participation exemption is relevant to the transfer of participations (equity shareholding) in non-resident entities and transfer of participations in Maltese entities. In the latter case, the exemption applies as long as the Maltese entity does not directly or indirectly own real estate situated in Malta.

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

A deduction of 2 % of the cost (straight line method) is allowed in respect of wear and tear of industrial buildings and structures (typically, hotels, factories and warehouses). The cost of the land on which the building or structure is erected is not included within the cost.

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

A non-resident person that is not domiciled in Malta is subject to Maltese tax on Malta source income and on foreign income (excluding foreign capital gains) that is received in Malta ('remittance basis'). Income or gains derived from real estate situated in Malta represents Malta source income and is always subject to Maltese tax (subject to relief in terms of a double tax treaty).

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

Both asset deals and share deals are possible in Malta. Transfers of real estate are subject to income tax in Malta. Transfer of shares in companies or entities (including partnerships) that own real estate situated in Malta are also subject to tax in the same way.

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

There are no thin capitalization rules in Malta.

Under Maltese tax law, deductions are allowed for interest payable on capital employed in acquiring the income. However, no deduction is allowed in respect of interest paid to a non-resident person where such interest is related to financing real estate situated in Malta.

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

Yes, but subject to certain limitations and exceptions.

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

Maltese tax law does not allow fiscal unity or pooling.

It is possible to surrender losses (or gains) between companies forming part of the same group.

As regards interest deduction, it is allowed against income derived from capital upon which interest was paid. For instance, interest paid on financing used to acquire shares is deductible against dividend income derived from such shares.

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

As a rule, income payable to non-residents is subject to a withholding tax. However, interest accruing to or derived by non-residents is exempt from Maltese tax and no WHT applies on interest payments to non-residents. The exemption does not apply if the non-resident is engaged in trade or business in Malta through a Maltese permanent establishment and the interest is connected with such permanent establishment.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

A loss can be carried forward under Maltese tax law. Trading losses may be set off against profits or capital gains whereas capital losses may only be set off against capital gains.

There is no Loss Carry Back under Maltese tax law.

C. Real Estate Taxes

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

No, there is no real estate transfer tax. However, transfers of real estate are, as a rule, taxed at 12 % on the transfer value as explained above.

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

No, there is no real estate tax imposed on real estate in Malta.

D. Value Added Tax

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

Transfers of real estate are exempt without credit, meaning that the underlying input VAT borne by the seller of the immovable property cannot be recovered on the sale of such property.

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

As a rule, letting of immovable property and real estate is exempt without credit. However there are exceptions

- Letting of licensed premises (typically hotel and holiday accommodation);
- Letting of premises and sites for parking vehicles;
- Commercial letting (letting by a limited liability company to a VAT registered customer);
- Letting of immovable property for not more than 30 days by a business.

E. Other Taxes

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

Dilution in the share capital of a property company resulting from a change in equity or capital injection can give rise to capital gains tax and stamp duty.

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

5 % stamp duty is chargeable on transfers of real estate in Malta and on transfers of securities in Maltese companies owning real estate. Certain exceptions and exemptions apply including group transfers.

Real Estate Investment in

Netherlands

A. Legal/General

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

Any (legal) person, including non-residents, can acquire real estate in the Netherlands so the acquisition does not have to be carried out by a corporation. Any acquisition of real estate must be carried out by a notary who also reports the transfer in the 'Kadaster' (land register).

2. Which importance does the land register have?

The primary duty of the Kadaster is to keep record of immovable property (land, homes, buildings etc) as well as certain movable properties (ships and airplanes). The Kadaster provides legal certainty regarding the ownership of property and what the exact measures and locations of that property are. The Kadaster also keeps record of any mortgages regarding the property.

B. Income Tax

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

Corporate income tax
The corporate income tax rate for 2012 is 20 % regarding profits up to € 200,000 and 25 % regarding profits exceeding € 200,000.

If a Dutch resident company (which is not a qualifying collective investment company) or Dutch permanent establishment holds shares in Dutch or foreign companies, dividends received from such companies or capital gains or losses with respect to the shareholdings in these companies are exempt from Dutch corporate income tax, provided the participation exemption applies. Furthermore, expenses related to the acquisition or alienation of shareholdings that qualify for application of the participation exemption are not deductible. Profit taxes levied by other jurisdictions on income or capital gains (like withholding tax on dividends received) to a shareholding to which the participation exemption applies, cannot be credited against Dutch tax and cannot be deducted in the Netherlands. The participation exemption has to be applied on a continuous basis, which can lead to compartmentalization of profits and losses with respect to the shareholding in case the participation exemption did not apply to the entire holding period of the shares. In general, the participation exemption applies when at least 5 %

of the share capital of a company is owned by a shareholder. The participation exemption does not apply to shares in qualifying collective investment companies and passive portfolio investments that are not sufficiently taxed or hold certain qualifying assets. Real estate companies (companies that mainly own real estate), provided they are not qualifying collective investment companies, qualify for the participation exemption even if they are not sufficiently taxed or are held as a passive portfolio investment.

Personal income tax

In the Netherlands, there are three 'boxes' in which the income of natural persons is taxed. Box 1 includes all active income, such as wages (including pensions) and business profits. The personal income tax rate in case of an active investment in real estate ranges from 1.95 % to 52 % and is levied on the actual income. In Box 2 the income from share capital is taxed when 5 % or more of the shares is (in-)directly owned by a private person. The tax rate for Box 2 is 25 %. In Box 3 all (passive investment) assets are taxed which are not included in Boxes 1 and 2. These passive investments (which could include real estate) are deemed to have an income of 4 % of the net asset value (in case of real estate: value of the building -/- mortgages). This deemed income is taxed at a tax rate of 30 % which results in an effective tax rate of 1.2 % of the net value.

There are no special income tax rates regarding real estate.

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

Depreciation on buildings is usually calculated on a straight-line basis using economic principles, which is for personal income tax purposes only relevant if it concerns box 1 income. The municipality makes an annual valuation to determine the 'WOZ-value' (WOZ = "Waardering Onroerende Zaken" which means "valuation of property") of each property, which is the basis for the municipal real estate tax and should be a measure of the fair market value of the property. The depreciation of a property is limited to 100 % of the calculated WOZ-value excluding the value of the land. When the building is used for more than 30 % by the owner for his own business or the business of related parties (and for example not rented out to unrelated parties), the depreciation is limited to 50 % of the WOZ-value.

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

Corporate income tax

A foreign investor, being a legal entity, is subject to Dutch corporate income tax in case it has a permanent establishment in the Netherlands which conducts a business in the Netherlands. Real properties located in the Netherlands are considered permanent establishments by fiction. So in case a foreign entity invests in real estate in the Netherlands, it is liable to pay Dutch corporate income tax. If the entity investing in Dutch real estate qualifies for the special regime for collective investment companies, then a tax rate of 0 % applies. This special regime is only available for corporate tax payers if certain requirements are met with respect to its legal form, activities, the composition of its shareholders, maximum debt financing and an obligation to distribute its annual profits.

In certain cases, an investment of more than 5 % in a Dutch company can make the foreign corporate investor subject to Dutch corporate income tax, i.e. if the investment is not part of the active business of the investor and the structure has the purpose to avoid Dutch personal income tax or dividend withholding tax.

Personal income tax

A foreign investor, being a private person, is subject to Dutch personal income tax in case he has income from one of the three Boxes mentioned in question B1, as far as it concerns Dutch sourced income, like from employment or a business in the Netherlands (box 1), large shareholdings in the Netherlands (box 2) or Dutch real estate (box 3) if it is not taxed in box 1 or 2.

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

In the Netherlands both asset deals and share deals are possible to acquire or sell real estate for income tax purposes. In general, for corporate income tax and personal income tax (box 1 only) purposes, an asset deal means triggering any hidden reserves in the real estate in question, while a share deal avoids this. However, gains on selling real estate can in certain cases be deferred for up to three years provided there is sufficient proof that there is a concrete intention to reinvest in the Netherlands.

Besides, there could be some VAT and/or real estate transfer tax consequences depending on which form is chosen.

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

In the Netherlands, corporate tax payers are subject to general thin capitalization rules which can result in the limitation of interest deduction. In essence, the general thin cap rules disallow the deduction of interest if a company that is considered part of a group is thinly capitalized, i.e. its average fiscal debt in a year, decreased by € 500,000, exceeds an amount of three times its average fiscal equity in a year (debt to equity ratio of 3:1). The interest amount that can be disallowed is capped at the amount of interest accrued or paid on intercompany loans. In case this leads to a better result for the tax payer, the thin cap ratio of the group to which the tax payer belongs may be used. This potential "escape" requires a thin cap calculation based on the debt and equity mentioned in the commercial accounts, not the fiscal balance sheet.

Apart from this general thin cap rule, two other specific thin cap regulations have been introduced recently, one regarding acquisitions of companies that are joined in a Dutch fiscal unity, and regarding holding companies. In addition, there are many more interest deduction restrictions as well as limitations to the depreciation of loans that may apply to a specific situation. Due to the amount and complexity of these regulations this cannot be elaborated in this overview any further.

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

In general, financing fees and interest can be deducted from the taxable profit but acquisition costs may have to be capitalized on the assets that are acquired. Several specific limitations for the deduction of (interest) expenses exist.

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

In general, the possibilities to allow pooling of financing cost with income of a target through a fiscal unity or legal merger, for example, are restricted. However, depending on the situation, it may be possible to achieve the desired result in whole or part through careful (cross-border) structuring.

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

No, unless the interest is not at arm's length or it concerns certain long term profit participating loans.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Corporate income tax

Losses suffered by a tax payer in the Netherlands can be offset against the profit of the previous taxable year (carry back). The losses which could not be settled against the profits of the previous year can be offset against future taxable profits. This carry forward of losses is limited to nine years. Some specific rules may apply that can restrict the utilization of the losses in case of a change in (indirect) ownership and/or activities of a tax payer.

Personal income tax

A negative income for a year in box 1 can be carried back to positive income of the 3 previous years. Losses that cannot be carried back can be carried forward for a period of 9 years. Negative income for a year in box 2 can be carried back one year and carried forward 9 years. Box 3 income cannot be negative by definition, so loss carry back and carry forward rules are not applicable at all for box 3 income.

C. Real Estate Taxes

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

When real estate is sold, real estate transfer tax (RETT) is due, unless an exemption applies. The RETT rate is 6 % (2 % for private homes) of the value and is due by the buyer. In some cases (legal) entities with a capital divided into shares are considered deemed real estate. The transfer of the shares in these entities is then also taxable with RETT. Not only the legal transfer, but also the economic transfer of real estate is in principle subject to RETT. Certain exemptions exist, for example in case of transfers within a group of companies.

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

Depending on in which city the property is located, the owner of real estate must pay municipality taxes (OZB) regarding the property. The municipality makes an annual valuation to determine the 'WOZ-value' of each property. The WOZ-value is used to calculate the annual OZB. In 2012 the rate ranges from 0.0423 % to 0.1993 % of the WOZ-value of the property.

D. Value Added Tax

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

The sale of real estate is in general VAT exempt unless the property is sold within two years after it has been taken into use for the first time. In that case the sale is taxable with Dutch VAT. When the VAT exemption applies, it is possible for buyer and seller to opt for a VAT taxable sale.

After the deduction of VAT that was charged for the sale of real estate, the use of the property will be monitored for ten years. If the property is sold within these ten years and the buyer and seller did not opt for VAT taxable sale then the seller of the property must pay back 10 % of the deducted VAT for each remaining year, so 40 % in case the property is sold after 6 years. This revision of the deducted input VAT must be paid at once after the VAT-exempt sale of the property.

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

The lease of real estate is VAT exempt. The lessor and lessee can opt for VAT taxable lease in case the lessee uses the property for activities which give right to deduct at least 90 % of charged VAT. In some cases (if the lessee is a realtor, travel agency etc.) the percentage is 70 %. In order to opt for taxation, the parties must file a joint request at the Tax Authorities or complete some administrative conditions in the lease agreement. When in case of a VAT audit it is concluded that the parties did not meet the conditions for opting taxation, then the lease should have been exempt. If the lessor deducted any input VAT regarding the property, the Tax Authorities can impose additional assessments to the lessor. The revision period mentioned at the sale section above, could also result in additional assessments from the Tax Authorities.

E. Other Taxes

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

The Netherlands does not levy capital tax for equity injected into a local company.

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

There is no stamp duty on debt granted to a local company in the Netherlands.

Real Estate Investment in

Norway

A. Legal/General

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

There are no general restrictions as to who can own property. Any domestic or foreign person or legal entity recognized in Norway may own real estate – and also register their rights in the Land Registry (see below). However, restrictions may apply under the Norwegian General Concession Act. An acquisition of some specific agricultural properties must be specifically authorized under the applicable legislation.

2. Which importance does the land register have?

All land in Norway is divided into registry units with unique numbers for identification and registration purposes. The registry is called the Land Registry ("Grunnboken"). Ownership, mortgages, long term leases as well as easements are commonly registered in the Land Registry. The records maintained by the Land Registry are open to public inspection.

A foreign legal entity must be registered in the Norwegian Register of Business Enterprises and must obtain a Business Register Number in order to have title to a property registered in the Land Registry. Likewise, a foreign individual must obtain a Norwegian identification number in order to have title registered. Obtaining a Business Register Number or an identification number is usually a swift and uncomplicated process.

Both a registration fee and stamp duty must be paid for the registration of a new owner of the property. The registration fee is modest being approximately € 200. For the registration of rights other than ownership, only the registration fee is payable. Stamp duty is payable by the buyer of commercial, residential or industrial property. Payment of stamp duty is not a condition for the buyer's ownership to the property in question to become effective, but it is a requirement if the buyer wants his ownership to be registered in the Land Registry. Stamp duty for previously used properties amounts to 2.5 % of the total value of the property. Stamp duty for newly erected buildings amounts to 2.5 % of the value of the land on which the building is erected (or part of the land if the property being purchased is a unit within a building).

It is not compulsory to register ownership or other rights over real estate in the Land Registry and registration is not a requirement for the ownership or right to become effective, but it is highly recommended as it is the only way to gain full legal protection for such rights against third parties.

B. Income Tax

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

Corporate tax
A flat tax rate of 28 % applies to corporate taxable profits (ordinary income). The tax base is the sum of operating profit/loss, financial revenues and net capital gains minus tax depreciation.

Personal income tax
The general combined rate of national and municipal income taxes is 28 %. A lower rate of 24.5 % applies for the counties of Finnmark and Nord-Troms. The maximum effective marginal tax rate on earned income (excluding employers' national security contribution) is 47.8 %. This occurs for income over NOK 741,700 and is made up of Social Security contributions of 7.8 %, tax on ordinary income of 28 % and surtax of 12 %.

Real estate
If the investment is made directly or through a general or limited partnership (i.e. without using a Norwegian limited liability company), payment of rental income to foreign lessors is not subject to any withholding tax in Norway. However, net rental income from real estate situated in Norway is subject to general corporate income tax at a rate of 28 % and this principle is followed in all 85 double tax treaties entered into by Norway.

Participation exemptions
Capital gains derived by Norwegian limited companies on the disposal of shares in other Norwegian or EEA resident limited companies are exempt from taxation. For gains realized on the disposal of shares in a company in a low-tax jurisdiction within the EEA, the exemption only applies if real business activities are conducted in that jurisdiction. Capital gains realized by Norwegian limited companies from shares in companies resident in non-EEA countries are exempt from taxation if at least 10 % of shares have been held for at least 2 years and the foreign company is not a resident in a low-tax jurisdiction. A low tax jurisdiction is assumed if the tax payable is less than two-thirds of the tax that would have been payable in Norway.

If the investment is made through a Norwegian limited liability company, the company will be taxed on its net income derived. The tax rate is 28 %. Dividends payable to non-resident corporate investors are subject to a withholding tax of 25 %, unless the recipient is protected by a double tax treaty or is resident in the EEA area.

For corporate investors resident in the EEA area no withholding tax applies. For corporate investors resident elsewhere, the withholding rate is usually reduced to 15 % or a lower level depending on the size of the holding in the Norwegian company and the relevant double tax treaty.

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

Assets used for business purposes with an expected life of more than three years and costing more than NOK 15,000 is depreciable. Taxable depreciation applies the reducing balance method.

According to current tax law, the maximum depreciation rate on industrial buildings and hotels etc. is 4 % p.a. This increases to 8 % if the useful life is less than 20 years. For commercial buildings the maximum depreciation rate is 2 % p.a. Parts of the acquisition cost may in certain cases also be eligible for a more favourable rate (for example machinery used in production and underground garages, but not fixed plant such as air conditioning systems and electrical installations).

Note that the purchase price of the land in itself will not be subject to depreciation.

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

Resident companies are subject to corporation tax on worldwide profits and capital gains. Non-resident companies are subject to limited taxation in Norway on Norwegian sourced income, e.g. corporation tax on Norwegian sourced profits, including income derived from a permanent establishment in Norway.

Limited companies incorporated in Norway and foreign companies with their effective management and control in Norway are treated as resident in Norway. Norwegian taxable income is based on worldwide income, unless exempt under a double tax treaty. Branches are taxed similar to Norwegian limited companies, but only on Norwegian sourced income.

Non-resident individuals are taxed on income received from real and personal property in Norway, including income from employment in Norway, but Norway's right to tax may be limited by an applicable double tax treaty. All individuals domiciled or permanently resident in Norway are subject to Norwegian income tax on their worldwide income.

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

Investment in real estate in Norway may be effected in two ways; either through direct acquisition, i.e. an asset deal, or through indirect acquisition, i.e. a share deal, in other words a purchase of the corporate vehicle that owns the real estate.

Asset deal

For asset sales including the transfer of real estate or leaseholds, a stamp duty of 2.5 % of the market value of the real estate in question or the aggregate rental for the first 20 years is levied on the buyer.
The acquired net assets receive a step-up or a step-down to market value equal to the purchase price for the buyer to determine the depreciation for tax purposes and the gain or loss in a future asset sale.

Share deal

An investment in real estate may also be effected by purchasing the shares in the company that owns the real estate. Share deals are often favoured in order to avoid stamp duty and registration fees as it is the company itself which is the registered owner of the real estate in the Land Registry. A purchase of shares in a company does not trigger stamp duty, and nor do mergers.

Indirect investment through corporate vehicles in Norway may be achieved using various types of corporate vehicles with limited liability or types of partnership.

Capital gains and dividends from shares held or acquired by corporate entities in Norway and companies resident in an EU or EEA member state are tax exempt. Losses from the disposal of shares are not deductible.

The fact that the gain derived from the sale of shares in companies is tax free in Norway implies that most foreign based real estate investments in Norway take place using a Norwegian (limited liability) company. If the investor in the Norwegian company is also resident in a state with which Norway has a relevant double tax treaty which applies the exemption method for income derived from real estate (and often from shares in companies whose assets are real estate), the gain from the investment in Norway may, in certain cases, be structured to be tax free.

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

There are no relevant formal thin capitalization regulations in Norway. The debt/equity ratio must be based on an arm's length principle. A ratio of 1:5 (equity vs. debt) was commonly accepted as a guideline for tax purposes, but must not be taken for granted as the Norwegian Tax Authority has put the ratio under severe scrutiny in recent cases.

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

All interest costs on business debt are deductible without limitations.

