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Key Tax Issues at Year End for Real Estate Investors 2017/2018

An overview of year-end to-dos and important issues in real estate taxation in 33 tax systems worldwide.

Introduction

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

This publication gives investors and fund managers an overview of year-end to-dos and important issues in real estate taxation in 33 tax systems worldwide.

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

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

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

We hope that you will find *Key Tax Issues at Year End for Real Estate Investors 2017/2018* a useful reference and source of information. We would be pleased to assist you with any further requests.

Berlin, November 2017

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List of abbreviations

ACE	Allowance for Corporate Equity
AE	Associated Enterprise
AFIP	Administración Federal de Ingresos Públicos
AIMI	Portuguese Additional Real Estate Municipal Tax
AMIT	Attributable Managed Investment Trust
approx.	Approximately
ATAD	Anti Tax Avoidance Directive
ATO	Australian Tax Office
BCRA	Banco Central de la República Argentina (Argentine Central Bank)
BEPS	Base Erosion and Profit Shifting
BGC	Business as a Going Concern
BITA	Business Income Tax Act
BPHTB	Bea Perolehan Hak atas Tannah dan Bangunan
CbCR	Country-by-Country-Reporting
CCA	Capital Cost Allowance
CFC	Controlled foreign corporation
CGT	Capital Gains Tax
CIT	Corporate Income Tax
CITL	Corporate Income Tax Law
CIV	Collective Investment Vehicle
CVAE	Cotisation sur la valeur ajoutée des entreprises
CZK	Czech Crowns
DPT	Diverted Profits Tax
CRA	Canada Revenue Agency
CRS	Common Reporting Standard

DDD	Deemed Dividend Distribution
DDT	Double Tax Treaty
DJAS	Advance Services Sworn Statement
EBIT	Earnings before Interest and Tax
EBITDA	Earnings before Interest, Tax, Depreciation and Amortisation
ECJ	European Court of Justice
EEA	European Economic Area
e.g.	Exempli gratia (for example)
EOI	Exchange of Information
etc.	Et ceterea (and so forth)
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FDI	Foreign Direct Investment
FIFO	First In First Out
FIRB	Foreign Investment Review Board
FIIS	Belgian Real Estate Investment Fund
FONDCE	Trust for Developing and Financing Entrepreneurial Capital
FX	Foreign exchange
FY	Fiscal Year
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti-Avoidance Rule
GCC	Gulf Cooperation Council
GST	Goods and Service Tax
IAS	International Accounting Standards
IBAN	International Bank Account Number
i.e.	id est (that is)
IFRS	International Financial Reporting Standards
IMI	Portuguese Real Estate Municipal Tax

IMU	Italian Local Property Tax
incl.	Including
INR	Indien Rupee
IP rights	Intellectual property rights
IRAP	Italian regional production tax
IRES	Italian Corporate Income Tax
IRS	Internal Revenue Service
IT	Information technology
ITA	Income Tax Act
ITAA	Income Tax Assessment Act
JPY	Japanese Yen
KSA	Kingdom of Saudi Arabia
L&B	Land and Building
LOB	Limitation of Benefits
MAAL	Multinational Anti-Avoidance Law
MAT	Minimum Alternative Tax
MIT	Managed Investment Trust
MOH	Ministry of Housing
MREC	Mutual Real Estate Company
MULC	Mercado Unico y Libre de Cambio
NATO	North Atlantic Traty Organisation
NCST	List of non-cooperative States and Jurisdictions
NFE	Net Financial Expenses
NID	Notional Interest Deduction
NJOP	Government Taxable Value
No	Number
NOL	Net Operating Loss
NWT	Net Wealth Tax

OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
PIT	Personal Income Tax
PPJB	Purchase Binding Agreement on Land and Building
PPT	Principle Purpose Test
Q	Quarter
RAP	Reasonably Arguable Position
RE	Real Estate
REAT	Real Estate Acquisition Tax
REIT	Real Estate Investment Trust
REF	Real Estate Fund
RET	Real Estate Tax
RETT	Real Estate Transfer Tax
RON	Romanian Leu
ROS	Revenue’s Online System
RRR	Renovation, Reconstruction and Restoration
RUSF	Resource Utilisation Support Fund
SAF-T	Standard Audit File for Tax Purposes
SDC	Special Defence Contribution
SEBI	Securities and Exchange Board of India
SME	Small Middle Enterprise
SPA	Sale Purchase Agreement
SPV	Special Purpose Vehicle
sqm	Square meter
STA	Swedish Tax Agency
STT	Securities Transaction Tax
TARP	Taxable Australian Real Property
TIVUL	Tax on the Increase in Value of Urban Land

TL	Turkish Lira
TMK	Tokutei Mokuteki Kaisya
TOFA	Taxation of Financial Agreements
TP	Transfer Pricing
TPD	Transfer Pricing Documentation
TRY	Turkish Lira
UK	United Kingdom
VAT	Value Added Tax
vs	versus
WHT	Withholding Tax

Europe

1 Austria

Tax Group

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

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

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

Losses carried forward

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

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

Substance requirements

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

It should be ensured that Austrian substance requirements are met.

Transfer pricing

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

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

Thin capitalisation rules

Under Austrian law, interest payments on senior and shareholder loans are generally tax deductible. There are no explicit thin capitalisation rules. Generally, group financing has to comply with the general arm's length requirements. A debt/equity ratio of 3:1 is usually accepted by Austrian tax auditors.

Payments made to related parties located in low-tax jurisdictions are no longer tax deductible. The restriction applies in case the respective interest income is not taxed or subject to a nominal or effective tax rate of less than 10%.

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

Participation in a partnership

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

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

Real estate transfer tax (RETT)

Austrian real estate transfer tax (RETT) of 3.5% on the compensation is generally payable upon the transfer of Austrian real estate.

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

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

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

As of January 1st 2016, share transactions are taxed based on a higher tax base, the 'property value'. The unification of 95% or more of the shares in one hand triggers RETT.

Land registration fee

The fee for the registration of real estate and transactions within the land register has to be calculated on the basis of the purchase price of the real estate. The fee amounts to 1.1%.

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

Capital gains on the sale of property

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

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

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

Regarding business income, the reduced taxation rates may be applicable for land and buildings. The disposal of real estate through a corporation is subject to corporate income taxation of 25%.

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

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

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

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

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

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

2 Belgium

Advance tax payments

Unless a company pays its Belgian corporate income taxes by means of timely tax prepayments (four due dates: April 10th, July 10th, October 10th and December 20th [dates applicable for assessment year 2018 if accounting year equals calendar year]), a surcharge on the final corporate tax amount will be due (1.125% for assessment year 2017 and 2.25% for assessment year 2018).

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

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

Provisions for risks and charges

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

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

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

Notional interest deduction (NID)

Deduction of interest expenses

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

The NID rate for tax year 2017 (accounting years ending between December 31st 2016 and December 30th 2017, both dates inclusive) is 1.131% (1.631% for SMEs). For tax year 2018, the NID rate is 0.237% (0.737% for SMEs). Since 2012, new excess NID can no longer be carried forward and the 'stock' of excess NID (stemming from previous years) that can be applied in a given year is limited.

Please note that in the framework of the recently announced corporate tax reform, the notional interest deduction would be modified. As from 2018, this deduction would be calculated based on the incremental equity (over a period of five years) and no longer on the total amount of the company's qualifying equity (transitional rules would apply). No specific details are available in this regard.

Thin cap rule: 5/1 ratio

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

European Anti-Tax Avoidance Directive (ATAD)

In the framework of the European Anti-Tax Avoidance Directive, an additional interest deductibility limitation would be introduced. Net interest expenses (including bank interest) would only be tax deductible up to 30% of the EBITDA. The Directive includes certain op-in and opt-out possibilities for the member state (e.g. the possibility to exempt the first €3 million of the net interest expenses). Furthermore, the taxpayer could in principle be allowed to deduct its entire interest expenses if it can prove that the ratio of its equity over its assets is equal to or higher than the equivalent ratio of the group. The exact scope of how this rule will be implemented in Belgium is not yet known. The rule is expected to be introduced by 2020 in Belgian tax law.

The debt to equity ratio of a company has to be monitored to comply with the 5/1 thin cap rule and the future implementation of the ATAD interest deductibility limitation.

Tax losses carried forward

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

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

As from 2018, a minimum tax charge would be imposed on companies making more than one million euros profits by limiting the number of corporate tax deductions. A basket of deductions could only be claimed on 70% of the profits exceeding the one million threshold. The remaining 30% would be fully taxable at the standard corporate tax rate. Besides, the deduction of tax losses carried forward, also the dividends received deduction carried forward, the innovation income deduction carried forward and the notional interest deduction (carried forward and new incremental NID) would be in the scope of this rule. The concrete features of this measure currently remain unclear.

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

The impact of the announced minimum charge should also be monitored.

Deferred taxation

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

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

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

Transfer pricing

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

The Program Law of July 1st 2016 contains the introduction into Belgian tax law of specific transfer pricing documentation requirements. Three layers of transfer pricing documentation are introduced in Belgium:

- Country-by-country reporting (CbCR)
- Masterfile: A global Masterfile covering information relevant to the entire group of companies;
- Local file.

The obligations for filing the Masterfile and the Local File are only applicable if at least one of the following thresholds is exceeded:

- Operational and financial revenue (excluding non-recurring revenue) of at least €50 million;
- Balance sheet total of €1 billion at least;
- Annual average full-time equivalents of at least €100 million.

Only Belgian ultimate parent entities of a multinational group with a gross consolidated group revenue of at least €750 million should file a country-by-country report.

The master file and country-by-country report should be filed no later than 12 months after the last day of the reporting period concerned of the multinational group. The local file, however, should be filed with the tax return concerned.

The arm's length principle should be duly followed and the necessary transfer pricing documentation should be complied with.

December Value Added Tax (VAT) advance payment

Monthly and since 2017 also quarterly VAT payers need to consider the December advance payment regulations. VAT payers have two options to comply. Monthly VAT payers should either pay the VAT due from the transactions occurring between December 1st and December 20th (inclusive) or pay the same amount of VAT due for the month of November. Quarterly VAT payers should either pay the VAT due from the transactions occurring between October 1st and December 20th (inclusive) or pay the same amount of VAT due for Q3.

In both cases, payment must be made by December 24th at the latest.

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

Withholding tax

Since January 1st, a uniform withholding tax (WHT) rate of 30% on interest, dividends and royalties is applicable.

Some WHT reductions/exemptions are still provided for under Belgian domestic tax law, such as for: Dividends from the Belgian specialised real estate investment fund or Belgian regulated investment companies to non-resident investors (WHT of 0%) to the extent the income originates from foreign real estate income, interests paid to credit institutions located in the EEA or in a country with which Belgium has concluded a double taxation treaty (0%).

Under certain conditions, a so-called Fokus Bank claim can be filed to reclaim withholding tax levied on interest paid to foreign (real estate) investment funds. The European Court of Justice ruled indeed that a discrimination exists for EU-based investment funds which are subject to withholding taxes when they invest in the shares of companies' resident in other EU member states or in EEA countries whereas a comparable domestic fund would not suffer from any withholding tax or would receive a refund of the tax withheld.

In the light of the recently announced corporate tax reform, as from 2018, any reimbursements of paid-up capital would become subject to withholding tax to the extent that taxable reserves are deemed to be distributed (pro rata method). The concrete features of this measure currently remain unclear.

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

Capital gains on shares

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

As from 2018, the separate 0.412% capital gains tax would be abolished, while the conditions to benefit from the capital gains exemption would be brought in line with the Belgian dividends received deduction. This implies the application of a minimum participation threshold of at least 10% or an acquisition value of at least €2.5 million in the capital of the distributing company for a period of at least one year.

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

Fairness tax

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

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

The fairness tax has recently been contested in front of the Constitutional Court. The Court referred the case to the ECJ for a preliminary ruling which ruled on May 17th that the fairness tax is in certain cases in breach with the European Parent/Subsidiary Directive and the European freedom of establishment.

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

At this stage, the status of the Fairness Tax remains unclear, the recently announced Belgian tax reform being silent on this topic. However, we may expect that the fairness tax in its current form will be abolished, taking into account the ruling of the European Court of Justice and the pending case before the Belgian Constitutional Court.

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

Anti-abuse regulation

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

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

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

Payments to tax havens

Belgian tax-residents have to declare their direct or indirect payments made to tax havens when these payments amount to at least €100,000. This declaration is made through a specific form F275 to be annexed to the tax return. Since assessment year 2016, it is no longer required to report payments to Cyprus or Luxembourg (which were up to then also considered as tax havens).

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

Recent changes

In the social housing sector the application of reduced VAT rates has been extended to private actors. Reduced rates are equally possible for certain ‘green’ rooftops.

Belgian Real Estate Investment Fund

The Program Act of August 3rd 2016 introduced the new Belgian Real Estate Investment Fund (FIIS) to Belgian tax law. The Royal Decree implementing the FIIS regime was published on November 18th 2016.

The fund could be used as a pan-European real estate platform for asset managers or as a holding vehicle for Belgian real estate investments (for typical Belgian/ foreign institutional investors such as pension funds, insurance companies, real estate funds, etc.).

In a nutshell, the main features of the FIIS are:

- The FIIS should not pay any Belgian corporate income tax on its real estate income (it is subject to Belgian corporate income tax but with a minimal taxable basis);
- Upon entry in the FIIS of Belgian real estate, a so-called entry tax on the latent capital gains at a rate of 16.995% is applicable (which can be offset against carried forward tax assets);
- The FIIS will be required to distribute 80% of its net income.

Upcoming changes in 2018

The Belgian Government recently announced that it considers to significantly modify the Belgian corporate tax regime. The aim of these modifications would be to reduce the general rate of 33.99% to a rate of 29.44% in 2018 and to 25% as from 2020 and compensate this budgetary gap with compensatory corporate tax measures which are to be introduced in 2018 and 2020.

Draft legislation is at this stage not yet available. Based on press statements, the most important measures that would be introduced are the following:

- The abolishment of the separate 0.412% capital gains tax on qualifying shares.
- The notional interest deduction would be modified. As from 2018, it would be calculated based on the incremental equity (over a period of five years) and no longer on the total amount of the company’s qualifying equity (transitional rules would apply).