A deduction against income generated by the property is usually available for any interest paid on debt used to finance the acquisition of the property. Interest payable to non-residents is not subject to withholding tax. The arm's-length test has to be performed in order to assess the deductible amount of intra-group interest. If the loan in question would not have been granted by a third party, the part of the interest accrued which is not at arm's-length will not be deductible for tax purposes.

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

Norwegian legislation for limited companies provides limitations for the target company in terms of taking on debt related to the owner or parent company. The target company may not take on debt from the buyer related to the acquisition of shares in itself, but a merger may take place between target and parent company at a later stage.

The prohibition only applies to acquisitions of shares in Norwegian companies. Thus, the prohibition does not apply if the buyout is structured as an asset acquisition rather than a share acquisition. If the target has non-Norwegian subsidiaries, these subsidiaries will in general not be subject to the prohibition. Thus, a foreign subsidiary of the target may, subject to the laws of its jurisdiction of incorporation, in general provide security in respect of the acquisition financing of the target – whereas a Norwegian subsidiary of the target would not have this opportunity.

Legal distributions of equity by the target are allowed. The target may distribute dividends or resolve to decrease its share capital or share premium through distributions to its shareholders and thereby enable the sponsor to partly repay its acquisition financing.

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

Norway does not levy withholding tax on interest (or royalty) payments.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Losses may be carried forward without time limitations ("evergreens") regardless of reorganization or changes in ownership, provided that exploitation of the loss was not the main objective behind the change. Losses may be set against income from all sources including capital gains.

Generally, losses may not be carried back, but liquidation losses may be offset against profits of the two preceding years.

C. Real Estate Taxes

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

There are no 'transfer taxes' other than stamp duty in Norway.

Stamp duty is normally payable in Norway on the acquisition of real estate situated in the country whether commercial, residential or industrial. The registration of transaction in immovable property in the Land Registry attracts the stamp duty. The stamp duty is 2.5 % of the sale value of the property. To calculate the sale value normal arm's-length conditions are deemed to apply. Registration of the new ownership in the Land Registry is optional and an application will not be accepted unless stamp duty is paid. The application must disclose the purchase price. Because of this, the Land Registry does not necessarily contain all relevant information about the ownership of the property, as some buyers may decide to avoid the stamp duty by not having their ownership registered. This is not recommended.

A transfer of shares in a limited liability company or a partnership that owns real estate will not trigger stamp duty. A transfer of real estate through a merger or de-merger of limited companies is also exempt from the duty.

Taken together with the Tax Exemption Model (see section B.1. and B.4.) this gives an incentive to buy and sell real estate companies instead of the property itself. For the same reasons, office buildings are often held in single purpose entities. Since future Norwegian buyers usually would not find it interesting or practical to acquire the shares in a foreign company in order to obtain real estate located in Norway, the best exit planning tool would be to own the property through a Norwegian entity.

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

State net wealth tax

Non-resident limited liability companies are liable to net wealth tax of up to 0.4 % on approximately 30 % of the fair market value of their real estate less the par value of debt related to the estate. Taxpayers can avoid net wealth tax where a double tax treaty is in place or by relying on the EEC principle of free movement of capital. Please note that any claims based on EEC regulations can be expected to be challenged by the Norwegian tax authorities.

Local Property tax

Property tax may be imposed by the municipal council. Local authorities may levy a property tax in urban areas, varying between 0.02 % to 0.07 % of the taxable fiscal value of the property (around 10 - 30 % of the fair market value).

Transfer by gift or on death

Property transferred by gift or on death is taxable at rates from 6 - 15 %.

D. Value Added Tax

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

Value added tax (VAT) is not payable in respect of the transfer or purchase price of real estate.

The construction of real estate however is subject to VAT. In principle the VAT is reclaimable, providing the real estate is used for taxable purposes when finished. The taxable use of the real estate is monitored for 10 years following completion of the works. VAT deductions related to the construction or reconstruction of buildings may have to be repaid to the tax authorities if the buildings are sold, rented out or otherwise disposed of within ten years of completion in a manner outside the scope of VAT. Assuming for example, the owner is not using the building for taxable purposes from year seven onwards, he will have to pay back 40 %

of the amount of VAT that was deducted earlier. The same applies to works of extension and refurbishment.

The standard rate of VAT in Norway is 25 %.

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

The letting out of real estate is in the main not subject to VAT; however, a voluntary registration model has been introduced for lessors who rent out business premises for the use in activities which do attract VAT. The purpose of voluntary registration is to give the lessor the opportunity to deduct input VAT on purchases of goods and services used in the business of letting out real estate.

Generally, all domestic sellers of goods and providers of services are liable to registration. However, some goods and services are exempted from the scope of the tax, for instance financial services, educational services, health and social services and a range of services within the area of sport and leisure. For this reason, renting out property to such enterprises may prevent voluntary registration.

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Poland

A. Legal/General

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

In general, citizens and corporate entities of the EEA may freely acquire real estate. In special cases (the purchase of agricultural or forest land or a second house) they need a governmental permit by the Ministry of Internal Affairs and Administration. Other foreigners generally require such a governmental permit (some exceptions exist).

It is not necessary that the acquisition is carried out by a Polish corporation.

2. Which importance does the Polish land register have?

The legal status of Polish Real Estate is codified in the Land and Mortgage Register maintained by Polish Courts. It provides information about the land ownership, the security and consistency for land transactions, mortgages, encumbrances, historical details etc. The Register is publicly accessible.

B. Income Tax

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

- Corporate income tax rate: 19 %
- Personal income tax rate: 18 % - 32 %
- Participation exemption is applied if the Polish company has held at least 10 % capital participation in the foreign subsidiary for an uninterrupted period of at least two years.

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

Tax depreciation rates for real estates depend on the intended purpose. The depreciation rate for house buildings and leased residential buildings is 1.5 %, for non-house buildings 2.5 %, for underground garages and roofed car parks 4.5 % and for kiosks and bungalows 10 %.

Land is not subject to tax depreciation.

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

In the case of taxpayers who do not have their registered office or management (or place of residence) in the territory of Poland, only the income earned by them in the territory of Poland is subject to taxation in Poland.

Under provisions of the Polish Personal Income Tax Act, a natural person is a Polish tax resident (a resident of Poland for tax purposes) if he or she has his or her centre of personal or economic interests (centre of vital interests) in Poland, or is present in the territory of Poland for longer than 183 days within a tax year.

In order to establish the appropriate tax treatment of the particular case, provisions of a relevant double tax treaty should be applied.

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

Real estate can be sold either through the direct sale of the property (an asset deal) or indirectly through the sale of the shares in the company owning the property (a share deal).

Capital gains realized by a Polish company upon the sale of real estate are subject to regular corporate income tax at the standard rate of 19 %.

The same is true for capital gains on the sale of shares. Individuals have to apply their individual income tax rate.

The sale of shares in the Polish company is subject to a 1 % civil law transaction tax (on the market value of shares) payable by the buyer. It is irrespective of where the transaction takes place or where the parties to the transaction are resident for tax purposes.

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

Under the Polish thin capitalisation rules, the interest due on loans or credits granted to the taxpayer by (i) the shareholders holding directly, individually or jointly, not less than 25 % of the voting rights in the loan beneficiary (mother companies) or by (ii) sister companies where the same shareholder holds directly at least 25 % of the voting rights in both of these companies (the borrowing and the lending company), may not be recognized as tax deductible cost in the part of which the borrowing company's debt to equity exceeds the ratio of 3:1.

No thin capitalisation restrictions are provided to third party banks or financial institutions.

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

In general, interest on loans and acquisition costs (e.g. advisory and financing costs) are tax deductible.

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

Group

In Poland, tax capital groups may be formed under Corporate Income Tax law. In order to form a tax group certain quite restrictive requirements have to be met:

- → Only joint stock companies and companies of limited liability can form a group
- → Average share capital is not lower than PLN 1 million
- → Minimum holding requirement of 95 % owned by the parent company
- → Minimum period for joint tax settlements of three years
- → Profitability ration of the group is not lower than 3 % for each tax year

Taxable income for the group is calculated by combining the incomes and losses of all group members. No transfer pricing regulations apply to a tax group.

Merger

Under the Polish tax law it is possible to implement a debt push down strategy through an up-stream merger.

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

Interest payments to foreign creditors are subject to 20 % withholding tax in Poland. A lower rate may be provided in the applicable double tax treaty. Furthermore, Poland incorporated into the domestic legislation the EU Directive on Interest and Royalty Payments.

Dividend repatriation to a foreign company is subject to withholding tax in Poland. The withholding tax from dividends amounts to 19 % of the value of the revenue. A lower rate may be provided for by an applicable double tax treaty and/or by the EU Parent Subsidiary Directive for group purposes.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Yes, a Loss Carry Forward is granted for a maximum period of five years. The annual amount deductible cannot exceed 50 % of the total loss.

In Poland, a Loss Carry Back is not possible at all.

C. Real Estate Taxes

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

In Poland no real estate transfer tax exists.

However, a real estate transfer may trigger Polish civil law transaction tax if the transfer is not subject to VAT (see D.1). The tax rate for selling real estate is 2 % of the market value.

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

Yes, in Poland a real estate tax is charged to the owner of the land/building/infrastructure used for business activities. The real estate tax rates are set by regional authorities. However, there are maximum tax rates which are governed by national tax regulations. The local authorities may grant exemptions for certain types of real estate.

D. Value Added Tax

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

In general, the sale of real estate is VAT exempt, except for the supply of (part of a) building/infrastructure in the course of its first occupation or when made within two years of the first occupation.

Despite the existing exemptions there is the possibility of taxing real estate sales if a transaction is carried out between registered taxpayers of Polish VAT. VAT rate for selling of real estate is 23 %. However, residential buildings and separate apartments are subject to 8 % VAT rate. However, if the usable surface of a single-family house exceeds 300 m^2 or if the usable surface of an apartment exceeds 150 m^2, the 8 % VAT applies only to the tax base corresponding to the share of the usable surface. The 23 % rate applies to the tax base corresponding to the surface exceeding the above limits.

If selling real estate is not subject to or exempt from Polish VAT, it is subject to the tax on civil law transactions. The rate of civil law transaction tax for selling real estate is 2 % of the market value.

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

As a rule, renting/leasing of real estate is subject to Polish VAT. The VAT rate for renting/leasing of real estate is 23 %. This VAT is added to the rent due.

Rental of residential units for housing is tax exempt.

E. Other taxes

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

Under the Polish tax law, there is no capital tax for equity injected into a local company. Under the provisions of the Polish Corporate Income Tax Act the following income is not taxable:

- → Additional payments contributed to a company if they are paid in accordance with separate provisions, amounts and values in excess of the nominal value of shares, received upon the issue of shares and allocated to the supplementary capital;
- → Revenue received for the purpose of establishing or raising the share capital,

Under the Polish tax on civil law transactions act, the equity financing involves civil law transactions tax at the rate of 0.5 %. There are certain exceptions for restructuring, reorganization transactions and changing the company and partnership agreements resulting in an increase of capital. No civil law transactions tax applies to the increase of share premium.

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

Loans involve a civil law transactions tax of 2 % of the loan principal. Certain loans are exempt from taxation, e.g. loans granted by shareholders to a limited liability company or joint stock company (exemption in force from January 1, 2009) or loans granted by foreign entities which are engaged in credit and financing activities.

Real Estate Investment in

Portugal

A. Legal/General

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

There are no restrictions in Portugal for non-resident individuals to acquire real estate in Portugal. In fact non-residents may acquire real estate in the same way as residents, not being necessary to carry out the acquisition through companies.

2. Which importance does the land register have?

According to the Land Register Code, the purpose is to give publicity to the legal status of real estate property, as a safeguard to legal trade.
Despite the registration of the facts related with real estate being mandatory, including legal actions, respective effects will still become valid inter partes and its inheritors if they are not registered. But if they are registered, those effects can be invoked erga omnes.

B. Income Tax

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

Tax rates
Portuguese tax resident individuals are subject to personal income tax (IRS) on their worldwide income at progressive tax rates ranging from 11.5 % up to 46.5 % (the maximum rate of 46.5 % only applies to income exceeding 153,300). During the tax years of 2012 and 2013, an additional surcharge of 2.5 % applies on the taxable annual income higher than € 153,300.
There are no special tax rates foreseen for real estate, except for income from rentals and leases obtained by non-resident individuals from property situated in Portugal, which is subject to a 16.5 % autonomous rate (the beneficiaries are also required to file an income tax return regarding such income).

The corporate income tax (IRC) rates are the following:

- Companies located in Portugal mainland and Madeira are taxed at a tax rate of 25 %, and are also subject to a municipal (ranging up to 1.5 % of the taxable profit depending on the municipality) and state surcharge (ranging from 3 % for taxable profits between € 1,500,000 and € 10,000,000 up to 5 % if the taxable profits exceed € 10,000,000);

- For companies located in Azores, the income tax rate is 17.5 %, being also subject to the municipal and state surcharge;
- For resident entities that do not carry out a commercial, industrial or agricultural activity as their main activity in Portugal mainland and Madeira the tax rate is 21.5 %;
- For resident entities that do not carry out a commercial, industrial or agricultural activity as their main activity in Azores the tax rate is 15.05 %.

Like for personal income tax, the IRC Code does not foresee any special tax rate for real estate in general, except for income obtained by non-tax resident companies (without permanent establishment in Portugal to which the income is attributable), which is subject to a 15 % special rate.

Participation exemptions

Dividends obtained by tax-resident individuals distributed by Portuguese based companies are excluded from taxation on 50 % of the dividend amount, if the individual opts to include the amount in the annual tax return.

Dividends distributed by Portuguese based companies to their parent companies may be corporate income tax exempt if the recipient is a Portuguese based company or a company that meets the requirements of the EU Parents Subsidiary Directive (90/435/EEC of July 23, 1990), and the participation exceeds 10 % of the capital or of the voting rights.

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

Depending on the activity pursued by the company, tax depreciation rates for real estate may change, ranging from 2 % up to 5 %, and the method adopted by the Regulatory Decree n.º 25/2009 is the straight-line method.

However, this method excludes a maximum of 25 % of the land value on real estate to be depreciated.

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

A foreign investor is subject to limited liability in Portugal on the income derived from Portuguese sources if he should not be deemed to be considered a tax resident in Portuguese territory.

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

Yes, real estate investors may opt between acquiring the property directly (asset deal) or indirectly, by means of the acquisition of shares of a company which owns the property (share deal). The main differences between the alternatives are the property transfer tax on the acquisition and the capital gains taxation in case of a disinvestment (sale).

Asset deal

The acquisition of real estate is subject to property transfer tax (IMT), see below under C.1. Gains arising from the sale of the land are subject to taxation at the IRS and IRC general tax rates.

Share Deal

The acquisition of shares on public limited companies ("Sociedades Anónimas") is not property transfer tax taxable.

The acquisition of shares of a private limited company ("Sociedade por quotas") or of a general partnership ("Sociedade em nome colectivo") or of a partnership association ("Sociedade em comandita simples"), is subject to IMT (i) if these companies hold properties, and (ii) if due to the share acquisition, one of the shareholders will hold at least 75 % of the share capital, or the number of shareholders will reduce to two, being these spouse, married within the regime of general community property.

Capital gains realized by non-resident individuals on the transfer of shares of Portuguese based companies may be IRS and IRC exempt, except for:
- Capital gains obtained by individuals or companies domiciled in a blacklisted territory;
- Gains derived from the transfer of shares in the capital of a company resident in the Portuguese territory, whose assets consist of more than 50 % of real estate situated therein or, in case of entities managing or holding corporate rights, if such companies have a controlling position in respect of companies resident in the Portuguese territory whose assets consist of up to 50 % of real estate situated therein.

Portuguese Holding Companies qualified as "Sociedades Gestoras de Participações Sociais" ("SGPS") are corporate income tax exempt on the gains arising from the sale of shares of its portofolio if some conditions ate met.

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

Thin capital rules are applicable where the indebtedness of a Portuguese tax payer to a non-resident entity in Portugal or in an EU country with whom special relations exist is deemed excessive. In such cases, the interest paid in relation to the part of the debt considered excessive will not be deductible for the purposes of assessing taxable income.

Furthermore, for shareholders' loans, the deductible interest shall not exceed the 12 month Euribor rate in force at the day the loan was granted, plus a 1.5 % spread. However, this rule only applies where transfer pricing rules do not apply.

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

Only financial expenses incurred by SGPS type Holding Companies with the acquisition of the respective shares (e.g. bank finance and exchange rate costs) are disallowed as a tax deductible expense.

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

Debt push down following a share deal is possible whenever the target is acquired by a NewCo incorporated for such purposes by means of a merger or by application of the tax consolidation (tax group regime).

Merger
The merger of the target company on the NewCo. may be pursued under the corporate income tax neutrality regime whenever the former is 100 % owned by the latter (Portuguese tax authorities deny the application of the neutrality regime for reverse, i.e. down stream mergers). However, this operation may trigger property transfer tax on the transfer of the property to the NewCo. (a property transfer tax exemption may be conceded by the Minister for Financial Affairs if certain conditions are met).

Debt push down by means of a merger may attract interest deductibility issues, as this cost may be deemed to be considered as not indispensable for the formation of the Target (operational) Company taxable profits.

Tax Group
Provided that certain conditions are met, it is possible to apply for the application of the Special Taxation Regime for Company Groups ("RETGS") after a one year period of the acquisition of the Target has elapsed. Once the RETGS is settled, the group's taxable profit is calculated by the dominant company, by deducting 75 % of tax losses of the NewCo. of the profits of the target company.

The setting up of a tax group does not trigger property transfer tax.

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

Yes, there is a withholding tax. The payment of interests derived from a local company is subject to a withholding tax of 25 %. This rate may be reduced to 5 % until June 30, 2013, and the payments may be tax exempt afterwards, under the EU Interest and Royalties Directive.

Interest withholding tax rates may also be reduced as a result of a double tax treaty concluded between Portugal and the country where the beneficiary is resident of.

9. Is a Loss Carry Forward granted and what are the restrictions?

Tax losses generated from January 1, 2012, onwards can be carried forward for a period of 5 years (losses generated before this amendment applies can only be carried forward for a period of 4 years).

Moreover, from January 1, 2012 onwards, the deduction of tax losses carried forward, including the tax losses generated before 2012, will be limited to 75 % of the taxable profit assessed in the relevant fiscal year.

Losses carry forward will not be allowed if at the end of the tax period in which the deduction is made, the corporate object of the entity is amended or there occurs a substantial change in the nature of the activity previously carried on relative to the period to which the losses relate, or there is a change of ownership of at least 50 % of the share capital or a majority of voting rights. The Minister of Finance may, in special cases of recognised economic interest, authorize the loss carry forward in spite of such occurrences.

C. Real Estate Taxes

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

Yes, there is a Property Transfer Tax (IMT). The IMT is levied on the transfer for consideration of ownership rights or parts thereof on real estate (immovable property) situated in the Portuguese territory, regardless of how such transfer is carried out.

The fiscal concept of «transfer» for the purposes of this tax is coincident, in principle, with that of private law, but also includes a number of situations assimilated to the conveyance or transfer of goods or rights on assets provided for by law with the purpose of preventing tax avoidance. As an example, the acquisition of shares of a private limited company ("Sociedade por quotas") or of a general partnership ("Sociedade em nome colectivo") or of a partnership association ("Sociedade em comandita simples"), is subject to IMT if these companies hold properties, and if due to the share acquisition one of the shareholder will hold 75 % of the share capital, or the number of shareholders will reduce to two, being these spouse, married within the regime of general community property.