As from 2018, a minimum tax charge would be imposed on companies making more than one million euros profits by limiting the number of corporate tax deductions. A basket of deductions could only be claimed on 70% of the profits exceeding the one million threshold. The remaining 30% would be fully taxable at the applicable standard corporate tax rate. The rule would apply for tax losses carried forward, dividends received deduction carried forward, the innovation income deduction carried forward and the notional interest deduction (carried forward and new incremental NID).

Reimbursements of paid-up capital would become subject to withholding tax to the extent that taxable reserves are deemed to be distributed (pro rata method).

Tax consolidation would be introduced as from 2020. This would imply that Belgian companies could offset their (new) profits against tax losses of another Belgian affiliated company. Only the consolidated tax base would then be subject to corporate income tax. Details on the system's application and limitations in practice are not yet available.

The impact of the announced changes should be closely monitored.

Option to apply VAT on immovable lettings as per 1/1/18

On July 26th, the Belgian Government decided to introduce the possibility for landlords to apply VAT on immovable lettings. For years, investors and landlords in Belgium have been struggling with the cost of non-recoverable or hidden VAT on their real estate as most forms of lettings are VAT exempt. With the new optional regime, the cost of investing in real estate should decrease significantly as input VAT paid on construction and operating costs would become recoverable. This change would be applicable as from January 1st 2018.

It is equally the intention of the Belgian Government to foresee a fade-out scenario for certain types of lettings that are currently already subject to VAT and to have them gradually replaced by the new option to tax.

Promotors, investors, landlords and end-users should assess the impact of these newly announced changes on their current lease arrangements as well as on pending and future plans.

3 Cyprus

Provisional income tax return for 2017

Where a taxpayer anticipates that it will generate taxable income (e.g. rental income) in the relevant tax year, (i.e. calendar year 2017), the taxpayer is obliged to prepare and submit its provisional income tax declaration form by July 31st in the relevant tax year and pay the respective tax (at the tax rate of 12.5%-corporate income tax; progressively up to a rate of 35%-personal income tax) in two equal instalments on July 31st and December 31st of the relevant year.

The taxpayer may submit revised declarations at any time up to December 31st of the relevant tax year, i.e. up to December 31st 2017 for tax year 2017.

Final tax payment for 2017

A corporate taxpayer has to pay by August 1st 2018 by a self-assessment process any excess tax shown as due per its 2017 annual tax return after the deduction of any provisional tax already paid (tax return due by March 31st 2019).

Final tax return for 2016

A company has the obligation to submit its 2016 tax return by March 31st 2018. Any liability per its 2016 annual tax return after the deduction of the provisional tax paid (as above) should have been paid via self-assessment by August 1st 2017.

Deemed dividend distribution (DDD) for 2015

A Cyprus tax resident company, controlled partly or wholly by Cyprus tax resident persons, must declare 70% of the relevant profits of 2015 within the next two years as dividends to its shareholders (i.e. by December 31st 2017), otherwise it will be subject to the deemed dividend distribution (DDD) provisions of special defence contribution (SDC) at 17%, and pay the relevant SDC by January 31st 2018.

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

Special defence contribution (SDC)

In addition to income tax, SDC is imposed on gross rental income at an effective rate of 2.25% earned by Cyprus tax resident companies and Cyprus tax resident and domiciled individuals.

For Cyprus arising rental income, companies, partnerships, the government or any local authorities that pay rents for immovable property are required to withhold the SDC at source and it is payable to the tax authorities by the end of the month following the month in which it was withheld.

In all other cases, the SDC on rental income is payable by the landlord in six month intervals on June 30th and December 31st.

SDC for the six month period July 1st 2017 to December 31st 2017 is due on December 31st 2017 and for the six month period January 1st 2018 to June 30th 2018 it is due on June 30th 2018.

Abolishment of the Immovable Property Tax

The immovable property tax has been abolished as from tax year 2017.

Capital gains tax (CGT)

CGT is imposed (when the disposal is not subject to income tax) at the rate of 20% on gains from the disposal of immovable property situated in Cyprus including gains from the disposal of shares in companies which directly own such immovable property. Further, as from December 17th 2015, CGT is imposed on disposals of shares of companies which indirectly own immovable property located in Cyprus if at least 50% of the market value of the said shares derive from such immovable property.

In case of disposals of shares the gain is calculated by reference to the Cyprus located immovable property fair value.

Individuals may claim certain life-time exemptions (up to a maximum of €85,430).

In addition, certain disposals are exempt.

Most notably amongst the exemptions, subject to certain conditions, land as well as land with buildings, acquired in the period of July 16th 2015 up to December 31st 2016 will be unconditionally exempt from CGT upon future disposal.

Shares listed on any recognised stock exchange are exempt from CGT.

Double tax treaties may provide protection from CGT on gains of sales of shares of such companies owned by non-residents of Cyprus.

Tax depreciation allowances

Tax depreciation allowance for income tax on capital costs is available to taxpayers at the rate of 3% for commercial buildings, and 4% for industrial buildings.

In the case of industrial and hotel buildings that are acquired during the tax years 2012 and 2016 (inclusive), an accelerated tax depreciation at the rate of 7% per annum applies.

The above rates are amended accordingly in the case of second-hand buildings.

Land does not attract tax depreciation allowances.

Upon disposal of the property, a tax balancing allowance or charge is calculated on the difference between sale proceeds and the tax written down value. However, the maximum taxable charge which may be taxed under income tax is the total amount of tax depreciation allowances previously claimable during the period of ownership.

Individuals who have been claiming allowances on property from which rental income was received are not subject to the balancing allowance/charge provisions upon disposal.

Further, balancing allowances or charges are not applicable in cases of tax-qualified company reorganisations.

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

An income tax loss incurred during a tax year and which cannot be set off against other income, is carried forward subject to conditions and set off against the profits of the next five years. In addition, company group loss relief provisions apply as set out below.

Group relief (set-off of the income tax loss of one company with the taxable profit of the same tax year of another company) is also allowed between Cyprus tax resident companies of a group. A group is defined as:

- one company holding directly or indirectly at least 75% of the voting shares of the other company,
- or where at least 75% of the voting shares of the two companies are held directly or indirectly by a third company .

As from January 1st 2015 interposition of a non-Cyprus tax resident company will not affect the eligibility for group relief as long as such company is tax resident of either an EU country or a country with which Cyprus has a double tax treaty or an exchange of information agreement (bilateral or multilateral). Also as from January 1st 2015, under conditions, an EU group company loss may be surrendered to a Cyprus company.

Capital tax losses may also be carried forward and set off against future capital gains tax profits without time restriction (but not group relieved).

Dividends and withholding tax

No withholding tax is imposed on dividend payments to investors, both individuals and companies, who are non-residents of Cyprus in accordance with the Cyprus domestic tax legislation, irrespective of the percentage and period of holding of the participating shares. Additionally, no withholding tax will apply in case the recipient of the dividend is an individual who is Cyprus tax resident but not Cyprus domiciled – applicable as from July 16th 2015.

No double tax treaty protection is needed for payment of dividends from Cyprus to non-residents of Cyprus.