The IMT is due by the acquirer of the immovable property. The tax base is the amount shown in the respective deed or agreement, or the taxable net-wealth of the real estate, depending on which is higher.

Open-end or closed-end special real estate investment funds are IMT exempt.

The IMT tax rates are as follows:

- → Acquisition of urban property for dwelling purposes – progressive tax rates (ranging from 0 % up to 8 %);
- → Acquisition of other urban property – 6.5 %;
- → Acquisition of rural property – 5 %:
- → Blacklisted domiciled acquirer (acquirers who are domiciled in countries, territories or regions with privileged and more favourable taxation) – 10 %.

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

Yes, the municipal tax on real property (IMI) is such real estate tax. The IMI is levied on the taxable net-worth value of real property classified as rural or urban property situated within the Portuguese territory being the tax revenue from property of the municipality where such property is located.

The taxable person is the owner, the usufructuary, the building lease holder or the person entitled to the use or fruition of the immovable property on December 31 of the year to which the tax relates.

The taxable value of immovable property is determined by an evaluation based on a taxpayer's statement, but if necessary the evaluation shall be preceded by an expert survey. The appraisal of rural property shall be made on a cadastral, non-cadastral or direct base. The appraisal of urban property is always directly undertaken.

The tax rates of IMI are as follows:

- → Rural property – 0.8 %;
- → Urban property – 0.5 % to 0.8 %;
- → Urban property evaluated under the IMI Code (since December 1, 2003) – 0.3 % to 0.5 %;
- → Blacklisted domiciled owners – 7.5 % (tax rate not applied to individual owners who are domiciled in those territories).

D. Value Added Tax

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

The sale of real estate is generically VAT exempt.

However, providing that some conditions are met, taxable persons can waive the VAT exemption on the sale of real estate and opt to apply for the general tax rate (presently at 23 %).

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

In general, the renting/leasing of immovable property is VAT exempt.

However, this exemption does not include the following operations: (i) the provision of accommodation in the hotel sector or in sectors with a similar function, including on sites developed for use as camping sites; (ii) the leasing of premises and sites for the parking of vehicles; (iii) leasing of machinery or other permanently installed equipments or any other leasing of immovable property from which may arise the onerous transfer of the exploitation of commercial or industrial establishment; (iv) leasing of safes; (v) leasing of exhibition or advertising spaces.

As for the sale operations, VAT exemption on the renting/leasing of immovable property may also be waived if certain conditions are met.

E. Other Taxes

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

No.

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

Loans granted to resident entities, regardless of the nature or place of domicile of the lender, are in general subject to stamp duty ranging from 0.04 % up to 0.6 %, depending on the period of time of the credit or loan given.

However, the Stamp Duty Code provides for some exemptions applicable to intra-group loans, as follows:

- Long term loans qualified as "suprimentos" for the Portuguese commercial law purposes, made by the shareholder to the company;
- Short term (less than one year) cash management loans made by Portuguese SGPS Holding Companies ("sociedades gestoras de participações sociais") to its subsidiaries;
- Short term cash management loans made by the subsidiaries to Portuguese SGPS Holding providing that both companies find themselves in a dominant or group position;
- Short term cash management loans made by Parent Companies to its Subsidiaries providing that the participation complies with a minimum holding period of one year and a minimum shareholding of 10 %.

Real Estate Investment in

Romania

A. Legal/General

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

Until January 2012, foreign individuals and foreign legal entities were not allowed to buy land in Romania. For land to be used for agricultural purposes, the restriction will be valid until January 2014.

However, non-resident investors are allowed to buy buildings or parts of a building (i.e., apartments). The acquisition of real estate may be done through a Romanian legal entity.

2. Which importance does the Romanian land register have?

The ownership right shall be entered in the Land Registry on the basis of the document through which it has been constituted or validly transmitted. The registrations shall be opposable to third parties on the date the request has been filed and will automatically be filed by the Public Notaries as their lawful obligation (as a general rule). Basically, if you are the owner of a piece of land, you must appear in the Land Registry as owner.

B. Income Tax

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

→ Corporate income tax rate:
- 16 %
- Taxpayers deriving revenues from nightclubs, bars, casinos and betting activities should pay the higher between corporate income tax (16 %) and 5 % applied on such revenues.
- A so-called "micro-enterprise" tax regime may apply to certain companies (such companies should have between one and nine employees, annual revenue should not exceed € 100,000 and should not be derived from the supply of management and advisory services). Instead of paying the regular corporate tax on profit, micro-enterprises may choose to pay a tax of 3 % starting 2009 of the total gross revenue.

- Personal income tax rate:
  - 16 %
  - 2 %/3 % (depending on the value of the transaction) for real estate applied to the entire income derived from the sale of real estate;
- Participation exemptions:
  - Full exemption for dividends received from a Romanian company;
  - For inbound dividends additional requirements for EU (minimum 10 % shareholding in the subsidiary and minimum holding period of 2 years);

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

Mainly, the depreciation period for buildings is between 40 to 60 years according to the Government Decision no. 2,139/2004 regarding the depreciation register of the fixed assets. In accordance with the Romanian Fiscal Code the depreciable fixed assets do not include land.

Also, according to the fiscal legislation for constructions only the straight-line method of depreciation is applicable.

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

The non-residents performing activities in Romania are subject to income tax on the Romanian source income. Provided that residency conditions are met, after the first year, the worldwide income is subject to taxation in Romania.

Foreign entities are generally subject to Romanian tax on the income derived from Romania. The extent to which a foreign entity is subject to Romanian taxation depends on its activities undertaken in, or related to Romania.

A foreign entity can be subject to taxation by establishing a branch, creating a permanent establishment, representative office or by becoming subject to withholding tax on the Romanian sourced income.

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

The real estate investor can acquire real estate located in Romania in the way of an asset deal (e.g. direct acquisition of real estate) or share deal (e.g. acquisition of corporation owning real estate). Please find below a short overview of the main advantages and disadvantages with respect to the above mentioned ways used for acquisition of real estate:

	Advantages	Disadvantages
Share deal	no VAT on transfer of shares	lower depreciation expenses and higher taxable profits unless revaluation is made
	no need to adjust input VAT	
	lower tax on buildings, until revaluation is performed	
Asset deal	higher depreciation expenses and lower taxable profits	higher tax on building

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

Deductibility threshold

The law limits the level of deductibility for loans obtained from companies other than banks, their branches, credit cooperatives, leasing and mortgage companies, at

- the National Bank of Romania's (NBR) reference interest rate – for RON denominated loans; and
- an annual interest rate for foreign currency denominated loans, a rate which is periodically updated by the Government. This interest rate is 6 % for 2012.

The interest expense in excess of the above limits is treated as non-deductible expense and its disallowance is permanent.

Debt-equity ratio (D/E)

The deductibility of interest expenses as well as of foreign exchange expenses is also subject to limitations based on the computation of the debt-equity ratio (i.e. borrowed capital divided by own capital).

For the purposes of the above ratio, the debt represents all credits and loans with a term longer than one year, including supplier credit, but excluding bank loans and lease operations. The interest expenses are deductible if the debt-equity ratio is positive and less than or equal to 3. If it is higher than 3 or negative, the interest is non-deductible; however, it can be carried forward and deducted in future tax periods, when the ratio drops to 3 or below.

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

The costs relating to the acquisition including transaction costs (e.g. due diligence costs, consultancy fees for structuring, valuation costs, etc.) and interest expenses of debt financed acquisition are deductible for corporate income tax purposes, provided that the general deductibility rule is fulfilled, namely "expenses are deductible only if they are incurred with the scope of obtaining taxable income". Other conditions that must be fulfilled by any type of expense in order to ensure that it is deductible for the computation of taxable profit refer to the fact that they must be recorded in accounting based on a justifying document proving the performance of transaction or the entry into patrimony.

Expenses for management services, consulting, assistance or other services are not deductible for corporate tax computation if the taxpayer cannot prove their necessity for the purpose of carrying out its own activity and if there are no contracts concluded for rendering them.

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

The Romanian legislation does not allow tax grouping for corporate income tax purposes.

A merger or a conversion is legally possible. According to the Romanian tax legislation, the interest related to a loan is deductible only if this loan is used in order to obtain taxable income. Generally, shares are not considered to generate taxable income, therefore the interest related to the loan for the acquisition of shares could be considered as non-deductible for corporate income tax purposes. However, in case that a debt push down structure will be used for financing purposes, the related interest expense could be deductible for corporate income tax purposes.

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

The tax rate applicable for the revenue obtained from Romania by a non-resident entity is the more favorable tax rate between internal legislation (16 % tax rate on interest revenues derived from Romania), EU legislation or double tax treaty, if specific documentation is provided.

EU legislation is applicable only in cases of transactions between Romania and EU or EFTA Member States.

Application of EU legislation – Romania has implemented the Interest and Royalties Directive. Starting January 1, 2011, provided that the actual interest beneficiary is an EU resident legal person and the foreign entity holds at least 25 % of the shares of the Romanian tax payer for an uninterrupted period of at least two years ending when the interest payment is made, the interest income would be exempt from withholding tax in Romania.

For application of EU legislation, the non-resident beneficiary must provide to the income payer, besides the fiscal residency certificate, a liability declaration disclosing the fulfillment of following conditions as the beneficiary of interest income from Romania: minimum ownership period, minimum percentage of ownership of the share capital of the Romanian legal entity.

If one of the above conditions is not met, the provisions of double tax treaties or the local legislation might be applied.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

The taxpayers are allowed to carry forward fiscal losses as declared in the yearly profit tax returns for a period of five years based on a First-In, First-Out (FIFO) method.

As an exception, the fiscal loss incurred starting with year 2009 and onwards may be carried forward for a period of seven years.

For foreign legal persons, this rule (i.e. carry forward of losses) applies only to revenues and expenses attributable to their permanent establishment in Romania.

In Romania, a Loss Carry Back is not possible at all.

C. Real Estate Taxes

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

No real estate transfer tax is applicable in Romania.

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

In Romania real estate are subject to local taxes and duties which are regulated by the Fiscal Code.

Taxes on Buildings
For buildings owned by individuals, the rate for calculating the tax is 0.1 %. The rate applies to the taxable base established by the law according to the type of building.

For buildings owned by legal entities, a 0.25 % - 1.50 % rate applies to the gross book value of the building, accounted for in the financial statements.

In case of buildings which have not been revalued for a period of three years prior to the year of taxation, the tax due represents 10 % - 20 % of the gross book value of the building.

In case of buildings which have not been revalued for a period of five years prior to the year of taxation, the tax due represents 30 % - 40 % of the gross book value of the building.

A lower building tax is due for buildings which are fully depreciated. No taxes on buildings are due on certain buildings and special constructions.

Taxes on Land
This tax is calculated annually as a fixed amount per square meter and is payable in two installments, on March 31 and September 30. The tax varies in accordance with the location of the land and its destination.

D. VAT

1. What are the VAT consequences of a sale of real estate (asset deal/share deal)?

Asset deal
The sale of old buildings and of ancillary land, as well as land which is not meant to be used for construction is exempt without deduction right.

New buildings (or part of buildings) and land that could be used for constructions sold by VAT payers do not benefit of this exemption. The sale of a new building means a sale made at the latest on December 31 of the second year following the first occupation or use, as the case may be.

The supplier has the option to apply VAT on the exempt transactions.

If a taxable person has deducted VAT related to a real estate and sells or rents immovable property under the VAT exemption regime, adjustments for the deduction right should be performed. The adjustment period is 20 years for immovable property built, acquired or modernized after January 1, 2007.

Share deal
No VAT applicable on transfer of shares.

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

With respect to the VAT on rent or leasing of real estate, after EU accession, the rental or leasing of immovable goods is exempt without right of deduction, except for certain cases explicitly specified by the law. In case of a sale of immovable property, the taxpayer has the option to apply VAT on these operations.

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Russia

A. Legal/General

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

Real estate may be acquired by individuals or corporations. Certain types of real estate may not be owned by foreign individuals or foreign entities (non-residents). This specifically relates to land adjacent to the national borders and agricultural land. However, those types of land may be leased.

2. Which importance does the land register have?

All legal rights with respect to real estate arise only upon registration. Therefore, any title in respect to real estate as well as any change therein should be registered in the Russian public register ("cadaster" – starting from 2013 and onwards). One should note that Russian civil law considers buildings and land as separate objects of legal rights and therefore they are recorded in the register as separate objects.

B. Income Tax

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

Corporate tax (CIT)
The Russian corporate profit tax rate is 20 %. CIT is calculated on income net of deductible expenses, provided they meet the business purpose test. There are no special rates for real estate.

Personal income tax (PIT)
Russia uses a flat scale taxation. A general PIT rate for tax residents is 13 % and 30 % for non-residents (Russian tax residency is acquired if an individual spends in Russia at least 183 calendar days during a period of 12 consecutive months). The duration of stay test is the only criteria for individuals in order to be considered as Russian resident for tax purposes.

No special rates for real estate exist.

Capital gains
Russian tax law does not know special capital gains tax.

- Real estate: Capital gains received by Russian companies from the sale of real estate are subject to CIT at a general rate of 20 %. Sale of real estate by individuals is subject to 13 % / 30 % – depending on their tax status.

  An exemption of capital gains derived from the disposal of real estate is available for Russian resident individuals only, provided that a property is held for more than 3 years and is used for private purpose only.

- Shares in real estate holding company: With respect to the sale of shares in real estate holding companies the same rates apply as in case of a direct sale of a real estate asset (20 % – CIT / 13 % or 30 % PIT).

  These capital gains may be exempt from taxation (new rule starting from January 1, 2011). This exemption particularly applies to capital gains from the disposal of stocks in Russian companies if the shares qualify as non-listed and its holding duration is at least 5 years (starting from 2011). A special rule exists in respect to listed stocks (only for high-tech companies).

  As a general rule, capital gains received by foreign companies from the disposal of shares in Russian legal entities are not taxed in Russia. The exclusion to this rule are capital gains from sale of shares in real estate holding companies (minimum of 50 % of assets are real estate). However, this exclusion may be overridden by applicable double tax treaty provisions.

Dividends
The general tax rate for dividends received by Russian corporations or individuals is 9 %.

Participation exemption (0 % rate) is available for dividends received by a Russian company if it holds at least 50 % of the capital of the distributing subsidiary for a period of not less than 365 calendar days. The exemption is unavailable if the subsidiary is an offshore company or resides in a country that does not support the exchange of information procedures (black list if defined by Russian Ministry of Finance).

Dividends payable to foreign legal entities are subject to general 15 % withholding tax and may be reduced under an applicable double tax treaty.

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

In Russia different types of asset are divided into categories. For each category of assets a useful life period is defined by law. The useful life of real estate assets is usually 30 years (the last group – 10).

For tax purposes a corporation may depreciate real estate using the straight-line method only and no accelerated depreciation is available. The base for depreciation are the acquisition of production costs of a real estate, less 10 % deduction which may be applied upon putting an asset into operation

The acquisition costs for a land plot are not depreciable, except in cases when land is acquired from public or municipal owner.

The different tax treatment of audition cost for building and land plots in practice requires to make a price split in the asset purchase agreement.

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

A foreign investor may be subject to limited taxation in Russia if he directly holds real estate assets.

If the investors' real estate business activity does not create a permanent establishment in Russia, rental incomes, capital gains from the disposal of real estate and the disposal of shares of real estate holding companies (minimum of 50 % of assets are real estate) are subject to withholding taxation at source at a rate of 20 %. As a general rule, the withholding tax is levied on gross income. In case of disposal of real estate or shares in real estate holding companies acquisition expenses may be deducted – a tax base is calculated by a tax agent who shall be provided with documents confirming the acquisition expenses prior to the payment of income to a foreign investor. Income from the sale of shares in real estate holding companies may be protected by an applicable double tax treaty.

If the investor's business activity creates a permanent establishment in Russia, a profit attributed to such permanent establishment (income less expenses) will be subject to general CIT rate at 20 %.

Direct holding of a real estate asset in Russia may be favorable if its acquisition was debt financed as this in certain cases allows avoiding the application of local thin capitalization rules.

Foreign (non-resident) individuals are subject to limited taxation levied on the gross income received from the rental of real estate, sale of real estate or sale of shares in real estate holding companies. The general applicable tax rate is 30 %. Foreign (non-resident) individuals are personally liable for the payment of tax and should declare their tax liability by filing a tax return.

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

Acquisition of real estate in Russia may be realized by way of an asset deal or share deal. There are no special transfer taxes applicable.

In case of a share deal the real estate asset value remains unchanged in the target company's books. Special attention should be paid to interest / cost of financing deduction if the acquisition is debt financed (please see sections B.5 - B.7 for details). Share deals are exempt from VAT.

If a transaction is structured as an asset deal, a real estate asset's value for the acquiring investor is defined as the purchase price. A step up of the asset's value to the purchase price increases the property tax base of the acquiring investor compared to the seller's tax base which was at the level of asset's residual value.

Asset deals are usually subject to VAT at the rate of 18 % (except land).

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

Russian thin capitalization rules may apply if:

- → Russian company has an outstanding debt to a foreign company which owns directly/ indirectly more than 20 % of the Russian company's share capital; or
- → The above debt is owed to a Russian affiliate of the above foreign company; or
- → A debt is guaranteed by an above foreign company (or its Russian affiliate);
- → Debt to equity ratio is 3 : 1 (12.5 : 1 for banks and leasing companies).

The current tax law also provides for a general threshold for the deduction of interest which shall be applied irrespective of the application of thin capitalization rules. In particular:

- → Amount of tax deductible interest should not deviate for more than 20 % from the amount of interest under other comparable loans, or alternatively (upon choice of the tax payer)
- → For the period of 2011 - 2012 the interest rate should not exceed 14.4 % for loans in Russian national currency and 6.4 % for loans in foreign currency. The new rules (thresholds) for 2013 and onwards are not defined yet.

If the new rules for 2013 and onwards are not enforced, the old threshold which has been applied prior to 2010 will be again in force: 8.8 % for loans in Russian rubles and 15 % for foreign currency loans.

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

Financing costs (fees / interest) are not capitalized and are deductible as expenses of the current period. Possible limitations for the deduction of financing fees and interest are described in detail above in section B.5.

If a transaction is structured as a share deal through a Russian SPV and the SPV's income is merely represented by dividend distributions from the acquired target company, the SPV's financing costs cannot be deducted against its dividend income. In this case financing fees form losses which may be deducted against general (operational / non-operational) income.

Costs for the acquisition of shares in real estate holding companies may be deducted against profits from the disposal of these shares. In order to achieve full deductibility of the acquisition and debt finance costs in a share deal transaction, a debt push down option may be used (please see below).

Costs for the direct acquisition of real estate can be deducted for tax purposes by one of two options: depreciation (please see answer on question B.2 for details) and deduction of acquisition costs (residual value) against profit derived from the sale of real estate.

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

It is possible to pool debt financed expenses for acquisition of a real estate company (target) with income of the target by way of down-stream or upstream merger.

If the target is absorbed by the parent company (upstream merger) the real estate asset is transferred at the tax value according to the records of a merged (target) company, i.e. tax neutrally.

Other debt push down options as for e.g. setting up a tax group is not practically available for most investors due to the very high assets value thresholds for group consolidation.

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

Interest paid by a Russian company to a foreign creditor is subject to Russian withholding tax at a general tax rate of 20 %. Withholding tax on the above payments can be reduced or eliminated based on the provisions of an applicable double tax treaty. No withholding taxation applies in case of interest payment in favor of resident creditor.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Operating losses incurred by resident companies and by foreign companies with a permanent establishment in Russia may be carried forward to the following 10 years without limitations. A loss carry back is not allowed.

Losses from the sale of a real estate asset are tax deductible in equal installments over the remaining depreciation period.

C. Real Estate Taxes

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

Russia implies no real estate transfer tax on sale of real estate or shareholding.

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

Real estate tax is levied on property of Russian companies and of foreign company's property qualifying as fixed assets including buildings. The maximum tax rate is currently 2.2 % for corporations of the average net book value of the fixed assets, but rates may vary depending on the region.

Land tax is a local tax payable on land which is owned by a resident or non-resident company. The tax basis is the cadastral value of the land which is set by corresponding local authorities on January 1 each year. The rate depends on the specific kind of land. The maximum rates are 0.3 % for land used for housing purposes and 1.5 % for other types of land. However, specific rates are set up by the local authorities.

D. Value Added Tax

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

VAT at a rate of 18 % applies to sales of commercial real estate realised in Russia. VAT is payable to the budget on an accruals basis. The sale of residential property and land plots is not subject to Russian VAT.

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

Lease of commercial property is generally subject to VAT. However, lease of property to foreign individuals or legal entities accredited in Russia is exempt from VAT if the foreign individuals are residents and foreign legal entities are incorporated in countries listed by the Government of the Russian Federation. This exemption is mandatory.

E. Other Taxes

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

Russia implies no capital taxes for contribution of equity into Russian entities.

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

Russia implies no stamp duty to debt financing granted to a Russian entity.

Real Estate Investment in

Serbia

A. Legal/General

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

Non-resident (foreign) individuals and non-resident (foreign) companies can acquire real estate 'needed for performance of their business' under the 'reciprocity principle'. Yet, in practice a Serbian subsidiary is frequently used for the purchase of real estate in Serbia (in order to avoid adverse interpretation of the term 'real estate needed for performance of their business activities'). These special purpose vehicles are used in order to avoid administrative requirements imposed on a foreigner in order to acquire land and for taxation purposes.

2. Which importance does the Serbian land register have?

Rights of ownership over real property are acquired by their registration in the Real Estate Cadastre. This unified registry is the public record of real estate objects and the rights established on them. It contains information about factual and legal data of real properties.

B. Income Tax

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

- Corporate income tax rate:
  - 10 %
  - Corporate Income Tax Act provides for a tax holiday for large investors. Large investors, who invest (currently) at least RSD 800 million (approx. € 6.9 million) and employ at least 100 workers for an indefinite time, are entitled to tax holiday of 10 years.
- Personal income tax rate: 10 - 20 %
- Special tax rates for real estate: The ownership over real estate in Serbia is subject to the annual property tax. The annual property tax amounts up to 0.4 % of the market value of the real estate as of December 31 of the year preceding the year of the tax assessment. For tax payers keeping business books, the 0.4 % is levied on the book value of the real estate.

- → Participation exemptions:
  There is no international participation exemption. However, withholding tax on dividends received by a Serbian resident company holding for at least a year a minimum of 25 % of the shares in the non-resident company, and the income tax paid by the non-resident subsidiary can be fully credited against the income tax of the Serbia holding company.

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

Real estate is depreciated over its useful life at a single annual tax depreciation rate of 2.5 %. There are no different depreciation categories.

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

A foreign investor is subject to limited liability in Serbia on income from: dividends, interest, royalty, excess bankruptcy and liquidation mass distributed to shareholders, capital gains, lease of movable and immovable property and income from artistic, entertainment, sports and similar programs performed in Serbia.

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

A foreign investment company has two options:

- → Incorporation of an Acquisition Company and purchase of real estate:
  The Serbian Enterprise Law provides for very few conditions for incorporation of a company. The usual form of a company is the limited liability company. The incorporation of a Serbian limited liability company does not trigger any taxation. Once the Acquisition Company is set up by the Investment Corporation, it can purchase real estate in Serbia.
- → Purchase of a local company owning real estate:
  The Investment Company can opt to purchase an existing Serbian company which holds real estate. The purchase of a Serbian company is in principle tax neutral. However, in practice, purchasers are regularly required to pay property transfer tax on transfer of shares in a Serbian company, which by law is due by the seller of the shares.

For other tax consequences see the questions below.

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

- → Thin capitalization rules:
  In case the loan is granted to the Serbian company by a related party, thin capitalisation rules need to be obeyed. A related party is a company or an individual holding at least half of the shares, stock or votes of the other company or if a company or an individual has control or influence concerning business decisions of the other company. According to Serbian Corporate Income Tax Law, the deductible interest is limited to 4*own capital of the Serbian tax payer. Interest in excess of the above formula may be deducted in the following year.
- → Transfer pricing:
  Transactions between related entities must be on arm's length basis. Serbia has no documentation requirements.

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

The purchase price paid for acquisition of real estate is capitalised. The only additional acquisition cost which can be capitalised along with the purchase price is the property transfer tax at the rate of 2.5 %, if it was paid by the purchaser. All other expenses (financing fees, interest from initial loan and refinancing, evaluation, lawyers' fees etc) are immediately deductible.

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

The Serbian Enterprise Law allows both up-stream and down-stream mergers. Mergers are tax neutral. After the merger is performed, all the financing costs (interest and similar), are deductible from the profit of the newly established company. Same refers to potential refinancing expenses. Serbian laws do not contain provisions on cross-border merger.

The Serbian legislation does allow tax grouping for corporate income tax purposes. The parent company must own at least 75 % of the shares or stock of the other company. The group files a consolidated tax return (losses and gains of the group members are offset).

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

Dividend distributions, i.e. interest payments from one Serbian company to another Serbian company are not subject to withholding tax. On the other hand, dividends and interest paid by a Serbian company to a non-resident shareholder are subject to 20 % withholding tax unless reduced under an applicable double tax treaty.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Tax losses incurred in a Serbian corporation can be carried forward for 10 years. No Carry Back is allowed.

C. Real Estate Taxes

1. Does Serbia levy a real estate transfer tax on sale of real estate or sharehold-ings? Is it avoidable?

Every sale of real estate built after January 1, 2005 other then the first transfer and sale of real estate built before January 1, 2005 is subject to 2.5 % property transfer tax. The tax payer is the seller, but in practice the tax burden is regularly shifted to the purchaser. The taxable base is the market value of the real estate. In general, sale of shares in a Serbian company is subject to the property transfer tax at the rate of 0.3 %.

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

Serbian real estate (buildings and land plots) is subject to property tax. The tax depends on the location of the real estate. For taxpayers who maintain business accounts the tax rate is 0.4 %, calculated on the market value. For other taxpay-ers the rate is progressive (starting value 0.4 %) The property tax rate is set by the municipalities, which have the right to stipulate it up to the amount of 0.4 %.

D. Value Added Tax

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

The real estate investor can acquire Serbian real estate by way of an asset deal (e.g. direct acquisition of real estate or acquisition of tax-transparent partner-ships. The sale of residential real estate is taxable at the rate of 8 % VAT, the sale of other types of real estate is subject to 18 % VAT and provided that the real estate is built after January 1, 2005 and that the sale of real estate represents the first transfer. Precisely, under the Serbian Value Added Tax Law, the first transfer of real estate built after January 1, 2005, is subject to VAT.

Sale of shares is not subject to VAT.

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

The leasing of real estate for business purposes is subject to VAT at the rate of 18 %. Leasing of residential premises however is VAT exempt. Therefore, only leasing of business premises qualifies the lessor to input VAT deduction, whilst lessor of residential real estate bears cost of VAT charged to it.

E. Other taxes

N/A

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

No.

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

No.

Real Estate Investment in

Slovakia

A. Legal/General

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

As of the date of accession of Slovakia to the EU on May 1, 2004, foreigners (all natural persons or legal entities not resident in Slovakia, including branch offices of foreigners – except branch offices of a foreign bank) may acquire ownership of real estate. There are restrictions concerning agricultural and forest property. Prior to the accession the ownership of real estate by foreigners was not possible.

The acquisition does not have to be carried out by a Slovakian corporation.

2. Which importance does the Slovakian land register have?

The ownership to real estate that is transferred under the contract passes over to the buyer as soon as the ownership right is registered with the Cadastral Register ("kataster nehnuteľností"). The standard application for registration of the ownership within a period of 30 days is charged with the administrative fee of € 66 or in accelerated time period of 15 days with the administrative fee of € 265.50.

B. Income Tax

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

- Corporate income tax rate: 19 %
- Personal income tax rate: Single tax rate 19 %
- Participation exemptions: No

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

Buildings – that belong to the fourth depreciation group – have a tax depreciation period of 20 years (since January 1, 2004). If the buildings were acquired by way of financial leasing, they can be depreciated in 12 years. There is also a possibility of the component depreciation of the building equipments which are a part of buildings (e.g. computer networks, elevators and lifts, air conditioning), but can be depreciated in a shorter time. Both straight-line and accelerated methods of depreciation are allowed.

Land cannot be depreciated.

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

Individual non-resident investors

An individual real estate investor is non-resident in Slovakia if he has neither a domicile nor his habitual place of abode in Slovakia.

Non-resident individuals are taxed on real estate only with respect to income from the following sources:

- → Income from rentals and leasing if the immovable property is located in Slovakia, irrespective whether the immovable property belongs to a Slovak or non-Slovak business
- → Income from the sale of real estate located in Slovakia within the five-year holding period in the case of ownership of the real estate.

Non-resident individuals with Slovak-source real estate income have to file tax returns. The 19 % flat tax rate applies.

Corporate non-resident investors
A corporate real estate investor is non-resident in Slovakia if the place of management or legal seat is not situated in Slovakia.

Income of non-resident corporations (comparable to Slovak corporations) from immovable property (including capital gains) situated in Slovakia is taxable as business income.

The 19 % flat tax rate applies.

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

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

Direct investment (asset deal)
A Slovak foreign entity may directly acquire Slovak real estate. Interest expenses for a debt-financed acquisition may be deducted from the income from real estate if real estate is rented out or used for its own business. No real estate transfer tax is applied.

If the investment fund is considered to be a transparent company in the state of its residence (outside Slovakia), it is considered to be a transparent company by Slovak law, too. The income of shareholders is subject to the personal income tax rate of 19 %.

If the investment fund is considered to be a non-transparent company in the state of its residence (outside Slovakia), the tax base is created by the company income and is subject to the corporate income tax rate of 19 %.

Indirect investment (share deal)
Investment through a resident corporation: The tax base is created by the company income. The income of shareholders (dividends) is not subject to taxation in Slovakia.

Investment through a resident partnership: The income of a general partnership (v.o.s.) is split between the shareholders and is subject to the personal income tax rate of 19 %. The income of limited partnerships (k.s.) is split between the unlimited and limited partners. Income of the limited partners is subject to the corporate income tax as a whole. Income of the unlimited partners is taxed separately at the level of each unlimited partner. The tax rate is 19 % for both limited and unlimited partners.

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

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

Thin capital rule
Currently there are no thin capital rules in legislation.

Transfer pricing rules
The Slovak ITA rules for transfer pricing are in line with OECD Transfer Pricing Guidelines. As from January 2009, transfer pricing documentation in line with the OECD Code of Conduct is obligatory. If requested by the tax authority during a tax audit it must be submitted within 60 days. Two types of transfer pricing documentation can be used, depending on the size of the company and some other criteria. In a simplified way – a smaller company can use simplified documentation.

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

Acquisition costs can be deductible by shareholders. Interest expenses for a debt-financed acquisition may be deducted from the income from real estate if real estate is rented out or used for its own business.

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

In general, each corporate entity is regarded as a separate entity for income tax purposes. Thus, parent corporations and subsidiaries are taxed separately. Resident parent corporations and resident subsidiaries may not elect for taxation as a fiscal unity. Any agreements in this regard are not valid for tax purposes.

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

Yes, generally the withholding tax rate on interest and royalty payments is 19 % of the gross amount of income. A lower rate may be provided in the applicable double tax treaty and per applying the EU Interest and Royalty Directive for group purposes. Payments for the financial leasing are considered as interest.

Dividends are not subject to withholding tax.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Tax losses arisen for any taxable periods after the year 2009 may be deducted from the tax base of not more than seven consecutive tax periods provided that the losses were computed according to generally accepted accounting principles and adjusted for purposes of the ITA.

For the tax losses generated in taxable periods that ended before January 1, 2010, the previous five-year period is still applicable. This tax loss carry forward applies to losses incurred starting in 2004.

There is no obligation to invest an amount equivalent to the losses or to carry forward the losses in equal portions. A loss carry forward is also possible for the legal successor.

It is not possible to carry back losses to previous periods.

C. Real Estate Taxes

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

As from January 1, 2005, no real estate transfer tax is levied in Slovakia.

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

Real estate tax is levied on Slovak real property, which comprises land, buildings and flats. For land the taxable base is the assessed value of 1 m^2 of land multiplied by the area in m^2.

Lower and higher annual tax rates are limited by the law and the Slovak municipalities may apply their local tax rates with effect from January 1, 2005.

D. VAT

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

The delivery (sale) of real estate or part of real estate is VAT exempt if the delivery is carried out after five years from the first use. The VAT registered person may opt to charge the VAT within the first five years. The seller is only entitled to a full input VAT deduction for services received related to the acquisition of real estate and the acquisition costs if the following sale is subject to VAT. The same has to be considered for VAT on some major repairs undertaken within twenty years of the sale. If input VAT was deducted, a VAT-exempt sale within twenty years leads to a pro-rata reversal of input VAT deduction. This new period (twenty years) will be applied for real estate acquired from January 1, 2011. For real estate acquired until December 31, 2010, the previous ten years period is valid.

The delivery of the land which is used for construction purposes as a building plot is always delivered with VAT.

The actual tax rate is 20 %.

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

In general, leasing or subleasing of immovable property or a part thereof is exempt from VAT. Excluded are rents of premises and sites for parking vehicle, accommodation facilities (hotel, hostel, pensions, etc.). The taxpayer who rents immovable property to a taxable person (it is irrelevant if this taxable person is or is not registered for VAT in Slovakia), may decide not to have the lease exempt from VAT.

The leasing agreement with the obligation to buy the subject of the leasing is treated as delivery of goods. A leasing agreement with the right to buy is treated as supply of services.

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Slovenia

A. Legal/General

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

Since May 1, 2004, citizens of the European Union may acquire real estate without any special requirements (the same as Slovenian citizens).

Special conditions for purchasing real estate apply for US citizens, Swiss citizens, and citizens of EU candidate countries and Slovenians without Slovenian citizenship.

Citizens of other countries can become owners of real estate in Slovenia only in accordance with inheritance law and the reciprocity principle.

It is common practice that the acquisition of real estate for business purposes is carried out by Slovenian corporations.

2. Which importance does the Slovenian land register have?

According to civil law regarding real estate, the ownership right may only be acquired with the incorporation of the property right in the land register (Zemljiska knjiga). The registration normally takes place within approximately one month.

B. Income Tax

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

→ Corporate income tax rate
- 18 % in 2012
- 17 % in 2013
- 16 % in 2014
- 15 % as of 2015
- Equipment and intangibles incentive:
  There is a deduction from the tax base of 40 % of the amount invested in equipment and intangibles up to the amount of the taxable base. Equipment does not include furniture and office equipment and motor vehicles, except cars and buses on hybrid or electrical drive, and trucks meeting the EURO VI emission requirements. The maximum amount of the deduction is not limited.

› A tax rate of 0 % applies for investment funds, pension funds and insurance undertakings for pension plans under certain conditions and to venture capital companies which were set up under the Venture Capital Companies Act and prepare a separate tax statement just for that part of their activity.

→ Personal income tax rate in 2012
Marginal tax rate:
› Up to € 7,840.53: 16 %
› From € 7,840.53 to € 15,681.03*: 27 %
› From € 15,681.03*: 41 %
  * From January 1, 2013, a new personal income tax scale will apply, in which the limit for the highest tax class has been increased from € 15,681.03 to € 18,534.
› A special rate of 50 % for taxable amounts exceeding € 69.313 has been adopted temporarily for the years 2013 and 2014. The special rate of 50 % will apply from January 1, 2013.

→ Participation exemptions:
When calculating the tax base for corporate income tax act purposes, the taxpayer may exclude dividends received and other similar income, except hidden reserves, if the payer is:
› liable to pay the tax based on the Corporate Income Tax Act; or
› a resident of an EU Member State for tax purposes in accordance with the law of such Member State and is not deemed to be a resident outside the EU in accordance with an international treaty on the avoidance of double taxation concluded with a non-Member State, and is a tax payer subject to one of the taxes in connection with which the common system of taxation applying to parent companies and subsidiaries from different EU Member States, whereby a company that is exempt from tax or that has the possibility of a choice of taxation shall not be deemed to be a taxpayer; or
› liable to pay tax comparable to the tax according to Slovenian Corporate Income Tax Act and is not a resident of a country – or in the case of a business unit, not situated in a country – in which the general average nominal level of tax on corporate profits is less than 12.5 %. The aforementioned provisions also apply to a non-resident recipient if the recipient's participation in the equity capital or management of the person distributing profits is connected with business activities performed by the non-resident in or through a permanent establishment in Slovenia.

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

The depreciation rate for building projects including investment property generally amounts to 3 % p.a., for individual building units the deprecation rate increases to 6 % p.a. Depreciation over a shorter useful life is permitted for financial accounting purposes but not allowable for tax purposes. For tax purposes only the straight-line depreciation method may be used.

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

A foreign investor is subject to limited tax liability in Slovenia if he receives income which has its source in Slovenia. Slovenian sourced income is i.a. a business activity carried out through a permanent establishment in Slovenia, income from real estate if the real estate is located in Slovenia or dividends paid by a Slovenian company.

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

A real estate investor may acquire Slovenian real estate in form of an asset deal or a share deal (e.g. acquisition of a corporation owning real estate).

Capital gains due to an asset deal or a share deal are not treated equally for corporate income tax purposes. Only 50 % of capital gains due to a share deal are subject to corporate income tax under the conditions prescribed by the Corporate Income Tax Act. Capital gains due to an asset deal are subject to the general corporate income tax.

Capital gains due to an asset deal or a share deal are treated equally for personal income tax purposes. The tax rate for capital gains depends on the holding period:
→ 20 % for a holding period of up to 5 years,
→ 15 % for a holding period from 5 to 10 years,
→ 10 % for a holding period from 10 to 15 years,
→ 5 % for a holding period from 15 to 20 years and
→ 0 % for a holding period longer than 20 years.

For gains generated after January 1, 2013, a higher tax rate will apply in case of a holding period of up to five years. The new tax rate will be 25 % (now: 20 %). This tax is a final (flat) tax.

Capital gains derived from the direct disposal of immovable property acquired before January 1, 2002 are not taxable. Gains on immovable property used as a permanent home of the taxpayer for at least 3 years preceding the disposal are exempt.

In case of an asset deal the purchase price forms the new tax basis for depreciation. In case of a share deal the depreciation basis is rolled over to the acquirer.