Stamp Duty

Unless otherwise stipulated in the sale-purchase contract, the purchaser is liable for the payment of stamp duty at the rate of 0.15% on the contract price for amounts between €5,001–170,000 and 0.2% thereafter.

The maximum total amount of stamp duty is €20,000 per transaction.

Land Transfer Fees

The fees charged by the Department of Land and Surveys to the acquirer for transfers of immovable property are as follows:

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

Subject to conditions, no transfer fees will be payable if VAT was paid upon purchasing the immovable property and the above transfer fees are reduced by 50% in case the acquisition of immovable property was not subject to VAT. This applies to contracts signed and submitted to the Cyprus Land Registry according to the Sale of Immovable Property (Specific Performance) Law after December 2nd 2011 irrespective of the transfer date.

Municipality levy

Subject to certain exemptions property owners are liable to pay Municipality Levy on immovable property which is set at a rate 1.5‰ on the assessed value of the property (this rate applies to all municipalities).

Schemes of Naturalisation and Permanent Residence

Cyprus offers two Schemes for foreign investors that are interested in either relocating in Cyprus or in becoming active in Cyprus and the EU. The two Schemes are the Scheme for Naturalisation of Investors in Cyprus by Exception and the scheme for obtaining Immigration Permit (Permanent residence) in Cyprus through an expedited process.

Under the Cyprus Citizenship scheme, an investor and his/her family (i.e. spouse, underage children, qualifying adult dependent children, and investor's parents) can apply for Cyprus citizenship under criteria.

Non-EU citizens, who purchase property in Cyprus of a cost exceeding €300,000 plus VAT, are entitled to apply and receive an Immigration Permit (Permanent Residence) through an expedited process. The investment in property/ies could be in 2 residential units, or one residential and one commercial property, subject to certain conditions.

This Permit grants its holders the right to travel to and reside in Cyprus for life. The Permit is extended to the applicant's spouse, under age children, adult dependent children up to 25 years and parents/in-laws of the investor.

Value Added Tax (VAT) on immovable property

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

The supply of second-hand buildings (after their first use) is exempt from VAT.

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

The reduced rate of 5% applies to contracts that have been concluded as from October 1st 2011 onwards provided they relate to the acquisition and/or construction of residences to be used as the primary and permanent place of residence for the next 10 years.

From November 18th 2016 onwards, the reduced rate of 5% applies on the first 200 sqm of the buildable area of a house/apartment as this is determined on the building coefficient of the residence in accordance with the architectural plans filed with the competent Authorities, when the house/apartment is acquired by individual/eligible person.

This is on the condition that the property will be used as the primary and main residence for ten years. On the remaining sqm, the standard VAT rate of 19% is applied. In addition, based on the amendment, persons who have already acquired a residence on which the reduced VAT rate was imposed can re-apply and acquire a new residence on which the reduced VAT rate will be imposed, irrespective of whether the ten year prohibition period for using the residence provided for in the legislation has lapsed or not. A condition for this to apply is that in case the ten-year period of using the residence as the main and permanent place of residence has not lapsed, the persons must pay back to the Tax Department the difference in the VAT between the standard and reduced VAT rates applicable at the time of the acquisition or construction of the residence.

The reduced rate is imposed only after obtaining a certified confirmation from the Commissioner of Taxation.

The eligible person must submit an application on a special form, issued by the Commissioner of Taxation, which will state that the house will be used as the primary and permanent place of residence. The applicant must attach a number of documents supporting the ownership rights on the property and evidencing the fact that the property will be used as the primary and permanent place of residence. The application must be filed prior to the actual delivery of the residence to the eligible person.

Eligible persons include residents of non EU Member States, provided that the residence will be used as their primary and permanent place of residence in the Republic.

The documents supporting the ownership of the property must be submitted together with the application. The documents supporting the fact that the residence will be used as the primary and permanent place of residence (copy of telephone, water supply or electricity bill or of municipal taxes) must be submitted within six months from the date on which the eligible person acquires possession of the residence.

A person who ceases to use the residence as his primary and permanent place of residence before the lapse of the 10 year period must notify the Commissioner of Taxation, within thirty days of ceasing to use the residence, and pay the difference resulting from the application of the reduced and the standard rate of VAT.

Persons who make a false statement to benefit from the reduced rate are required by law to pay the difference of the additional VAT due. Furthermore, the legislation provides that such persons are guilty of a criminal offence and, upon conviction, are liable to a fine, not exceeding twice the amount of the VAT due, or imprisonment up to 3 years or may be subject to both sentences.

Imposition of VAT on building land

The Parliament has passed a legislative amendment under which building land will be subject to VAT at the standard rate of 19%. This provision will become effective as from January 2nd 2018. It will apply on supplies made by persons engaged in economic activities for VAT purposes.

Imposition of VAT on rent

As from January 2nd 2018 VAT will be imposed on rental of commercial buildings to persons making wholly taxable supplies.

This provision will not apply to existing lease agreements which are in force at the time of introduction of the Law.

In addition taxable persons will be entitled to opt out from the obligation to impose VAT on rent of commercial buildings by notifying the Tax Commissioner. The right to opt out can be exercised only once. Rental of residential buildings continues to be exempt from VAT.

4 Czech Republic

Real estate acquision tax (RETA)

The taxpayer of Real Estate Acquisition Tax (REAT) is the purchaser.

Acquisition of a real estate as part of a transformation of companies is generally not subject to REAT, this should not hold true in respect of transfer of assets to a shareholder.

Extension of free hold right is subject to REAT.

Thin capitalisation rules

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

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

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

Going forward, the Czech Republic must adopt with a legal effectiveness to January 1st 2019 limitations to tax deductibility of interest imposed by the EU Anti-Tax Avoidance Directive. The Directive proposes that borrowing costs (on both related and unrelated party debt) should newly be deductible in the period in which they are incurred only up to 30% of taxpayer's earnings before interest, tax depreciation and amortization (EBITDA).

Borrowing costs and EBITDA as defined by the Directive may be calculated at the level of group and comprise the results of all its members. At the same time, the taxpayer may be given the right to deduct borrowing costs of up to €3,000,000 or to fully deduct borrowing costs of taxpayer if a standalone entity.

The exact shape of the Czech version of the rules is not known yet (including the possibility of carrying forward amount of interest exceeding 30 % of EBITDA to consequent tax periods).

The company should review the debt to equity ratio and, in case that the full deductibility of interest will not be achieved, we recommend increasing equity as soon as possible during the end of 2017 period to mitigate any negative tax implications regarding the deductibility of interest. Going forward, it is advisable to factor the envisaged deductibility rules once their Czech shape becomes known.

Technical improvement

As of 2014, amendment of Accounting Act regulation introduced a definition of technical improvement of long term assets. The definition is similar to that used for tax purposes – nevertheless, the two differ as regards time period to be reviewed and financial limit after exceeding of which the costs incurred are regarded as technical improvement. For accounting purposes, the costs are reviewed for an accounting period whereas for tax purposes for the whole project. For tax purposes the threshold sum is CZK40,000 whereas for accounting purposes the financial threshold is determined in the internal accounting guidelines.

When company incurs costs on technically improving long term assets it should pay proper attention to testing of meeting the definition of technical improvement for tax and accounting purposes.