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

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

Thin capitalization rules apply to loans from shareholders who hold at least 25 % of the capital or voting rights at any time during the tax period. According to the provision, the interest on loans from such shareholders may not be deducted if the loans exceed four times the value of the lender's share in the capital of the company (a debt-equity ratio of 4:1). Thin capitalization rules apply to direct loans and loans granted by a substantial shareholder indirectly through a bank or any other third party. The provision covers not only the debt financing of companies subject to unlimited tax liability in Slovenia, but also the financing of companies that are only subject to limited tax liability such as Slovenian permanent establishments of foreign companies.

There is a special rule regarding the interest paid among associated enterprises in accordance with Article 19 of the Slovenian Corporate Income Tax Act. The interest shall be determined in general in accordance with the arm's length principle.

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

Interest on the debt-financing of the acquisition of a participation in a (resident or non-resident) corporation is in general tax deductible regardless of the fact that the participation exemption provides for a tax exemption on income from the acquired participation.

Interest expenses for a debt-financed acquisition of real estate may, in general, be deducted from the income from real estate if the real estate is rented out or used for the own business.

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

In Slovenia neither a tax group nor a conversion are legally possible to generate a debt push down, whereas a corporate income tax neutral merger is in principle allowed. However, a debt push down/up by down-stream or up-stream merger is not possible in Slovenia, since interest paid after mergers are not recognized as expenditures for tax purposes.

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

Withholding tax at a rate of 15 % applies for corporate income tax purposes to interest, with the exception of interest on loans raised and securities issued by the government of Slovenia, and interest paid by banks.

There is no withholding tax if a resident taxpayer notifies the payer of its tax number and if a non-resident taxpayer for activities in a business unit in Slovenia notifies the payer of its tax number.

The EU Directive on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been implemented.

Interest paid to individuals is subject to a flat rate of 20 %. From January 1, 2013, a higher tax rate of 25 % will apply (now: 20 %).

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Losses derived from business activity may be carried forward without limitation, provided the loss was computed according to generally accepted accounting principles. There is no loss carry back in Slovenia.

C. Real Estate Taxes

1. Does Slovenia levy a real estate transfer tax on sale of real estate or share-holdings? Is it avoidable?

Transfer of real estate and comparable rights
The real estate transfer tax is levied on the transfer of immovable property if VAT has not been charged on such property. Taxable transactions include the sale and – inter alia – the exchange of immovable property. In general, the taxpayer is the seller of the immovable property. The tax rate is 2 % of the contractual price. If the contractual price is 20 % lower than the general market value determined by a special rule, the tax base is 80 % of the market value.

The following transfers of immovable property are exempt: transfers to diplomatic and consular missions and to other international organizations according to international contracts and conventions, transfers made under the privatization process, transfers of agricultural land and transfers connected to the enforcement of tax collection.

The taxpayer must submit details of the transfer to the local tax administration on a prescribed form within 15 days of the contract date. The tax office must issue a written invoice for the tax within 30 days and the tax due is payable within 30 days.

Transfer of shares
Real estate transfer tax is not levied in the case of a transfer of shares in companies owning Slovenian immovable property.

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

There is no general real estate tax. However, a land and building compensation duty is imposed on owners or users (renters, etc.) of plots of land and buildings. The tax rates are set up by the municipalities. For individuals, the duty is deductible if the property is used as business property.

In addition, a property tax is levied on individuals who own premises (including plots of land and buildings that are also subject to the above duty). The taxable base for premises is the value determined by law. In general, the first 160 sqm of an apartment are exempt from property tax if the owner or his family members live in the apartment. The tax rates are progressive and depend on the type of the premise and on its value. In general, the rates range from 0.1 % to 1.5 % of the value.

→ Tax on immovable property of a greater value – temporary measure used only until 2014
The tax is assessed for the period from June 1, 2012 on, whereby the tax liability for 2012 is reduced by 50 %.
- Taxable person
  The person liable to pay the tax is an individual or a company registered in the real estate register as owner of the real estate on January 1 of the current year (in 2012: on June 1, 2012).
- Subject to taxation
  The tax is levied on immovable property in the territory of the Republic of Slovenia which belongs to the same owner and if the total value amounts to at least € 1,000,000. The tax base is the sum of the values of all immovable property owned by the same owner. The value is determined based on the mass valuation of real estate data. Immovable property intended for business or industrial use, agricultural land, water areas, forest land and public good are exempt from taxation.
- Tax rates
  0.5 % if the tax base is between € 1,000,000 up to € 2,000,000,
  and
  1.0 % if the tax base is above € 2,000,000.
- Assessment
  The tax authority will issue a tax assessment until June 1 of the current year. For the year 2012, the tax will be assessed before August 31, 2012.

→ Tax on profit from land use change
It is levied on the profit from the sale of land whose use, since the time of the acquisition, has been altered into building use. Land which was already designated for building use at the time of acquisition is not subject to taxation.
- Taxable persons
  The person liable for the tax is the person (individual or company) selling the land.
- Taxable amount
  The taxable amount is the difference between the value of the land at the time of the disposal and the value of the land at the time of the acquisition (taking into account certain expenses incurred upon acquisition/disposal). If the land was acquired before June 1, 2012, the acquisition value will be determined as of June 1, 2012 based on the mass valuation of real estate data. The taxable person can demonstrate a different value by means of acquisition document.

- Tax rate
  The applicable tax rates depend on the duration from the change of use until the sale:
  25 % – less than 1 year
  15 % – from 1 to less than 3 years
  5 % – from 3 to incl. 10 years
  0 % – more than 10 years.
- Tax return
  Taxable persons are obliged to submit a tax return to the tax authorities within 15 days after concluding the sales contract by means of the capital gains tax form.

D. VAT

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

Revenues from the sale of real property are VAT exempt, with the option to taxation. However, the sale of buildings, parts of buildings and land on which the buildings are located is not VAT exempt:

- → if the supply is effected before the buildings or parts of buildings are used for the first time or
- → if the supply is effected before two years after the first use

Transfer of building land is always subject to VAT. If VAT was deductible when buying a real estate and later this real estate is sold under VAT exemption, an adjustment of the deductible VAT has to be made over a period of 20 years, starting with the year in which the VAT was deducted. The same holds for other tangible assets whereby the correction period is only five years.

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

The leasing out of real estate for business purposes is, in general, VAT exempted. The lessor may opt for taxation if the lessee has a 100 % right for VAT deduction. In that case the lessor would charge VAT at a rate of 20 % on the rent. Before charging the first rent with VAT, both the lessor and the lessee have to send a note to their respective tax office to inform it about the option for taxation (same procedure is valid when buying a real estate). The lessor is entitled to VAT deduction for services received in connection to his taxable activity – leasing by charging VAT. Financial leasing has the same consequences as the sale of real estate.

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Spain

A. Legal/General

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

In Spain there is no restriction with regard to the acquisition of real estate. Residents as well as non residents can purchase real estate.

Therefore, the acquisition of Spanish real estate does not have to be effected by using a Spanish acquisition company.

2. Which importance does the land register have?

The registration is not a prerequisite for rights with respect to real estate to become effective between the contracting parties. However, such rights are not effective against third parties before they are registered.

B. Income Tax

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

Personal Income Tax (IRPF)
For rental and lease income, generally, the difference between income and all necessary expenses, including interest, is taxable. A 40 % reduction applies to this income if it is earned over a period of more than two years, up to the maximum of € 300,000.

Furthermore, a reduction of 60 % for housing rental is granted, provided the taxpayer reports these earnings. This means the reduction does not apply if the income is not reported but discovered by the tax authorities. Under certain circumstances, for rental to young people (between 18 and 30 years old) this reduction may be increased to 100 %.

Urban properties (designated under land registry rules) that are (i) not rented/leased (ii) but still used for business purposes and (iii) are not the owner's primary residence (e.g. holiday flats located in Spain), result in imputed annual income of 2 % or 1.1 % of the cadastral value. The rate depends on whether the cadastral value was adjusted after January 1, 1994.

The progressive IRPF tax rate depends on the respective autonomous region in which the taxpayer resides. The minimum rates vary between 24.35 % and 24.75 %. The maximum of the progressive rates varies between about 51 % and 56 %. It must be noted that these rates were raised temporarily for the years 2012 and 2013, due to the financial situation of the Spanish treasury, and will be reduced again for 2014.

Capital Gains: This category refers mainly to profits from the sale of assets. The Spanish Personal Income Tax Act (LIRPF) contains a definition of this category and a list of valuation rules.

In effect since January 1, 1999, this system provides for an adjustment of the acquisition value to offset the effect of inflation. The nominal acquisition value is multiplied by a factor that is determined according to the year of acquisition.

The value of assets acquired prior to January 1, 1994, may be reduced to the percentage of taxable capital gains attributed to the period between the acquisition date and January 20, 2006.

With regard to capital gains in 2012 and 2013 the applicable rates, depending on the amount of the taxable basis are 21 %, 25 % and 27 %.

Corporate tax

The general tax rate for corporate tax purposes amounts to 30 %.

A special corporate tax regime applies to companies whose principal business purpose consists of housing lease. Under this regime a 85 % - 90 % reduction of the tax portion corresponding to the income derived from such lease is granted. The requirements are:

- Main business purpose: housing lease, i.e. at least 55 % of the company's income;
- Minimum stock offered for lease: 10 properties;
- Maximum surface of 135 square meters per property;
- No transfer of the houses at least for a 7 years period;
- Separate bookkeeping of the activity consisting of real estate promotion and housing lease with the necessary detail in order to determine the income corresponding to each property.

Requirements for the application of the participation exemption rule:

- Participation in the dividend distributing company of at least 5 % during one year
- The distributing entity must be subject to a tax comparable to the Spanish corporate tax. This requirement is deemed to be fulfilled where a double tax treaty exists that includes the exchange-of-information-clause.
- At least 85 % of the income of the distributing company must derive from entrepreneurial activities, i.e. activities that are not subject to CFC rules.

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

- Personal Income Tax: 3 %
- Corporate Tax:
  - Industrial buildings and warehouses: 3 %
  - Administrative buildings, commercial buildings and housing: 2 %

As an alternative to the straight-line depreciation method a progressive or declining-balance depreciation method can be applied. Furthermore, if it can be justified, a special depreciation plan can be proposed to the tax authorities.

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

Income derived from real estate obtained by non-residents is subject to limited tax liability both according to domestic rules and following articles 6 and 13 of the double tax treaties signed by Spain.

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

Both ways of acquisition are possible in Spain.

In case of a share deal possible tax risks and liabilities are transferred. However, in case the asset deal implies the transfer of a business, tax risks and liabilities deriving from such business are transferred, as well.

In case of a share deal regarding a company whose assets consist of more than 50 % of real estate (taking into consideration real values, not book values) the transfer is subject to transfer tax (general tax rate is 7 %), if the purchaser acquires the control over such company. The tax base for such transfer tax is the real value of the real estate multiplied by the acquired stake.

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

For tax purposes, the amount of financial expenses exceeding the financial income (net financial expenses) is only deductible up to a percentage of 30 % of the operative profit of the company (EBITDA + financial income of investments in equity instruments). This limit does not apply if the net financial expenses do not exceed € 1 Mio.

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

Personal Income Tax
In case of lease income interest is deductible within the limit of the income obtained.

In order to determine a capital gain, interest paid is not deductible.

Corporate Tax
Interest do not increase the book value and are deductible to the limits mentioned in this document under B.5 and B.7 and to the limits of the arm's length rules where applicable.

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

Financial expenses derived from the indebtedness to entities belonging to the same group and incurred in order to acquire intergroup participations or to make intergroup contributions are not deductible unless a business purpose can be justified.

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

Interest payments within Spain generally are subject to a 19 % withholding tax (in 2012 and 2013: 21 %). Interest payments made to residents of other EU Member States are exempt from withholding tax. Interest payments made to non EU-residents generally are subject to a 19 % withholding tax (during 2012 and 2013: 21 %). If a double tax treaty is applicable, a reduced withholding tax rate may apply.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

A Loss Carry Back is not granted.

Personal Income Tax
In general, losses can be carried forward 4 years. Losses derived from lease only can be offset against profits derived from lease and capital gains and capital losses only can be offset among themselves.

Corporate Tax
Tax losses can be carried forward 18 years.

During the years 2011, 2012 and 2013 the loss carry forward is subject to the following restrictions:

- → In case of a turnover exceeding € 20 Mio: tax losses may be deducted up to 50 % of the taxable basis (prior to the loss carry forward).
- → In case of a turnover exceeding € 60 Mio: tax losses may be deducted up to 25 % of the taxable basis (prior to the loss carry forward).

The consequence is a minimum taxation of 50 % respectively 75 % of the taxable income.

C. Real Estate Taxes

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

Transfer undertaken by a non-entrepreneur:
These transfers are generally subject to transfer tax amounting to 7 % of the real value of the real estate transferred.

Transfer undertaken by an entrepreneur
According to Art. 7.5 of the Spanish Transfer Tax Act immovable property transferred together with the whole entrepreneurial patrimony is subject to transfer tax if such transfer is not subject to VAT. Additionally, transfer tax is also triggered in case of second transfers of buildings that are exempt of VAT (see D.1).

Also, see B.4 above regarding the transfer of shares or participations in entities holding real estate.

Furthermore, it should be pointed out that renting/leasing of real estate by non-entrepreneurs is subject to transfer tax.

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

Real estate is subject to real property tax.

This tax is based on the value of rural and urban lands, and on immovable properties with special characteristics, and must be paid by the owner, usufructuary or holder of a usufructuary right under public law. The tax base is the cadastral or land value as determined by the tax authorities.

The tax rate is between 0.3 % and 1.1 % depending on the area where the property is situated. The general tax rate on immovable properties with special characteristics is 0.6 %. These tax rates may vary in different municipalities depending on population and other factors. Furthermore, a temporary increase of these rates is planned for 2012 and 2013 of between 0.5 % and 0.6 %, depending on the year of the cadastral review.

D. Value Added Tax

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

In general, such transfers are subject to VAT. The general VAT rate is 18 %. As per September 1, 2012 the VAT rate is increased to 21 %.

However, if the sold assets represent an autonomous economic unit which is capable to develop its entrepreneurial activity independently such transfer will not be subject to VAT (Art. 7.1 of the Spanish VAT Act). In addition, second transfers of buildings are exempt of VAT (Art. 20.22 of the Spanish VAT Act). Second transfers are those not undertaken by the building promoter or those undertaken by the promoter but after one year as per finishing the construction works. Under certain conditions the parties can renounce to such exemption.

In addition it must be highlighted that the reduced tax rate of 4 % applies to purchases of residential housing acquired before December 31, 2012.

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

Renting/leasing of real estate by non-entrepreneurs is subject to transfer tax.

If it is undertaken by entrepreneurs it triggers VAT at the general tax rate of 18 %. As per September 1, 2012 the VAT rate is increased to 21 %.

E. Other Taxes

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

No, as per December 3, 2010.

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

No.

Real Estate Investment in

Sweden

A. Legal/General

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

Residents as well as non-residents may acquire Swedish real estate.

It is not required that the real estate acquisition is carried out by a corporation or other legal entity.

2. Which importance does the land register have?

The Swedish land register ensures security for real estate owners and provides for a functional credit sector.

In the land register ownership is registered when a real estate is acquired, and it is required that a registration of a change of ownership of a real estate is applied for within three months from the acquisition.

Further, easements, site leaseholds and mortgages on a real estate are also registered in the land register.

Lantmäteriet is the Swedish land registry authority.

B. Income Tax

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

Corporations, such as limited liability companies (Swedish: aktiebolag)

Corporate income tax
Corporate income tax is currently levied with 26.3 %.

Participation exemption
Under the Swedish participation exemption regime dividends and capital gain on business related shares are tax exempt.

The Swedish participation exemption regime covers business related shares in a Swedish limited liability company or equivalent foreign legal entities, which are held by e.g. a Swedish limited liability company or equivalent foreign legal entities. Further, the shares must be held as capital asset (not stock) and (i) be unquoted or, if quoted, (ii) correspond to at least 10 % of the voting rights in the company, or (iii) held for organizational purposes.

Partnership interests in Swedish limited partnerships or foreign equivalents are also covered by the Swedish participation exemption regime provided that the holder of the interest is e.g. a Swedish limited liability company or equivalent foreign entity. Further, dividends and capital gain received by a Swedish limited partnership held by e.g. a Swedish limited liability company or equivalent entities are tax exempt under the Swedish participation exemption provided that the dividend and/or capital gain would have been tax exempt under the Swedish participation exemption regime should the holder of the interest in the limited partnership have received the dividend/capital gain directly.

Shares in companies holding real estate are generally covered by the Swedish participation exemption regime. However, shares in companies holding real estate may constitute stock items if the shareholder conducts e.g. proprietary trading, and/or building and construction services. Additionally, shares may also constitute stock items if the shareholder conducts trading with shares or securities.

With regard to quoted shares a minimum holding period of one (1) year is required for tax exemption. In order for a disposal of quoted shares to be tax exempt it is thus – provided that the requirements above are fulfilled – also required that the shares have been held by the seller for a minimum of one year prior to the disposal.

A capital loss on shares covered by the Swedish participation exemption regime is not deductible for tax purposes.

Tax consolidation

It is possible to tax consolidated in a group of companies through the use of group contributions, provided that certain requirements are fulfilled. A group contribution is a taxable income for the receiver and a deductible cost for the distributor.

One of the fundamental requirements for the distribution of tax deductable group contributions is that the distributor and the receiver are corporate entities taxable in Sweden. A permanent establishment in Sweden held by a foreign company within the EEC is generally considered as qualifying for the tax liability requirement.

In addition, the following requirements need to be met for a group contribution to be deductible between a parent company and its subsidiary:

- Disclosure: The group contribution must be fully disclosed in the tax returns by both the distributor and the receiver
- Ownership: The parent company must have held at least 90 % of the shares in the subsidiary during the entire fiscal year of both companies or since the subsidiary started to conduct business
- Tax exemption: If the group contribution is distributed by the subsidiary to the parent company, dividend distributed from the subsidiary to the parent company in the same fiscal year must be tax exempt (i.e. the shares must be business related and qualify for Swedish participation exemption)

Group contributions may also be distributed between fully owned subsidiaries and other Swedish companies within the same corporate group. A group contribution may also be transferred through a chain of companies, as long as the criterions stated above are fulfilled in every step of the chain and provided that the receiver is tax liable in Sweden. A foreign company established within the EEC may be part in the chain of companies, provided that the receiver of the group contribution is tax liable in Sweden.

Income and capital gain on real estate

Income and capital gain assignable to real estate is subject to normal corporate taxation.

A capital loss assignable to real estate is generally only deductible against capital gains on real estate. Such loss may also be deducted against a capital gain on real estate incurred in another company within the same group of companies, provided that the company reporting the capital loss and the company reporting the capital gain may distribute deductible group contributions between each other. A capital loss from the sale of real estate may be carried forward indefinitely.

Individuals

Personal income tax rate

The personal income tax rate on salary income is progressive.

Personal income tax rate (2012):

- Up to 401,000 SEK: approx. 30 % (local/municipality tax)
- From 401,000 SEK: approx. 30 - 57 % (local/municipality tax and state tax)

Capital income/gains tax

Capital tax is levied at a rate of 30 % on capital income and capital gains. However, with regard to capital gains the actual tax rate may sometimes be reduced depending on the type of asset disposed of.

A capital gain assignable to disposal of real estate held for housing is subject to an effective tax rate of 22 % and a corresponding capital loss on real estate is tax deductible to 50 %. A capital gain assignable to real estate held for business purposes by individuals is subject to an effective tax rate of 27 % and a corresponding capital loss is tax deductible to 63 %.

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

The acquisition cost for real estate, including stamp duty, may be depreciated for tax purposes.

Cost for acquiring land cannot be depreciated for tax purposes; however, for other parts of a real estate different depreciation rates and methods are applied depending on the category type.

Acquisition cost for building is subject to depreciation of 2 - 5 % p.a. in accordance with recommendations from the Swedish Tax Agency. The applicable depreciation rate is based on the estimated economic lifetime of the building and depends on the type of building (e.g. rental building or industrial building etc.). Costs for new,-add- or rebuilding of a property are added to the acquisition cost for the building and, thus, also subject to depreciation.

Land improvements are subject to depreciation with 5 - 10 % p.a.

Acquisition costs for building- and land equipment are subject to depreciation at a rate of 20 - 30 % p.a. It is also possible to depreciate at a rate of 25 % based on the tax base value.

Subject to certain requirements, maintenance costs, such as e.g. repairs and customizations for tenant purposes, can be deducted immediately.

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

In general, foreign investors are subject to limited tax liability in Sweden and thus only taxable for certain income deriving from Sweden.

Foreign corporate investors with a limited tax liability are taxable in Sweden for income assignable to a permanent establishment or real estate located in Sweden.

Further, foreign corporate investors with a limited tax liability are in general subject to Swedish withholding tax on dividends distributed from Swedish limited liability companies at a rate of 30 %. However, corporate investors may be exempt from the liability to pay Swedish withholding tax due to the Swedish participation exemption regime (please see section B1) or due to the EEC parent/subsidiary directive. The withholding tax may also be fully or partly reduced due to provisions in double tax treaties.

Individual foreign investors with a limited tax liability are taxable in Sweden for e.g. income and capital gain deriving from a Swedish real property, a Swedish permanent establishment or for certain salary income deriving from Sweden.

Further, individual foreign investors with a limited tax liability are subject to Swedish withholding tax on dividends distributed from Swedish limited liability companies at a rate of 30 %. However, the applicable withholding tax may be reduced due to provisions in double tax treaties (normally to 15 %).

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

A real estate investor may sell and acquire a Swedish real estate by way of an asset deal or as a share deal. In general, no limitations apply from a tax perspective.

Asset deal

In general, capital gain from the sale of real estate is subject to taxation. A capital gain or loss from the sale of real estate is generally equivalent to the difference between the purchase price and the tax value (or acquisition cost).For corporate tax purposes, a capital loss is normally only deductible against capital gain on real estate. For capital tax purposes a loss is deductible.

In an asset deal it is possible for the acquirer to deduct the acquisition cost for tax purposes by way of tax depreciations. For tax depreciation purposes the acquisition cost for real estate is divided into land, building, land- and building equipment and land improvement. Please see section B2.

An asset deal may trigger Swedish stamp duty. Please see section C1.

An asset deal is exempt from Swedish VAT. Please see section D.

Share deal

Under the Swedish participation exemption regime a share deal can be carried out without any tax implications for the seller. This may also apply for the disposal of interest in limited partnerships. Please see section B1. A capital gain from the sale would not be subject to tax and a corresponding loss would not be deductible for tax purposes.

However, it should be noted that shares in companies holding real property may constitute stock if the shareholder conducts e.g. proprietary trading, and/or building and construction services. Additionally, shares may also constitute stock if the shareholder conducts trading with shares or securities. Should the shares qualify as stock the Swedish participation exemption does not apply. Consequently, a gain from the disposal would be taxable and a corresponding loss would be deductible for tax purposes.

In a share deal the tax value of the real estate is not subject to a step-up and the tax depreciation plans remain unchanged in the target company. Further, the acquirer may not depreciate the acquisition cost for tax purposes.

A share deal does not trigger Swedish withholding tax or stamp duty.

A share deal is exempt from Swedish VAT. Please see section D.

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

Currently, Sweden does not have any thin cap rules.

As a general rule, interest costs are deductible for tax purposes. However, some limitations as to this general rule apply.

First, interest between related parties must be set on market conditions and thus at arm's length. According to case law from the Swedish Supreme Administrative Court, the arm's length criteria should not be the only decisive factor when determining the market conditions of a loan between a parent company and its subsidiary Due to the reduced credit risk involved in intra-group loans, and depending on the conditions in each specific case, the interest rate sometimes needs to be set at another (in this case lower) rate than usually applied between independent parties.

Second, the right to deduct interest on intra-group loans assignable to the acquisition of shares from a related party is limited. Thus, as a general rule interest assignable to a debt due to a share acquisition from a related company cannot be deducted for tax purposes. The deduction of interest costs assignable to a debt to an external party due to a share acquisition from a related company may also be restricted if the debt is a so-called "back-to-back loan".

Companies are regarded as related companies if (i) one company directly or indirectly has the controlling influence over the other company, or (ii) the companies principally are under the same control.

Exemption to the interest deduction restriction applies if, briefly, (i) the receiver (beneficial owner) of the interest income is subject to a minimum of 10 % taxation ("the ten per cent rule"), or (ii) both the share acquisition and debt assignable to the acquisition principally may be justified from a business perspective.

Further, it should be noted that the Swedish government has presented a proposal for new legislation to come into force as from January 1, 2013. Provided that the proposed new rules will be implemented, the scope of the Swedish interest deduction limitations in the corporate sector would be extended to cover interest on all debt between related companies. Internal and external acquisitions of shares, business assets and receivables would be covered as well as loan for financing and contributions. However, third party loans would not be covered.

According to the above-mentioned proposal the definition of related companies will be changed whereby, instead of controlling influence, it will be sufficient that a company has substantial influence over another company.

The ten per cent rule will, according to the proposal, be supplemented with a new rule according to which the interest is not deductible if the predominant reason for the inter-company debt is to achieve a significant tax benefit.
Finally, the scope for applying the justification for business reasons is suggested to be narrowed and only applicable if the beneficial owner of the interest income is resident within the EES or a jurisdiction covered by a Swedish tax treaty, and provided that the loan is principally motivated by business reasons.

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

If the acquisition costs are funded by debt, the interest costs could be deducted from the acquiring company's profits. However, certain restrictions as to the right to deduct interest apply. Please see section B5.

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

In general, debt push down into the target company is possible. However, certain restrictions apply. Please see section B5.

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

Swedish withholding tax is not levied on interest payments.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Tax losses can generally be carried forward for an unlimited period of time and be set off against future profits or group contributions received (losses may not be carried back).

Certain restrictions as to this general rule apply e.g. when a loss company is subject to a change of ownership whereby the new owner/owners obtain(s) the direct/indirect decisive control over the company (i.e. generally more than 50 % of the voting capital), there are certain restrictions as to the right to set off tax losses carry forward from previous fiscal years (the capital restriction and the group contribution restriction).

Briefly, a capital restriction resulting in losses exceeding 200 % of the total consideration paid for obtaining the decisive control of the loss company, may not be carried forward and be set off against future profits. When calculating the total consideration paid, the consideration should normally be reduced by any formal/informal capital contributions, such as e.g. shareholder's contributions made to the acquired company (or other companies within the same group of companies both before and after the acquisition) during the acquisition year and the two previous fiscal years.

Briefly, a group contribution restriction results in tax losses carried forward not being permitted to be set off against group contributions received from companies not within the same group of companies prior to the change of ownership. The restriction applies during a five-year period after the year of the change of ownership.

Tax losses incurred in the year of the change of ownership are not subject to utilization restrictions.

Further, company mergers may affect tax loss carry forwards in both the transferring company and the surviving company. First, the capital restriction is triggered if the surviving company has no decisive control over the transferring company prior to the merger. Second, a merger restriction could affect the possibility for the surviving company to utilize own tax loss carry forwards as well as tax loss carry forwards assignable to the transferring company during a six-year period.

C. Real Estate Taxes

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

Stamp duty is levied on acquisitions of real estate. No stamp duty or other transfer taxes are levied on transfer of shares.

With regard to real estate acquisitions stamp duty is levied at a rate of 4.25 % (1.5 % if the acquirer is an individual) of the highest of the purchase price and the real estate tax assessment value for the year prior to the year when the acquisition is registered in the Swedish land registry.

Certain types of real estate acquisitions are exempt from stamp duty, e.g. land mergers and company mergers. However, the majority of real estate acquisitions triggers stamp duty.

If a real property is acquired due to an intra-group transaction, the stamp duty may normally be deferred as long as the seller and acquirer are part of the same group of companies or until the real estate is transferred.

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

Real estate tax is normally levied with 1 % for commercial premises and 0.5 % for industrial premises on the real estate tax assessment value. However, other tax rates apply (between 0.4 % and 2.4 %) depending on the type of real estate. A real estate which is used for certain specific purposes, such as e.g. nursing, communications or education, may be exempt from real estate tax.

As a general rule, the real estate tax assessment value should be equivalent to 75 % of the market value of the real estate.

The owner of the real estate is liable to pay the real estate tax at the beginning of each calendar year (January 1). Real estate tax is deductible for tax purposes.

D. Value Added Tax

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

A sale of real estate through an asset deal is exempt from Swedish VAT. In general, the exemption applies to all transfers of real estate for consideration in return. A sale of real estate as a share deal is also VAT exempt in Sweden.

With regard to optional VAT treatment for letting of buildings the optional VAT treatment normally follows the transfer of the real estate. Please see section D2. The transfer of real estate being subject to optional VAT taxation must be reported to the Swedish Tax Agency by both the seller and the acquirer.

A sale of real estate normally involves a transfer of rights and obligations to adjust input VAT on investments. The owner is responsible for adjusting input VAT on investments for ten years from the time of the investment. The seller of real estate is required to issue a document that specifies the necessary adjustment information. The document is used by the acquirer if adjustment of input VAT has to be reported to the Swedish Tax Agency before the end of the 10-year adjustment period of each investment.

Should the rights and obligations to adjust input VAT on investments not be transferred, or not be possible to transfer, the sale of the real estate will result in VAT adjustment.

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

As a general rule, letting of buildings is exempt from Swedish VAT. However, letting of buildings may be subject to optional VAT taxation. Where the requirements to opt for taxation are met, a commercial landlord would normally apply for optional taxation so that the most possible extent of the letting is subject to VAT and to be entitled to deduct input VAT.

Optional VAT requires a formal decision from the Swedish Tax Agency upon application. The decision defines the scope of the right to deduct input VAT. If the usage of the building is changed so that it is no longer let according to the provisions of optional VAT, the Swedish Tax Agency must be notified and the VAT treatment is terminated. Additional applications are required for optional VAT on letting of other areas of real estate than originally included in the decision on optional VAT.

Deductions of input VAT on investments on real estate can be subject to adjustment for a period of ten years after the investment was carried out. Adjustments could be made either due to a change in the usage of the investment that increases or decreases the right to deduct input VAT or due to a sale of the real estate. However, in case of a sale the buyer normally succeeds into the seller's legal position with regard to the input VAT corrections. Please see section D1.

E. Other Taxes

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

N/A

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

N/A

Real Estate Investment in

Switzerland

A. Legal/General

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

In Switzerland restrictions exist with regard to the acquisition of real estate by persons being non-residents. The respective requirements are defined in a specific legal act called "Lex Koller". The fulfillment of these requirements will be checked by the responsible land register of the canton where the real estate is located.

In case the potential buyer of a real estate has the citizenship of an EU- or EFTA-country and has the permission for residency the purchase of a real estate in Switzerland should be possible. Otherwise the option to purchase real estate has to be clarified in detail.

In case the acquisition of the real estate should be carried out by a corporation, the similar law as mentioned above will be applicable. This means concretely, that the ultimate beneficial ownership of a corporation will also be a criterion if the purchase of the real estate is in line with the existing legal requirements.

2. Which importance does the land register have?

Rights with respect to real estate are to be recorded in the land register as such rights only come into existence upon registration.

In Switzerland the land register is in the competence of each of the 26 cantons. Therefore, the concrete procedure and also the costs of the acquisition of a real estate may vary depending on the canton where the real estate is located.

B. Income Tax

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

The tax system in Switzerland is organized on three different levels. Any individual or legal person is liable for taxation on federal, cantonal and communal level. The tax rates on cantonal and communal level depend on the concrete domicile of the taxpayer while on federal level – depending on whether the taxpayer is an individual or a legal person – the tax rates are uniform.

Corporate tax rates:

- On federal level the income tax rate is 8.5 % flat.
- On cantonal and communal level a broad range of income tax rates exists. Depending on the domicile of the company the income tax rate may vary between 5 % up to 25 % (flat rates or progressive rates). Furthermore, on cantonal and communal level a capital tax, calculated on the amount of the taxable equity of the company by end of the tax period, is levied. The rates for capital taxes are 0.1 % up to 0.6 %.
- In Switzerland, all taxes due by corporate taxpayers are tax deductible costs, which is a difference in the tax system to most other countries. Therefore, the overall effective income tax rates on all levels for corporations vary between 12 % and 25 %.

Tax rates for individuals on income and wealth:

- The personal tax rates depend on the domicile (canton and municipality) of the individual. In general, Swiss income and wealth tax rates are progressive. Very often, different rates apply for married and single taxpayers, as the income of husband and wife is aggregated and taxed together.
- On federal level the maximum income tax rate is 11.5 %, while no wealth tax is owed.
- The cantonal and communal rates vary considerably. Usually, the tariff mentioned in the cantonal tax act only results in so-called "basic rates". These rates are subject to annually fixed cantonal and municipal multipliers. Church taxes are levied in the same way. Maximum income tax rates on cantonal and communal level are between 15 % up to 35 %, respectively, up to 1 % for the wealth tax.

Special real estate taxation:

- For the income from real estate no special tax rates exist.
- In case the real estate is owned by an individual, the income derived from the real estate is taxed as part of the overall income of the person. In case of a personal use of the real estate there exists a special system in Switzerland. For such real estate a fictive income, the so called "rental value", is taxed but also relevant costs for financing and for maintenance may be deducted.
- For real estate owned by companies the realized income is taxed with the other income according to the statutory accounts of the company. In certain cantons there exists a minimum taxation which is based on the tax value of the real estate. This means that – even if a company has realized a loss in the relevant tax period – a minimum real estate tax of up to 2 % of the tax value is levied.

Participation exemption on federal and cantonal/communal level for corporations:

- Dividend income generated by qualifying participations will be indirectly tax exempted – using a special calculation method – due to the so called participation exemption. A qualifying participation means a participation in a legal entity, corresponding to a portion of the share capital of such a legal entity of at least 10 % or having a fair market value of at least CHF 1,000,000.
- Capital gains generated by the disposal of a participation in a legal entity which corresponds to a portion of at least 10 % of the share capital of such legal entity are also subject to the participation exemption, but only if the holding period of the relevant participation is at least one year before the disposal and if the sales price of the participation exceeds the initial acquisition costs.

Participation exemption on federal and cantonal/communal level for individuals:

- On federal level only 50 % of the net dividend income (and similar income such as liquidation proceeds or deemed dividends) derived from a participation in a legal entity with at least 10 % of the share capital is taxable in case the participation is qualified as business assets respectively 60 % in case the participation is qualified as private asset.
- On cantonal/communal level there exists in most cantons a similar taxation for participations with at least 10 % of the companies' capital. In some cantons the percentage of the tax exemption of the dividend income is even more favorable than the solution on federal level.

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

For real estate held by individuals and qualifying as private assets no tax effective depreciation is possible.

For real estate held by companies or by individuals in their business assets the straight-line or declining depreciation method is possible. Using the declining method the general annual depreciation rates are 1.5 % to 2 % for apartment buildings, 3 % to 4 % for office buildings, 4 % to 6 % for hotels and 7 % to 8 % for industry buildings, depending on whether the depreciation is calculated only on the value of the building or on the value of the building and the ground. Generally, there is no depreciation on the value of the ground.

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

Non-resident taxpayers as individuals may be subject to Swiss taxes only with respect to income from certain Swiss sources. Important examples therefor – as long as not restricted by double tax treaties – are:

- → Income from Swiss real estate (assessed tax)
- → Income from business performed in a permanent establishment located in Switzerland (assessed tax)
- → Employment income performed in Switzerland if paid by an employer being resident in Switzerland or having a permanent establishment in Switzerland (withholding tax)
- → Director's fee (withholding tax)
- → Interest income secured by mortgage on Swiss real estate (withholding tax)
- → Income from dealing with Swiss real estate or acting as a broker
- → Pensions and similar payments related to a former employment in Switzerland (withholding tax)

Non-residents companies may be subject to Swiss corporate taxation if they:

- → Are partners of a business in Switzerland;
- → Have a permanent establishment in Switzerland;
- → Own Swiss real estate;
- → Have claims secured by mortgage on Swiss real estate;
- → Deal with Swiss real estate or act as a broker.

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

According to Swiss civil and tax law both possibilities of an asset or a share deal can be chosen.

From a pure tax perspective, the main consequence of a share deal is the fact that the book value of a participation may only be depreciated under certain economical conditions, e.g. if the fair market value of the participation is lower than the initial acquisition value. Furthermore, in case of a sale of the participation, any reversal of former depreciations will be fully taxable and only the difference between the sales price and the initial acquisition costs, if all other requirements are fulfilled, will be tax exempted due to the participation exemption rule.

In case of an asset deal the investor has the possibility to depreciate the assets and therefore to realize income tax deductible costs. Due to that – besides other legal requirements or reasons – the purchase of a business using an asset-deal may be more favorable for an investor.

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

According to federal and cantonal tax law detailed thin capitalization rules exist. The basis to calculate the potential thin capitalization are the assets of a company (book value or fair market value if higher) and – due to a pre-defined percentage as per asset-category – the calculation of the maximal allowed debt. Afterwards, the total of the calculated debt capacity is compared with the effective debt of the company. In case of an existing shareholder loan – or a bank loan guaranteed by the shareholder – the portion of the companies' debt above the calculated limit will be qualified as so called hidden equity for tax purposes.

Any interest expenses on the debt exceeding the allowed debt capacity of a company, i.e. identified thin capitalization will not be accepted as income tax deductible cost. This will lead to an increase of the income tax expense of the company. Furthermore, due to the qualification as deemed dividend, federal withholding tax of 35 % is to be paid by the company.

In regard to interest on loans from or also to the shareholder or group-companies so-called safe haven rules exist. At the beginning of each calendar year the federal tax authority publishes in a circular letter the minimal and maximal interest rates for shareholder- and/or group-company-loans in Swiss francs but also in other relevant currencies. In case a company is not in line with these "official" interest rates, the fulfillment of the dealing at arm's length principle needs to be proven.

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

If all requirements are fulfilled, e.g. no interest on hidden equity exist, and the company does not have a special tax status (e.g. a holding privilege with full income tax exemption on cantonal level) any acquisition costs and financing fees and interest will be fully income tax deductible.

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

Compared to other countries the creation of a tax group does not exist for income tax purposes. Due to that, a direct pooling of the debt financed interest with the income from the target is not possible.

Furthermore, certain restrictions for a merger of the acquiring company with the target exist. Normally, after a certain time – in general a period of 5 years should be adequate – a debt push down by merging the two companies should be possible. Nevertheless, any transaction with the consequence of a debt push down should be agreed by the tax authorities before the respective merger will be realized.