Reserve on repairs of fixed assets

Reserves for repairs of fixed assets are tax-deductible only if created in accordance with the Czech Act on Reserves and the corresponding cash amount is deposited in a special escrow bank account.

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

Tax losses carried forward

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

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

Changes to tax depreciation of technical improvement made on asset leased or subleased

As of April 1st 2017, an amendment regarding tax depreciation of technical improvement came in force to the Income Tax Act (ITA). Under the amendment, technical improvement made on leased or subleased asset may newly be depreciated for tax purposes even if made by a sub-lessee and in case of assignment of the lease agreement between two lessees, the assignee may depreciate the technical improvement made by the assignor. The consent of the owner of the asset is required in all cases. The newly amended regime of the depreciation of the technical improvement made on leased or subleased assets may not be applied for any technical improvement made on leased or subleased premises before April 1st 2017.

Companies should be aware of the abovementioned potential change to the ITA that is being in force from April 1st 2017. A higher degree of flexibility is introduced in the commercial agreements.

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

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

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

Hedge accounting

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

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

Control statement

The Czech VAT Act introduced a new control statement mandatory for all VAT payers. The control statement is a new tool in the field of fighting tax evasions and includes detailed information that VAT payers already had to keep in their VAT records.

As the tax authorities accent the control statement in relation with fighting tax evasion, there are strict sanctions in case of late submission of the control statement/subsequent control statement or in case the VAT payer does not submit the control statement at all. The sanction amounts from CZK1,000 up to CZK500,000. Since mid-2016, some of the sanctions may be partially or fully waived under certain conditions.

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

Changes in Value Added Tax (VAT) exemptions in respect of plots of land

Transfer of plots of land is VAT-exempt in case:
- The plots of land do not compose a functional unit with a building firmly affixed to the land, and
- The plots of land are not considered to be a building plot.

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

VAT exemptions in respect of other immovable property

Transfers of other immoveable property, including plots of land other than those listed above are VAT-exempt after the expiry of five years from the final approval inspection or from the date when the first use of the structure commenced, whichever occurs earlier.

There is an option to tax the transfer of immovable property after the expiry of this period as well as to tax the transfer of non-building plots.

Freehold right

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

Reverse-charge regime on transfer of immovable property

The reverse-charge regime is required in case a VAT payer opts for taxation of transfer of immovable property and the customer is a VAT payer as well.

During 2017, the reverse-charge regime was introduced in case of sale of immovable property within a compulsory sale based on a decision of a court (e.g. within compulsory public sale) or in case an immovable property is sold as a pledge.

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

Reverse-charge regime in relation with construction works

As of July 1st 2017, the reverse-charge regime on provision of construction works was widen by introducing this regime in case of hiring-out of labour for constructions works.

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

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

Among other cases, the recipient of the supply is liable for any VAT unpaid by the supplier where:

- The supplier is known to be an unreliable VAT payer, or
- The recipient makes a payment to a bank account other than one which is publicly disclosed. This applies only in cases where the consideration for the supply exceeds the amount of CZK540,000, or
- The payment is made on bank account held by a bank not seated in the Czech Republic.

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

Unreliable person

The status of an unreliable payer has been extended with that of an unreliable person (newly defined in Section 106aa of the VAT Act) within the VAT Act amendment, which came into effect on July 1st 2017. The position is to enable the VAT administrator to identify any physical person or legal entity, not necessarily a VAT payer, that has failed to meet their obligation related to VAT administration which has made them an unreliable payer. Also, if an unrealiable VAT payer losses its VAT registration, it becomes automatically an unreliable person.

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

Mandatory e-filing

VAT returns, their annexes and all other VAT reports have to be filed only electronically. Paper filing is not allowed anymore. Furthermore, in case the structure of the submitted forms is not in compliance with structure announced by tax authorities, such form will not be accepted by the Tax authorities. It is considered as if the form is not submitted at all.

5 Finland

Real estate tax rates

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

The minimum general real estate tax rate was increased as of January 2017. Currently the minimum tax rate set by tax legislation is 0.93% and the maximum tax rate is 1.80%.

It is intended to tighten the real estate taxation also as of fiscal year 2018. According to the published information, the minimum tax rate would be increased to 1.03% and the maximum tax rate to 2.00%. Higher real estate tax rates are applied e.g. to power plants and vacant construction sites.

The Finnish Ministry of Finance is also planning a reform to the determination of tax values for land for real estate tax purposes. It is expected that the reform would be introduced as of 2020.

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

Reform of allocation of income baskets

The Ministry of Finance has published a memorandum concerning a reform of allocation of income baskets in June 2017. The main purpose of the reform is to combine business income and other income baskets of entities. The reform is intended to take effect in the beginning of 2019.

As planned, the Finnish Business Income Tax Act ('BITA') would be applied to all taxpayers carrying out business or professional activities. The general definition of business income would be extended to include real estate business activities. In addition BITA would be applied to all entities, excluding public bodies, religious organizations, housing companies, mutual real estate companies ('MREC') and non-profit organization, even when their activities do not meet the conditions of business activities. In practice, more companies would be taxed in the basket of business income.

A new class of asset i.e. deemed investment asset is intended to be created within the basket of business income. According to the memorandum deemed investment assets would be more loosely connected to the business activity than other business assets e.g. assets currently belonging to other income basket. Treatment of capital losses would depend on classification of the asset.

The assessment of real estate activity being business activity would be made based on the overall assessment, taking into consideration e.g. the nature of the activities and the actual purpose of using property. As the exact scope of business and real estate business activities is open to interpretation and as e.g. housing companies and MRECs are not taxed in accordance with the BITA solely based on their legal form, at this point the treatment of housing companies and MRECs remain unclear. Same applies to real estate activities of non-profit organizations. The legislative process around the reform should be followed.

The reform's effect on interest deduction limitation rules

Currently Finnish limitations on tax deductibility of interest do not apply to companies taxed in the basket of other income.

Upon implementation of the above reform on allocation of income baskets, additional entities would fall within the scope of BITA either due to their legal form or as the carrying real estate business activities. As a result, such entities would also be subject to Finnish limitations on tax deductibility of interest expenses.

However, it should be noted that also as a result of the implementation of EU Anti-Tax Avoidance Directive (adopted by the EU Council on July 12th 2016), also companies taxed in the basket of other income (including e.g. MRECs) will be subject to the interest deduction limitation rules by 2019. It is further expected that the current scope of the interest capping rules will be changed due to the aforesaid Directive.

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

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

According to the current legislation, interest deduction limitations do not apply in the following cases:

- The interest is paid on loans granted by a third party e.g. a bank unless i) the loan is a back-to-back arrangement, or ii) a receivable of a group company serves as security for the loan.
- The entity does not carry out active business for Finnish tax purposes but is taxed in the basket of other income in accordance with the provisions of the Finnish Income Tax Act (such as MRECs and typically also many of the other real estate companies).
- The Finnish subsidiary's equity ratio is equal or higher than the corresponding ratio of the entire group of companies in the consolidated balance sheet.

In case the interest deduction limitation rules apply, the potential impact of the current rules should be analyzed. It is also important to follow the up-coming tax law changes with respect to the rules and practice on the tax deductibility of interest expenses.

The reform's effect on group contribution

Companies within the same group taxed in accordance with the BITA can level their income by giving and receiving group contributions. The group contribution is considered deductible cost for income tax purposes of the distributing company and taxable income for income tax purposes of the recipient company. Thus, upon reform of the income baskets, additional entities would fall within the scope of BITA which would enable them to level their income with the group companies by way of group contribution.

Return of the funds of unrestricted free equity

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

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

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

Transfer pricing

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

Ensure compliance with transfer pricing rules.

MRECS

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

Payments between the MREC and its shareholder(s) need to be carefully planned and documented.

Transfer tax

A transfer tax of 4% of the sales price is payable on the transfer of real estate situated in Finland. The transfer of shares in Finnish companies (other than housing companies and real estate companies) and other domestic securities is subject to a transfer tax of 1.6%. The transfer of shares in Finnish housing companies and real estate companies is subject to a transfer tax of 2%. No transfer tax is payable if both the seller and the transferee are non-residents. Transfer tax is, however, always payable on transfers between non-residents if the transferred shares are shares in a Finnish housing or real estate company.

Transfer tax implications need to be carefully analyzed before a transaction takes place. Transfer tax issues are closely investigated by the Finnish tax authorities and there are currently several ongoing disputes.

Change of VAT-able use of premises

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

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

VAT refunds from the year 2014

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

If there are undeducted VAT in the purchases, it can be investigated whether it is possible to apply the refund before the end of the year.

Own use of real estate management Services

According to the Finnish VAT Act, real estate management services are considered to be taken into own use when the real estate owner or holder is performing services in respect of the real estate by using own employees, if the real estate is used for non-deductible purposes.

However, the holder or the owner of the real estate is not liable to pay tax, if he/she uses the real estate as a permanent home or if the wages and salary costs including social benefit costs relating to these services, during a calendar year, do not exceed the set threshold.

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

Definition of a real estate from VAT point of view

The definition of a real estate, for VAT point of view changed as of January 1st. The definition of a real estate is determined based on the Council Implementing Regulation (EU) No 1042/2013. The Regulation also includes an example list of transactions identified as services connected with real estate. Services that are considered to relate to real estate are subject to VAT in the country where the real estate is located, i.e. reverse charge rules are not applicable.

The new definition has widened the scope of real estate. Thus, also the scope of investment subject to VAT adjustment right and liability is wider and should be taken into account when making the adjustment liability calculations.

6 France

List of states or territories defined as NCST

As for FY 2016, the list of NCST includes, Botswana, Brunei, Guatemala, Marshall Islands, Nauru, Niue, and, as from January 1st 2017, Panama.

As a reminder, French interest, dividends, capital gains (non real estate companies) realized by tax residents of those countries or paid in a bank account located in those countries are subject to a withholding tax of 75%. Capital gains on French real estate companies shares realized by those tax residents are computed as follows: (sale price – purchase price) – 2% * (amount of the building) * (year of the holding period). These capital gains are subject to withholding tax at the standard CIT rate.

France-Luxembourg double tax treaty

An amendment agreement was signed on September 5th 2014 as regards the capital gains provisions. As from January 1st 2017, capital gains generated by the sale of French real estate companies' shares are taxed in France. The new capital gains provision is drafted as follow: 'Gains from the purchase of shares or other rights in a company, trust or other similar body or entity, the assets or property of which consist for more than 50% of their value of, or derive more than 50% of their value – directly or indirectly through the interposition of one or more other companies, trusts or similar bodies or entities – from immovable property situated in a Contracting State or rights connected with such immovable property shall be taxable only in that State. For the purposes of this provision, immovable property pertaining to the business activities of such company shall not be taken into account'.

3% tax on dividends distribution

Under the new legislation following several case law, the 3% tax exemption applicable to dividend distributions between members of a fiscal unity has been extended to dividends distributed by companies that are not members of a tax group. However, these companies must meet all requirements of the fiscal unity regime or would meet those requirements if these companies were established in France.

Despite these favourable decisions and the subsequent legislative reform, the discrimination was still creating negative consequences for taxpayers with respect to previous distributions. Claims have been filed accordingly by taxpayers and are still pending.

In a judgement of May 17th 2017, following a priority question asked by the French jurisdiction, the European Court of Justice confirmed that the application of the French 3% tax on redistribution of dividends received from subsidiaries established in another EU Member state is incompatible with the Parent-Subsidiary directive in that it creates double taxation on profits realized within the EU.

Given that the decision of French Supreme Court and European Court of Justice have as a matter of principle a retroactive effect, it could be now argued that the refund of 3% tax wrongly paid for years prior to 2017 could be envisaged in both situations:
- upon distribution made before January 1st 2017 to French and foreign entity, which could be theoretically members of the French tax group (as explained above); and
- upon redistribution of dividends coming from EU subsidiaries to French or EU parent company.

Companies' added value contribution (CVAE)

The French Supreme Court has requested to the Constitutional Court the confirmation as to whether the companies' added value contribution (*cotisation sur la valeur ajoutée des entreprises*, or CVAE) computation rules within a French tax group are in line with the French Constitution. According to these rules, the tax rate of CVAE is determined on the basis of the turnover at group level for companies members of a tax group whereas in principle, it is determined on a stand-alone basis in case where there is no tax group.

In a judgement of May 19th 2017 the French Constitutional Court decided that this difference of treatment infringes the French Constitution. It is therefore very likely that the CVAE computation rules will be modified in the coming months. The French Tax Administration has confirmed on its website the immediate impact of this decision. As a consequence, companies' members of a tax group could determine the tax rate of CVAE on a stand-alone basis. Please note that this decision could be subject to a claim for all companies' members of a tax group which have already paid in recent years an amount of CVAE still higher than determined originally by taking into account the turnover at group level.

Corporate Income Tax (CIT) – Case Law 'Costa Foncière'

There is a recent case rendered by the Appeal administrative court of Paris on May 17th 2017 (Costa Foncière case) regarding the application of the 'Quemener adjustment'.

As a reminder, for the computation of capital gain or loss on the transfer of French tax transparent company shares (such as SCI or SNC), the Quemener case requires an adjustment of the book value of these shares to avoid a double taxation or a double deduction.

According to this decision, the book value of the shares must be:
- increased by the tax profits included in the shareholder's tax result and the accounting losses covered by the shareholder
- decreased by the tax losses effectively deducted from the shareholder's tax result and the accounting profits distributed to the shareholder

This adjustment was notably used to avoid discounts on the sale price of SCI shares, due to latent capital gain tax liability on the underlying asset. Under this rule, the purchaser of the SCI shares could reevaluate the underlying real estate property and wind-up the SCI straight after. The cancellation of SCI shares by the purchaser could in principle benefit from the Quemener adjustment and generate a capital loss equal to the revaluation gain. This could result in a step-up in basis of the real estate property free of tax.

Last year, the French Supreme Court put a limitation on that adjustment (Lupa case of July 6th 2016) in the context of an intra group reorganisation, realised under prior version of France/Luxembourg tax treaty (absence of taxation of the gain on the transfer of land rich company shares) and aiming at increasing the book value of the real estate property free of tax.