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

In case the company is not qualified as a bank or the debt is not qualified as a bond in the sense of the federal withholding tax law and the interest payment is not qualified as deemed dividend due to other reasons (hidden equity, interest rate not in line with safe haven rules, see above under section B.5) there is no withholding tax on interest payments effected by a local company to the creditor.

With regard to the qualification as a bank in the sense of the Swiss withholding tax law and the qualification of a loan as a bond, the following general remarks can be made:

- → Status of a bank
  A company qualifies as a bank in the meaning of the Swiss withholding tax law if it shows more than 100 non-bank-creditors of interest-bearing loans and if the total amount of such loans exceeds CHF 5,000,000.
- → Qualification of a loan as a bond
  For Swiss withholding tax purposes, there is an issue of a bond if there are more than ten non-bank-creditors granting a loan to the Swiss issuer based on debt securities having identical conditions and if the overall debt amount exceeds CHF 5,000,000, or if a Swiss resident borrows funds from more than twenty non-bank-creditors to similar conditions on an ongoing base and if the overall debt amount exceeds CHF 5,000,000.

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

According to federal and cantonal tax law any realized – tax accepted – loss of the company may be offset against taxable profits for a period of 7 years. On the other hand, a loss carry back does not exist due to federal and cantonal tax law.

C. Real Estate Taxes

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

Most of the cantons of Switzerland levy a real estate transfer tax of up to 3 % on the purchase price of a real estate. Not only the legal change of ownership of a real estate but also the economical transfer of the ownership – e.g. by the purchase of the shares of a real estate company – is liable to the cantonal real estate transfer tax. The assessment of a real estate transfer tax depends on the canton where the real estate is located. Therefore, in case a company is owner of a real estate, the domicile according to the commercial register is not decisive. The real estate transfer tax is only avoidable in case the requirements for a tax neutral restructuring are fulfilled.

For the sake of completeness it needs to be mentioned that the cantons of Switzerland also levy a real estate gain tax. Two different systems of taxation of real estate gain exist. Some of the cantons levy a special real estate gain tax for each sale of real estate, regardless of whether the real estate was owned by an individual or a company, which is the so called "monistic system". Some of the cantons only levy real estate gain tax on transactions of individuals, which is the so-called "dualistic system". In the second case, the cantons levy taxes on the sales of real estate by companies according to the normal income tax law as described in section B, question No. 1.

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

On federal level no other specific real estate tax is levied. Nevertheless, for companies as owner of real estate, some cantons levy a real estate tax in the sense of a minimal taxation. This means that this tax is only levied if the company does not pay a minimal amount of income and capital taxes. Normally, this kind of real estate tax is calculated by a certain amount of per mill of the tax value of the real estate.

D. Value Added Tax

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

Based on the federal VAT law, the sale of real estate is generally VAT exempted without credit of input VAT. Therefore, the sales price of a real estate is not liable to Swiss VAT. On the other hand, any VAT on the costs of the real estate (e.g. construction costs, etc.) may not be recovered as input VAT.

Nevertheless, in case the real estate is not used for private but for business purposes, the seller may opt to treat the sale of the real estate as VAT-liable. In that case, the seller has – except for the value of the land which cannot be VAT-liable at any time – to calculate Swiss VAT of currently 8.0 % on the sales price. If all requirements are fulfilled, the purchaser of the real estate may recover the paid VAT as input-tax.

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

Like the sale of a real estate also the renting or the leasing of such is generally VAT-exempted without credit of input-VAT. However,for renting or leasing of a real estate – except for real estate which is only used for private purposes – there exists the possibility of opting for VAT as well. Then the rent or lease is subject to Swiss VAT.

E. Other Taxes

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

There is a capital tax for equity injected into a company which is levied on cantonal/communal level (see section B.1). The basis of the cantonal/communal capital tax also includes the portion of the debts of the company which was qualified as hidden equity for tax purposes according to the thin capitalization rules.

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

Any foundation, respectively, increase of equity of a Swiss company is subject to Swiss stamp issuance duty of 1 % calculated on the value contributed to the company but at least on the newly founded share capital. The first CHF 1,000,000 newly created equity (share capital and/or share premium) is stamp issuance duty exempted. Furthermore, if a transaction is qualified to be tax neutral restructuring due to the fact that the legal requirements for such qualification are met, no stamp issuance duty is levied. Eventually, if the foreseen changes in the tax law are realized, Swiss stamp issuance duty should be abolished within the next two years, i.e. by 2014.

Real Estate Investment in

Turkey

A. Legal/General

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

With Law No. 6302 promulgated in the Official Gazette dated May 18, 2012, acquisition of real estate and limited rights in kind in Turkey by foreign individuals and foreign-capital Turkish companies has been simplified. Accordingly, foreign nationals may acquire real estate and limited immovable rights in Turkey provided that they are a citizen of one of the countries that have been listed by the Council of Ministers of Turkish Parliament. Additionally, foreign commercial companies having legal personality established in foreign countries according to the laws of those countries can acquire real estate in Turkey only in accordance with the provisions of Private Laws (Law for Encouragement of Tourism Numbered 2634, Petroleum Law Numbered 6326, Industry Zones Law Numbered 4737). Other foreign legal entities (e.g. foreign charities, foundations, societies) cannot buy property in Turkey.

Legal entities established in Turkey by foreign investors can acquire real estate in Turkey in line with operational purposes set in the company's articles of association. The same rule applies to properties that are acquired by other companies established in Turkey by foreign investors or if a foreign investor acquires a Turkish company owning a property. With respect to the definition of the "companies with foreign capital", a foreign capital Turkish company is defined by Law No: 6302 as:

- → A company having a legal personality and established in Turkey; and
- → 50 % or more shares of which belong to foreign nationals; international institutions; or legal entities established under the laws of foreign countries; or,
- → Where the above listed persons have the right to assign or depose the majority of the persons having the management rights in that company.

The limit of the amount of land that a foreigner can acquire is 30 hectares and this limit can be doubled per person by the decision of the Council of Ministers. Notwithstanding the above, the amount of land that can be acquired by a foreign national in one district cannot exceed 10 % of the total surface area of private properties of the district concerned.

It is compulsory for foreign nationals and foreign legal entities to submit a "project plan" regarding the acquired real estate – that does not have any construction on it – to the relevant Ministry within two years and obtain an approval from there. Non-compliance with the project plan submitted or realized would cause a compulsory sale of the relevant real estate.

2. Which importance does the Turkish land register have?

In Turkey, the entry in the property register is performed by an official of the Property Registry Department. It is legally compulsory for both sides (the seller and the buyer) to be present at the entry. It is possible to authorize another person to do so.

Agreements of commitment to sell real estate, may only be concluded at a public notary, otherwise they are considered null and void.

Rights on real estate such as rights of pre-emption, rights of repurchase, or rights of construction (superficies) can only be established at the Property Registry Department. Rights of this type that have not been registered at the Property Registry Department shall be deemed null and void. A charge at the rate of 5.9 % is applied on the rights of redemption.

B. Income Tax

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

- Corporate income tax rate: 20 %
- Personal income tax rate: 15 % - 35 %
- Participation exemptions:
  - National participation exemption: Dividends derived by a resident company from a participation in another Turkish corporation are exempt from corporate income tax.
  - Foreign participation exemption: Dividends derived from a participation in a foreign corporation or limited liability company are exempt from corporate tax under the following conditions
    - Equity participation of at least 10 % in a foreign corporation for a minimum uninterrupted period of one year
    - The profits out of dividends are paid were subject to a foreign income tax of at least 15 %

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

The general depreciation period for buildings is 50 years. Buildings which are used as factories that are built from concrete, iron or steel are depreciated over 40 years, factory buildings which are built from other material than the ones mentioned will be depreciated over a period between 10 - 25 years depending on the material used. Leasehold additions and improvements on buildings are depreciated over the life of the lease agreement (i.e. over the lease period).

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

Those individuals who are not 'settled' in Turkey are taxed solely upon the earnings and revenues they have acquired in Turkey as they are considered as "limited tax liable".

Those whose residence is in Turkey and those who reside in Turkey for more than six months during one calendar year are considered as settled in Turkey and their taxation is made according to the rules of full tax liability.

The foreigners who are businessmen, scientists, experts, officials, press correspondents, and other individuals whose situation resembles these, as well as those who have arrived in Turkey for purposes of education, medical treatment, rest, or of travel shall not be considered as settled in Turkey, even if they have stayed in the country for more than six months in a calendar year.

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

Generally, capital gains derived by a foreign company;

- from the disposal of Turkish company shares (share deal)
- from the asset sales transaction (asset deal)

are subject to 20 % corporate tax on the profit realized from the sales transaction.

There is a 75 % capital gains exemption for the sale of shares (share deal) and immovable property (asset deal) which has been owned by the company for a minimum period of two years and of which the proceeds have been kept within the company for a period of five years. This provision is not applicable for companies that are active in trading of marketable securities and immovable property and have been holding these assets for trading purposes.

For certain Turkish joint stock companies, capital gains generated from sales of participation shares that are held at least for two years in foreign companies are exempt from corporate income tax. This rule applies to Turkish joint stock companies, if 75 % of their assets are constituted of at least 10 % of shares of foreign corporations or foreign limited liability companies.

For other tax consequences see the questions below.

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

Under Turkish thin capitalization rules, if a loan obtained by a corporation directly or indirectly from shareholders or from related parties is more than three times higher than the net equity at any given day within an accounting period, the exceeding amount is considered as thin capitalization (debt to equity ratio 3:1). Expenses (interest expense and foreign exchange losses) related with the exceeding amount are not only treated as non-deductible expenses during determination of corporate tax base but they are also regarded as disguised profits. If the shareholder or related party is a bank or finance institution, the debt to equity ratio applied is 6:1.

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

Interest expenses as well as foreign exchange differences that incurred by Turkish corporate taxpayers in connection with the business purpose are considered as deductible expense.

Interest expenses and foreign exchange losses accrued within the purchase year for loans acquired to finance the purchase of fixed assets shall be capitalized as a part of the cost of the asset. After the purchase year, the buyer may freely decide to capitalize such expenses or accept them as deductible financial expenses. Interest expenses incurred for the acquisition of participation shares are also considered as deductible expenses.

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

The Turkish Corporate Tax Code allows Turkish corporate taxpayers to merge in a tax-free manner under certain conditions stipulated by law. Accordingly, Turkish companies may accomplish a tax free merger if all of the items of the balance sheet of the merged entity are transferred to the acquiring entity. Typically, if one of the companies has an outstanding debt in principle, there is no restriction to transfer the loan to the acquiring entity. The interest expenses arising from this loan can still be deducted at the level of the acquiring entity.

There is no tax consolidation (fiscal unity) regulation under Turkish tax rules.

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

If the interest is being paid for a loan received from a foreign government, international financial organization, or from a foreign bank or financial institution, the withholding tax to be imposed on such payments is 0 %. In other words, there is no withholding tax to be applied with regard to these loans.

For loans that are obtained from non-resident persons or entities other than mentioned above, the withholding tax rate on interest payments is 10 %.

Dividends distributed from Turkish companies to non-resident entities and non-resident persons are subject to 15 % withholding tax. The withholding tax can be reduced in line with the provisions of applicable double tax treaties.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Under Turkish tax regulation, losses can be carried forward for a period of five years. There is no tax loss carry back.

C. Real Estate Taxes

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

Conveyance of title is subject to a transfer tax corresponding to 3.3 % of the sales price. Normally this tax is split between buyer and seller (each bearing 1.65 %) but it is also possible that one side pays the whole amount.

If real estate, either in the form of a land plot or building, would be subject to transfer as part of an asset deal, there would be 3.3 % title deed levied on this transaction.

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

Property Tax is applied and levied on immovable properties such as land, lots and buildings on an annual basis. It is paid to the municipality of the area where the concerned real estate is located.

The value that will be taken as basis in the calculation of the tax is determined through appraisal procedures that are performed every four years. The tax value is determined separately for each street and road.

An annual property tax on the tax value applies to residences (0.1 %), buildings other than residence (0.2 %), cultivated land (lots) (0.3 %) and uncultivated land (0.1 %). The tax value is determined via appraisal procedures that are performed every four years. The procedures are performed for each city, each street and each road. The rates are applied twice for property located in the metropolitan municipality areas like Istanbul, Ankara or Izmir.

D. Value Added Tax

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

The supply of real estate is subject to VAT. The general VAT rate is 18 %.

For Turkish corporate taxpayers that are engaged in real estate business, the sale of residential and commercial property is subject to 18 % VAT. VAT is not applied on the sale of real property held for a period of at least two years by corporate entities who are not engaged in the trading of real estate.

Delivery of residential property which has a net usage area of less than 150 m^2 is subject to 1 % VAT.

Under Turkish VAT rules, input VAT is offset against output VAT. As a general rule, if input VAT is larger than output VAT, VAT that can not be credited is deferred to the following month. For delivery of goods that are subject to the reduced VAT rates of 1 % and 8 %, the VAT that can be recovered can be refunded.

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

The rental of real estate is also subject to the general VAT rate of 18 %. Renting of immovable properties that are not held for commercial purposes is VAT exempted.

E. Other relevant business-related taxes:

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

There is no "Capital Tax" application in Turkey. The equity amounts injected into companies are not subject to taxation.

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

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Stamp tax is levied as a percentage of the monetary value stated on the agreements at the rate of 0.825 %.
In case of an asset deal, 0.825 % stamp duty for each copy of the contracts is triggered.

Real Estate Investment in

Ukraine

A. Legal/General

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

In general, non-resident citizens as well as foreign legal entities may acquire real estate, buildings or structures, freely on the same grounds as Ukrainian citizens or Ukrainian companies.

However, the rights of non-residents to acquire plots of land are limited.

On October 25, 2001 the Parliament of Ukraine adopted a new land Code which came into effect on January 1, 2002. This Code strictly prohibits foreign citizens, legal entities and governments from acquiring agro-industrial land. Moreover, most transactions regarding agro-industrial land even between Ukrainian residents are prohibited at least till January 1, 2013 but most likely this prohibition will be prolonged further.

Foreign citizens may acquire non-agricultural land within the boundary of populated areas. However, foreign citizens may only acquire ownership rights to a non-agricultural plot of land outside the boundaries of populated areas if they have privately-owned real estate already located on such property.

Foreign legal entities may acquire ownership rights to land plots of non-agricultural designation (a) within populated areas, if the property acquisition of real estate will be improved by buildings or other objects related to the company's business activities in Ukraine; or (b) outside the boundaries of populated areas in case of an acquisition of real estate.

2. Which importance does the Ukrainian land register have?

Article 210 of the Civil Code effective as of January 1, 2004 stipulates a general rule that an agreement on real estate shall be registered. This code provides for real property rights, defines the holder of real estate and regulates real estate transactions.

Under Article 125 of the Land Code of Ukraine the title to the plot of land, as well as lease rights under the land lease agreement, may be considered as fully acquired only after state registration of such rights in the State Register of the Plots of Land. The State Register of the Plots of Land consists of two major parts: the Records Book on registration of titles to the plots of land and the Land Book containing information regarding the plots of land.

Additionally, owners (users) of agricultural land are obliged to keep the Agricultural Chemical Passport of the plot of land, which contains detailed information regarding chemical and radiation conditions of the soil on the plot of land. Data of the Agricultural Chemical Passport should be updated by the owner (user) every five years and is taken into account, among other, during normative and expert land plot evaluation.

B. Income Tax

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

Corporate income tax rate:
- Starting from January 1, 2012 the rate is set at 21 % and will be gradually decreased in the following years (the rate will be 19 % in 2013 and 16 % starting from January 1, 2014)
- 15 % general rate of withholding tax applicable to incomes of non-residents from Ukraine sources
- 0 % for life insurance companies
- Simplified taxation for small legal entities possible (optional): 3 % of sales proceeds for VAT registered and 5 % of sales proceeds for non-VAT-registered entities

Personal income tax rate:
- 15 % for the incomes below the threshold of 10 minimum salaries as of beginning of the year (minimum salary for 2012 amounts to UAH 1,073, about € 107.30)
- 17 % for the portion of income in excess of this threshold

Participation exemptions: No

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

Under Ukrainian Tax Code, for tax depreciation purposes fixed assets are classified into 16 groups. Buildings, constructions and transmitting terminals belong to the third group. The depreciation period (“minimum period of beneficial use”) is 20 years for buildings, 15 years for constructions and 10 years for transmitting terminals.

Normally land is not depreciable unless the real estate and the corresponding land are purchased together. In this case the land can be depreciated together with the value of the real estate.

The following depreciation methods are available for real estate:
- Straight-line depreciation;
- Declining-balance method;
- Cumulative method (The depreciation expense is computed by multiplying depreciated value by cumulative coefficient. The cumulative coefficient is determined by dividing the remainder of years of beneficial use by the overall number of years of beneficial use);
- Production method (similar to the units-of-production depreciation method).

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

A foreign investor (hereinafter “non-resident”) is subject to limited tax liability in Ukraine on incomes from Ukraine sources.

According to Article 160 of the Ukrainian Tax Code non-resident entities are subject to withholding tax at a rate of 15 % on Ukraine-source income. Ukraine-source income subject to withholding tax includes:
- Interest
- Dividends
- Royalties
- Income from engineering work
- Lease payments and rentals
- Income from the sale of real estate located in Ukraine
- Profit on transactions in securities, derivatives and other rights in companies
- Income from joint ventures and long-term contracts carried out in Ukraine
- Insurance payments
- Commission/brokerage fees and remuneration
- Other income from business activity in Ukraine, except for proceeds from the sale of goods, services or works preformed by non-residents for Ukraine residents.

Ukrainian entities paying the income are responsible for withholding and paying the tax.

If the activity of a non-resident in Ukraine triggers a permanent establishment recognition, the permanent establishment must be registered with the Ukrainian tax authorities (except for dependent agent permanent establishments already registered as Corporate Income Tax payers). The general definition of 'permanent establishment' is provided for in the Ukrainian Tax Code. It is generally in line with the OECD Model Income Tax Treaty definition, yet there are differences.

Permanent establishments are subject to general Corporate Income Tax and must conduct respective accounting and submit periodic tax returns under the general rules. Special Corporate Income Tax payment regimes may be available for the permanent establishment, for example the imputed profit method. According to this method, a taxable profit is assumed at 30 % of the revenue received during the period in question, without the permanent establishment having to account for expenses.

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

Asset deal
The feasible option for an asset deal will be to set up an acquisition company in Ukraine. The real estate is purchased under the agreement between the acquisition company and the Ukrainian company owning the real estate. The acquisition company may be financed by loans from a non-Ukrainian investment corporation or bank.

For the Ukrainian company (as the seller) the positive margin between the book value of real estate and the sale price will be taxable with the profit tax at the regular rate of currently 21 %.

Share deal
The share deal is quite frequently used for acquiring real estate in Ukraine. There are two principal options for the share deal:

A non-Ukrainian investment corporation directly acquires 100 % of the shares of the Ukrainian company owning the real estate. The sum paid by the non-Ukrainian investment corporation for the purchase of the shares may be deducted from the revenue gained in case respective shares are alienated in future or from the revenue from sale of other securities (corporate rights in other form) of similar type. Thus, the Ukrainian Tax Code stipulates that in case of proceeds from trading with securities it is the profit (rather than the revenue) from such trading that constitutes Ukraine-sourced income of a non-resident. Respectively, a Ukrainian withholding tax at the general rate of 15 % shall be applied to profit rather than revenue.

An alternative structure which provides the opportunity for a debt push down is to incorporate the acquisition company in Ukraine. This acquisition company will acquire the shares in the Ukrainian company owning the real estate.

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

Thin capitalization
There are no general thin capitalization rules in Ukraine.

Special rules provide for timing limitation on the deductibility of interest for Ukrainian legal entities held by non-residents at 50 % or more with respect to loans from such non-residents or affiliated parties of those. Namely, in cases where the aforementioned timing limitation is applicable, the interest expense allowed for deduction in given reporting period is limited by interest income received in the same period from own assets grossed up with 50 % of taxable profit of the period exclusive of such interest income. The non-deductible interest expense may be carried forward for deduction in subsequent periods, again subject to the same limitation.

Transfer pricing rules
The Ukrainian tax authorities use the concept of the “usual price” (usually the fair market price) to adjust deductible interest. The Ukrainian law provides specific regulations for determining the usual price. These rules have to be applied in case of loans from non-residents, related parties or legal entities and individuals who are subject to a lower rate than the general income tax rate.

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

Share deal
Costs which are related to the purchase of an Ukrainian company (e.g. due diligence costs, valuation costs etc.) are deductible provided that such payments are related to business activities of the taxpayer. In some cases there is a timing limitation on deduction of interest, as outlined above. In addition to that, Ukrainian tax authorities may disallow deduction of interest under the loans used for acquisition of shares claiming that such use of loan is not related to the business activity as such. Therefore, the conservative approach will be not to deduct interest used for financing acquisition of shares.

Asset deal
The interest under the loan used for the acquisition of assets shall be immediately deductible provided that such assets will be used in connection with the

business activity. Other expenses of the acquisition company for purchase of real estate will be capitalized and subject to depreciation for profit tax purposes.

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

Merger
The principal option that may allow pushing down the debt to operating level under Ukrainian legislation is a merger under universal succession. The merger is Corporate Income Tax and VAT neutral.

Group
Ukrainian law does not provide for consolidation or group relief (grouping) for tax purposes with each legal entity within a group being recognized as a separate taxpayer.

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

Foreign legal entities deriving income from Ukraine – but not through a permanent establishment in Ukraine – are subject to withholding tax in respect of types of incomes that are specifically listed in the Tax Code. The general withholding tax rate for interest, dividends and royalties is 15 %. Normally Ukrainian withholding tax may be capped at the lower rates by virtue of double tax treaties concluded by Ukraine. The applicable rate may be substantially lower in case the loan is granted by a non-resident financial institution.

9. Is a Loss Carry Forward or Carry Back granted and what are the restrictions?

Tax losses can be carried forward for an unlimited period of time.

For the sake of completeness please note that in July 2012 the Tax Code of Ukraine has been amended.

Restrictions on the loss carry forward of losses realized as of January 1, 2012 by taxpayers with turnover as per results of 2011 in excess of UAH 1 million were introduced.

According to this limitation starting from the second half of 2012 and valid until 2015, the taxpayer has the right to carry forward 25 % of the losses to the second half of 2012 and each following year. If the amount of losses is not used until the end of 2015, a further loss carry forward of such unused losses will be disallowed. Ukrainian Tax Code does not provide for a Loss Carry Back.

C. Real Estate Taxes

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

For the transfer of real estate according to Ukrainian legislation the state duty at the rate of 1 % and the contribution to the pension fund at the rate of 1 % shall be paid based on the value of agreement on transfer of real estate, i.e. purchase price of real estate.

The transfer of shares in a real estate owning company is not subject to any transfer tax in Ukraine.

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

Yes, for owning and using land a land tax is charged in Ukraine. The level of the tax rate varies depending on the nature and location of the land. If the land has an estimated value then the land tax is calculated as 1 % of that estimate.

D. Value Added Tax

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

The sale of real estate will be subject to Ukrainian VAT at a regular rate of 20 % (17 % starting from 2014).

The sale of pure land is exempt of VAT.

Sale purchase of shares is not subject to Ukrainian VAT provided that the shares are paid with monetary funds or sold in return for other shares (securities).

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

The leasing of real estate (including land) is subject to VAT in Ukraine at the standard rate of 20 %.

E. Other taxes

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

The equity injected into a local company is not subject to a capital tax in Ukraine. For the sake of completeness please note that if the injection of equity into a local company is accompanied by the issue of securities (i.e. in joint stock companies), such issue would be subject to the state duty at the rate of 0.1 % of their nominal value. However, this amount must not exceed 50 times the annual minimum wage as of January of the relevant year.

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

No stamp duty is payable on debt granted to a local company.

Real Estate Investment in

United Kingdom

A. Legal/General

1. Are non-residents entitled to acquire real estate in the UK? Does the acquisition have to be carried out by a British Corporation?

It is possible for non-resident individuals and companies to purchase property in the UK. The UK authorities HM Revenue & Customs ("HMRC") encourage personal ownership for residential properties in excess of £ 2 million and where such property is purchased through a company higher rates of Stamp Duty Land Tax apply.

2. Which importance does the land register have?

The Land Registry registers the ownership of property. It records the ownership rights of Freehold properties and Leasehold properties where the Lease has been granted for a term exceeding seven years.

According to HM Land Registry the benefit of registration is that it establishes point of ownership and produces an easy-to-read document reflecting the contents of all the paper Title Deeds. The majority of land mass in England and Wales is registered with HM Land Registry.

B. Income Tax

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

The Income Tax rates for the 2012/13 UK Tax Year are:

- £ 0 - £ 34,370 — Basic rate of 20 %
- £ 34,371 - £ 150,000 — Higher rate of 40 %
- Over £ 150,000 — Additional rate of 50 %

Non-Resident Landlord Scheme

If a non-resident individual or company has a rental property in the UK but his or her usual home is outside the UK their tenants or the letting agents will need to operate the Non-Resident Landlord ("NRL") Scheme. Any profit made from letting a property in the UK is taxable in the UK. The tenants or the letting agents will need to deduct basic rate tax from rental income before they pass it on to the landlord. The landlord can then set his tax off against their tax bill at the end of the year.

It is, however, possible for the landlord to make an application under the Non-Resident Landlord Scheme to receive UK rental income without the deduction of this tax from the tenant or letting agent at source. This allows the non-resident landlord to pay UK tax due on the rental income upon filing their annual UK tax return which gives rise to a cash flow benefit.

Dividend Exception
Dividends and other distributions received by companies are generally exempt from tax. There are a few exceptions to this rule and therefore it is important to ensure that one of the exemptions applies.

The Corporation Tax rates in the UK for 2012 are:

→ Small profits rate	20 %
→ Full rate	24 %
→ Effective marginal relief rate (applicable to total profits that fall between the lower and upper limit)	25 %
→ Lower limit – profits on which the small profits rate of tax applies	£ 300,000
→ Upper Limited – profits on which the full rate of tax applies	£ 1.5 million

The property business profit assessed to UK Corporation Tax is the income accrued in the accounting period. This income is pooled together in calculating the UK tax charge due.

Withholding Tax on REIT dividends
The UK does not normally impose a withholding tax on dividends. The only circumstance in which a withholding tax is levied is on dividends paid from a REIT (Real Estate Investment Trust), the current withholding tax rate is 20 %.

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

There is generally no tax depreciation for the capital cost of property in the UK. The only costs which qualify for tax depreciation, known as capital allowances, are some types of fixtures and fittings and plant and machinery within the building.

For furnished properties HMRC allows relief for capital expenditure on furniture and fittings on a renewals basis. The original cost and the cost of any improvements are not relieved but the cost of replacing furniture to the same standard is allowed as an expense. Alternatively, as this may be cumbersome to administer, there is a concession available whereby a 'wear and tear allowance' is given instead. This is based on a specific formula and is allowed as a deduction in place of claiming relief for the acquisition and replacement of furniture.

In respect of leased properties, dependent on the term of the lease an annual deduction may be available for any premium on the purchase of the lease.

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

Individuals
From a Capital Gains tax perspective, a non UK resident investor will not be subject to Capital Gains tax upon the disposal of their UK property provided that they are not resident and not ordinarily resident in the UK. The exact position would need to be reviewed on a case by case basis.

From an income tax perspective, a non UK resident investor will be subject to income tax on rental/lease income less expenses under the Non-Resident Landlord Scheme. The income is subject to tax at the basic rate (currently 20 %).

Companies
From a Capital Gains tax perspective a non UK resident company will only be chargeable to UK tax if the property is used by a permanent establishment in the UK.

The UK Government are consulting on whether to introduce Capital Gains tax for non-residents. Any changes are likely to take effect from April 2013.

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

Asset deals and share deals are possible in the UK. The main difference for the purchaser is the rate of Stamp Duty and Stamp Duty Land Tax. For further details see Section C.

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

There are several rules in the UK to limit the deductibility of interest by companies including transfer pricing, thin capitalisation, debt-cap and the anti arbitrage provisions.

Transfer Pricing

The basic rule for the UK transfer pricing legislation is that, where a non-arm's length transaction is made between persons who are associated with each other and the result is to give a UK tax advantage to one or both of the persons, the person is required to make an adjustment to their tax return to ensure that the transaction is taxed as if the terms were arm's length terms.

The UK transfer pricing rules do not, in general, apply to small and medium-sized enterprises unless an exception applies.

Thin Capitalisation

Where a UK resident company or non-UK resident company takes out a loan to purchase property or finance expenditure on developing a property, tax relief should be available for the interest payable on the borrowings provided that the interest payable is an arm's length rate and the quantum of the loan is an arm's length amount.

Debt Cap

The Debt Cap rules limit the amount of debt on which the part of the group can claim relief, for interest payments to the amount of consolidated gross debt of the group as a whole.

For individuals, HMRC may seek to deny interest deductions where loans are not on commercial terms. Therefore, it is important to consider the financing structure carefully to determine the deductibility of any interest expense.

Generally, where the loan is used to acquire a property and it is on commercial terms, any interest expense will be deductible.

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

The following expenditure can be deducted from the UK proceeds received in respect of the disposal of the property when calculating the amount subject to UK Capital Gains tax:

- The cost of acquiring the asset plus any incidental costs;
- Incidental costs of disposal, valuation of disposal such as professional fees, advertising costs; and
- Costs incurred to enhance the property

For Corporation tax purposes and Income tax purposes, interest payable on loans used to buy land or property which is used in the rental business, or on loans to fund repairs, improvements or alterations, is deductible in computing the profits or losses of rental income. There are restrictions on the quantum of interest that may be deducted in certain circumstances. However, where the amount borrowed, and the interest rates are commercial it is unlikely that the interest will be disallowed.

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

A debt push down may be effected by refinancing the acquired company (target). Alternatively, interest expenses may be surrendered to another UK group company (within a 75 % group) to offset against its profits.

The deductibility of any interest may be restricted by the various limiting provisions in the UK (please see answer to B.5).

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

Generally a 20 % withholding tax is imposed on interest payments to non-UK residents. This rate may be reduced under an applicable tax treaty. Furthermore, an application can be made to exempt payments to qualifying EU companies that meet the conditions for the EC Interest and Royalty Directive as implemented in UK law.

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

A loss carry back is only possible if there is a permanent establishment in the UK, otherwise any losses can be carried forward indefinitely, to offset against future property income.

C. Real Estate Taxes

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

The sale of shares

There is a charge to Stamp Duty in the UK on the sale or transfer of stock or marketable securities. The charge is a percentage of the consideration given for the transfer of the shares. The percentage rate is 0.5 % and the Stamp Duty is rounded up to the nearest multiple of £ 5. Stamp Duty is payable by the purchaser.

There are various reliefs available in order to minimise UK Stamp Duty. These are complex rules and are applied based on the facts on a case by case basis. The most common Stamp Duty relief is on intra group transfers between group companies.

The sale of real estate

Stamp Duty Land Tax ("SDLT") is payable by the purchaser when property or land is acquired or transferred or where a lease is granted. The rate of SDLT depends on whether the property or land is residential or non-residential. The current rates are:

	Residential
→ Up to £ 125,000	Zero
→ Over £ 125,000 to £ 250,000	1 %
→ Over £ 250,000 to £ 500,000	3 %
→ Over £ 500,000 to £ 1,000,000	4 %
→ Over £ 1,000,000 to £ 2,000,000	5 %
→ Over £ 2,000,000	7 %
→ Over £ 2,000,000 purchased by certain persons including corporate bodies	15 %

	Non-Residential
→ Up to £ 150,000 annual rent is under £ 1,000	Zero
→ Up to £ 150,000 annual rent is £ 1,000 or more	1 %
→ Over £ 150,000 to £ 250,000	1 %
→ Over £ 250,000 to £ 500,000	3 %
→ Over £ 500,000	4 %

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

The UK imposes a local property tax, called Rates, collected from the property owners. Rates are based on the annual rental value of the property as assessed by the Valuation Office Agency, an executive agency of HMRC.

D. Value Added Tax

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

Commercial

The sale of a commercial property is generally exempt from VAT and no VAT can be recovered on attributable costs. A VAT registered trader can opt to tax a commercial property, in which case VAT will be charged at the standard rate applicable in the UK (currently 20 %).

There is an exception to the above. A sale of the freehold of a new commercial property, completed less than three years before the sale will be subject to the standard rate of VAT.

In addition, if the sale of a property meets the Transfer of a Going Concern conditions, it will not be subject to VAT.

VAT adjustments may be required according to use over a 10 year period on land and buildings costing more than £ 250,000 which fall within a scheme in the UK known as the Capital Goods Scheme.

Residential

The sale of a residential building is generally exempt from VAT and no recovery of VAT incurred on costs can be made. However, the first sale of the freehold (or grant of a lease of more than 21 years) by a person constructing a residential building is subject to VAT at the zero rate giving rise to recovery of VAT incurred on the construction.

The sale of a furnished holiday let is exempt from VAT, unless sold within 3 years of construction when it is subject to the standard rate of VAT.

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

Commercial

The rental or lease of a commercial property is generally exempt from VAT unless the trader has opted to tax the property and in such cases rents are subject to VAT at the standard rate.

An exempt rental will not allow recovery of VAT on attributable costs. VAT attributable to an opted property is recoverable subject to meeting the normal conditions for input VAT recovery.

Residential

The rental or lease of a residential property is exempt from VAT and VAT on costs attributable are not recoverable.

Rental of a furnished holiday let is subject to VAT at the standard rate. Any VAT incurred on attributable costs is recoverable subject to the normal conditions for input VAT recovery.

E. Other Taxes

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

No.

2. Is there a Stamp Duty on debt granted to a local company?

There is no Stamp Duty payable on debt granted to a local company. However, if there is debt involved in respect of the sale or transfer of shares then this may form part of the 'chargeable consideration' used to calculate the Stamp Duty payable on the shares (see in conjunction with the answer to question C.1).

Our Partners

Austria | Walter Loukota
WTS Tax Service Steuerberatungs-gesellschaft mbH
www.wts.at

Belarus | Kiryl Apanasevich
Sorainen
www.sorainen.com

Belgium | Bernard Peeters
Tiberghien
www.tiberghien.com

Bosnia & Herzegovina | Pavo Djedovic
LeitnerLeitner
www.leitnerleitner.com

Brazil | Fernando Zilveti
WTS do Brasil
www.wtsdobrasil.com.br

China | Hongxiang Ma
WTS Consulting (Shanghai) Ltd.
www.wtscn.cn

Croatia | Pavo Djedovic
LeitnerLeitner
www.leitnerleitner.com

Cyprus | Nicolas Kypreos
WTS World Tax Service Cyprus Ltd.
www.wtscyprus.com

Czech Republic | Jana Alfery
WTS Alfery s.r.o.
www.alferypartner.com

Denmark | Lars Fogh
Gorrissen Federspiel
www.gorrissenfederspiel.com

Estonia | Kaido Loor
Sorainen
www.sorainen.com

Finland | Sari Laaksonen
Castrén & Snellman Attorneys Ltd.
www.castren.fi

France | Christoph Seseke
WTS Seseke France
www.wtsf.fr

Germany | Peter Jung
WTS Steuerberatungsgesellschaft mbH
www.wts.de

Greece | Ioanna Fokianou
Prooptiki Ltd
www.prooptikiltd.gr

Hong Kong | Claus Schuermann
WTS (Hong Kong) Ltd.
www.wts.com.hk

Hungary | Zoltán Lambert
HLB Klient Kft.
www.klient.hu

India | Kunjan Gandhi
WTS India Private Limited
www.worldtaxservice.in

Italy | Giovanni Rolle
WTS R&A Studio Tributario Associato
www.taxworks.it

Latvia | Janis Taukacs
Sorainen
www.sorainen.com

Luxembourg | Jean-Luc Dascotte
Tiberghien
www.tiberghien.com

Lithuania | Saule Dagilyte
Sorainen
www.sorainen.com

Malta | Damien Fiott
Fenech Farrugia Fiott Legal
www.fff-legal.com

Netherlands | Denis Pouw
WTS World Tax Service BV
www.wtsnl.com

Norway | Ulf Sørdal
Steenstrup Stordrange DA
www.steenstrup.no

Poland | Magdalena Saja
Doradztwo Podatkowe
WTS&SAJA Sp.z.o.o.
www.wtssaja.pl

Portugal | José Pedroso de Melo
CCA-Carlos Cruz & Associados
www.cca-advogados.com

Romania | Mihaela Danalache
ensight Finance Consulting
www.ensight.ro

Russia | Igor Schikow
EPAM
www.epam.ru

Serbia | Ivana Blagojevic
LeitnerLeitner
www.leitnerleitner.com

Slovakia | Martin Siagi
Mandat Consulting, k.s.
www.mandat.sk

Slovenia | Karmen Demsar
LeitnerLeitner
www.leitnerleitner.com

Spain | Luis Lamarque
WTS Lamarque & Krieg Tax Advisors
www.lamarque-krieg.com

Sweden | Fredrik Sandefeldt
Svalner Skatt & Transaktion
www.svalner.se

Switzerland | Markus Pfirter
Bratschi Wiederkehr & Buob
www.bratschi-law.ch

Turkey | Arif Çelen
Çelen SMMM Ltd. Sti
www.celenltd.com

United Kingdom | Kari Campbell
Smith & Williamson Tax LLP
www.smith.williamson.co.uk

Ukraine | Alexander Minin
KM Partners
www.km-partners.com

Contacts

Peter Jung
Thomas-Wimmer-Ring 1 - 3
80539 München
Tel. + 49 (89) 28646 - 182
Fax + 49 (89) 28646 - 149
peter.jung@wts.de

Bernhard Brock
Thomas-Wimmer-Ring 1 - 3
80539 München
Tel. + 49 (89) 28646 - 132
Fax + 49 (89) 28646 - 149
bernhard.brock@wts.de

Dr. Bela Jansen
Taunusanlage 19
60325 Frankfurf am Main
Tel. +49 (69) 1338456 - 61
Fax +49 (69) 1338456 - 99
bela.jansen@wts.de

Eric Bongers
Thomas-Wimmer-Ring 1 - 3
80539 München
Tel. + 49 (89) 28646 - 193
Fax + 49 (89) 28646 - 149
eric.bongers@wts.de

wts worldwide

www.wts-alliance.com

wts TAX LEGAL CONSULTING