The French Supreme Court justified that the Quemener adjustment could not apply due to the absence of double taxation at the level of the company realizing the winding-up.

In Costa Fonciere case, the background was similar to Lupa Case: an intra-group reorganisation (SCI X shares are contributed by LuxCo at fair market value to SCI Y and SCI X is wound-up into SCI Y) realised under prior version of France/Luxembourg tax treaty, resulting in a step-up in basis of the property at SCI level free of tax.

The Court of Appeal applied the same principles as in Lupa case and denied the application of the Quemener adjustment because there was not any double taxation at the level of the same taxpayer.

For now, we consider that the discount on the sale of SCI shares could still be avoided if:
- the Seller revaluates the property before the sale;
- the Seller decides an early closing of SCI's FY prior to the sale.

As a consequence, the 'Quemener adjustment' would still apply on the computation of the gain on the sale of SCI shares by the Seller since the revaluation gain would also be taxable at the level of the Seller.

CIT – Property dealer's speculative intention

Based on the French tax code, the operations performed by a property dealer fall within the scope of trading profits if the operations are (i) realised habitually – first condition – and (ii) proceed from a speculative intention – second condition.

In decision rendered on June 2nd, 2006, the French Supreme Court had confirmed that the speculative intention must be assessed at the purchase or subscription date and not at the moment of the resale. According to the Supreme Court, the proof had to be provided by the FTA. However, the FTA considered that the second condition (proof of speculative intention) derives from the first condition in order to reduce its burden of proof.

On April 1st 2017, the FTA adapted their administrative guidelines in order to reflect the Supreme Court position. As a consequence, the FTA must necessarily provide some proof in order to demonstrate that the second condition is met.

Decrease of the standard CIT rate

As from January 1st 2019, all companies with a revenue below €1 billion should be subject to CIT at a rate of 28% (+3% surcharge if CIT exceeds €763,000).

Indeed, the Finance Act for 2017 progressively reduces the CIT rate from 33, 33% to 28% by 2020. The 28% CIT rate will be extended to tall companies as follows:
- 2017: the 28% CIT rate will only apply to Small and Medium Enterprises (i.e., enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million) on their taxable income up to €75,000;
- 2018: the 28% CIT rate will apply to all companies on their taxable income up to €500,000;
- 2019: the 28% CIT rate will apply to both (i) companies whose turnover does not exceed €1 billion on their total taxable income and (ii) companies whose turnover exceeds €1 billion, on their taxable income up to €500,000;
- 2020: the 28% CIT rate will apply for all companies, irrespective of their turnover and their taxable income.

During his presidential campaign, The French President Emmanuel Macron proposed to go further with a CIT rate at 25%. No date of implementation has been indicated yet, but if implemented it should take place after 2020.

Value Added Tax (VAT)

In a decision rendered on January 24th 2017, a French lower court admitted that no late interest related to VAT was due in the framework of rent free period when the tenant and the lessor re-issued invoices including VAT.

In this respect, the late payment of VAT due to the later recognition by the FTA of reciprocal services subject to VAT does not trigger the payment of late interest.

Net Wealth tax

The French President Emmanuel Macron has proposed to limit the net wealth tax *'impôt sur la fortune'* to real estate assets renaming it *'impôt sur la fortune immobilière'*. Same rates and threshold would apply, including the 30% allowance for the main residence. Practical changes should be implemented. All the changes should take place as from January 1st 2018.

7 Germany

Dividend and capital gains tax exemption

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

Capital gains received by corporations upon selling the shares in other corporations are 95% tax exempt. If the shareholder is a foreign resident corporation, the capital gains are 100 % tax exempt according to recent case law of the German Federal Fiscal Court. Currently, there is no minimum holding requirement. However, since some years there are discussions to align the capital gain exemption rules with the dividend exemption rules, i.e. the 95% capital gains tax exemption would require a minimum holding of 10%.

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

Share capital repayments

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

Apply for equity qualification of share capital repayments received in 2016 before December 31st 2017.

Rollover relief

Gains of a German permanent establishment from the sale of land and buildings need not be taken to income immediately, but may be deducted from the cost of purchasing replacement premises in the same or in the previous year. Alternatively, the gain may be carried forward and be deducted from the purchase price of land and buildings acquired during the following four years or from the construction costs of a building erected during the following six years.

For gains from the sale of land and buildings which do not belong to a German permanent establishment no rollover relief is available. However, according to new legislation introduced in 2015, the taxation of capital gains reinvested in another EU-member state may be deferred and spread over five years. The application for tax deferral has to be made up to the end of the financial year in which the land or building has been sold.

Apply for tax deferral on capital gains for EU land and buildings sold in 2017 before December 31st 2017.

Interest capping rules	Where an entity is not able to limit its net interest to below the €3 million threshold, other escape clauses (non-group escape clause or group escape clause) might be applicable. According to the group escape clause, interest expenses paid in 2018 may be fully deductible only where the equity ratio of the German business equals or is higher than that of the group (2% tolerance) as at December 31st 2017. ***It should be verified whether the equity of the tax paying entity equals that of its group. If it stays below the quota of the group by more than 2%, additional equity may be injected in order to ensure interest deductibility in 2018.***
Net operating losses (NOL) planning	According to tax accounting rules, an impairment to a lower fair market value may be waived. ***In a loss situation, impairment may be waived to avoid an increase of net operating losses.***
NOL planning for partnerships	Net operating losses of a partnership are allocated to a limited partner only up to the amount of its equity contribution. ***Inject equity before year end in order to benefit from losses exceeding the current equity contribution.***
Losses carried forward	Any direct or indirect transfer of shares/interests (or similar measures, e.g. in the course of restructurings) may lead to a partial/total forfeiture of losses and interest carried forward at the German entity's level. Exemptions may apply for tax privileged restructurings and where the entity continues to perform the same business as prior to the share transfer (restrictive requirements). Recently, the German Federal Constitutional Court has ruled that the German loss forfeiture rules violate the German constitution to the extent they anticipate a partial forfeiture of a company's losses upon a transfer of more than 25% but less than 50% of its shares. A further decision is pending for share transfers of more than 50%. ***It is strongly recommended to explore structuring alternatives where you intend to reorganise your investment structure. All tax assessments for years in which a harmful share transfer has occurred should be kept open.***
Trade tax status	Investments relying on no trade tax due to the non-existence of a German trade tax permanent establishment, or a preferential trade tax regime under the extended trade tax deduction, must fulfil strict requirements. The requirements of the extended trade tax deduction must be met for a complete fiscal year. ***It should be verified whether the requirements are met from January 1st 2018 onwards (if the fiscal year equals the calendar year) in order to mitigate trade tax on income derived in 2018.***
Tax prepayments	In the case of declining profits, an application can be made to reduce current income and trade tax prepayments. ***Cash flow models and profit forecasts should be checked in order to improve liquidity by applying for tax prepayment reductions and/or refunds.***

Substance requirements

General substance requirements need to be met by foreign corporations receiving German income in order to be recognised by the German fiscal authorities. This inter alia may ensure the deductibility of interest expenses borne in connection with German investments. Where (constructive) dividends are distributed by a German corporation to a foreign shareholder, the foreign shareholder has to fulfil strict substance requirements in order to benefit from a dividend withholding tax exemption/reduction. It is doubtful if these substance requirements are in line with EU law and a number of cases pending before the ECJ.

It should be ensured that German substance requirements are met and case law of the ECJ monitored.

Transfer pricing

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

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

Permanent Establishment (PE) cross-border transactions

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

Review cross-border transactions between head office and PEs.

Tax group

The acceptance of a tax group is subject to strict observation of certain legal requirements. The profit transfer agreement needs to be registered with the commercial register before December 31st 2017 in order to become effective for the fiscal year 2017. If companies do not obey the requirements during the minimum term of five years, the tax group will not be accepted from the beginning.

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

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

Land tax

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

Apply for land tax 2017 refund before April 1st 2018.

Real estate transfer tax (RETT)

Federal states have the right to set the real estate transfer tax (RETT) rate themselves instead of applying the uniform federal RETT rate of 3.5%. In Bavaria and Saxony the rate of 3.5% applies. The other federal states have increased their RETT rate: Baden-Wuerttemberg (5%), Berlin (6%), Brandenburg (6.5%), Bremen (5%), Hamburg (4.5%), Hesse (6%), Lower Saxony (5%), Mecklenburg-Hither Pomerania (5%), North-Rhine Westphalia (6.5%), Rhineland-Palatinate (5%), Saarland (6.5%), Saxony-Anhalt (5%), Schleswig-Holstein (6.5%) and Thuringia (6.5%). Further increases are expected.

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

Planned tax changes

German tax law is subject to continuous changes.

Currently, there are a number of tax amendment acts in the legislative process which impact taxation of real estate investments. Amongst others, there are plans to levy German real estate transfer tax on share deals where less than 95% of the shares are transferred.

Constantly monitor German tax law changes.

8 Ireland

Taxation of Rental Income

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

Interest Deductions

A deduction for interest is only allowed in computing the rental profits for the year where the money borrowed has been used on the purchase, improvement or repair of the property which generates the rental income. The interest deduction for a loan used to acquire a residential property is currently restricted to 80% of the interest accrued during the period of assessment. Finance Bill 2016 introduced the first measure in what will be a phased unwinding of the restriction on interest deductibility for residential landlords, with an increase in the allowable deduction from 80% to 85% which will take effect from January 2018. It is intended to further increase the allowable deduction on a phased basis in future years.

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

Other Allowable Deductions

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

Capital Allowances

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

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

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

Withholding Tax on Rents

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

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

Interest Withholding Tax

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

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

Dividends Withholding Tax

Distributions made by an Irish resident company are generally subject to withholding tax at a rate of 20%. A number of exemptions are available under the Irish tax legislation subject to having the appropriate declarations in place.

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

Disposals by Non-Residents

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

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

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

Tax Filing Obligations

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

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

Stamp Duty

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

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

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

Tax Losses Forward

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

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

Value Added Tax (VAT)

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

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

Local Property Tax

Local Property Tax is only chargeable on residential properties and is generally payable by the owner of the premises. The local property tax for 2017 is calculated based on the market value of the property as at May 1st 2013.

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

Tax Clearance Certificates

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

9 Italy

Interest capping rule

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

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

Moreover, this rule does not apply to interest expenses that have been generated by loans/debts guaranteed by mortgages on real estate up for lease. Pursuant to law (as amended with effect from the tax period starting after October 7th 2015), the benefit of the exclusion of mortgage loans interest from the EBITDA limitation is applicable only to companies which carry on 'actually' and 'prevalently' real estate activity. This is met if the following conditions are fulfilled:

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

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

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

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

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

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

Tax losses carried forward

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

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

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

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

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

The carry-forward of tax losses (as well as of other tax attributes, namely: interest expense and ACE excesses) can meet limitations in case of tax neutral reorganisations (e.g., mergers, spin-offs), in light of a specific anti-abuse provision.

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

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

Make sure that the combination of different kinds of tax losses is suitable, also to maximize the offsetting of the future taxable income.

Check if the tax losses carried-forward are affected by the 'change of control' limitation.

'Passive' company legislation

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

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

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

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

The law provides a list of circumstances in which the application of this legislation is automatically excluded. Out of these cases, if the 'non-operative' status is due to objective circumstances, the non-application of this regulation may be claimed by way of specific ruling. However, from FY 2016, in presence of such valid objective circumstances which did not consent the minimum level of revenues (or lead to a systematic tax loss position), the taxpayer can settle income taxes and fulfil relevant payment and reporting obligations without considering the non operative companies rules. The proper demonstration and related documentation have to be submitted to the Tax Office upon request.

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

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

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

If the 'operative test' is not passed or if the company is in 'systematic tax loss' position due to objective circumstances which prevented to reach the 'expected minimum' revenues, ask for the non-application of the 'passive' company regime by ruling duly documented or, alternatively, arrange a proper set of supporting documentation to be submitted to the Tax Office upon request.

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

Losses on receivables

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

Check if losses on receivables are supported by 'certain' and 'precise' elements.

Check if the losses on receivables refer to debtors which entered into a special eligible proceedings.

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

Allowance for Corporate Equity

The Allowance for Corporate Equity (*Aiuto alla Crescita Economica*, or ACE) is a tax relief (applicable from tax period 2011) to boost business capitalization. It allows an additional yearly deduction for IRES purposes, corresponding to a 'notional' interest on net equity increases occurred in respect to the net equity existing at the end of year 2010 (net of the 2010 profit), computed with rate of 1.6% for FY2017 and 1.5% for the following years (the rate was 3% in FYs 2011–2013, 4% in FY2014, 4.5% in FY2015 and 4.75% in FY2016). In each tax period, the ACE basis is capped at the level of the net equity at the end of the same tax period.

Relevant net equity increases include: (i) shareholders' contributions in cash; (ii) waivers of shareholders' receivables; (iii) retained profits appropriated to capital reserves (except those allocated to 'unavailable' reserves). Relevant equity decreases include: (i) attributions/distributions to shareholders in any form and for any purpose; (ii) acquisition of interests in already controlled companies; (iii) acquisition of going business concerns or activities from other companies of the same group; (from FY2016 and for subjects different from banks and insurance companies) increase, with respect to the end of year 2010, of securities, debentures and other financial instruments (other than shareholdings held as investment). To compute the deductible notional interest, in the year of their execution equity increases have to be adjusted pro-rata temporis; for the following years, the full amount of these equity increases is taken into consideration in the computation. Conversely, equity decreases reduce the ACE base since the beginning of the financial year in which they take place.

In connection with the adoption of revised national accounting standards (from FY2016), specific provisions regulated the impacts on the ACE basis of the consequent variation of the accounting net equity.

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

The Italian tax authorities have implemented certain anti-avoidance provisions to prevent the abuse of the ACE system (namely, duplication of benefits by way of circular operations). For instance, equity contributions deriving from (pursuant to look through analysis) subjects resident in 'black list' countries (i.e. tax haven) are not eligible to ACE deduction unless the absence of (actual or potential) duplication of benefit is/can be demonstrated.

As anti-abuse rule, the taxpayer can ask their disapplication by way of ruling, to the extent it can demonstrate that the abuse, which the law is aimed to prevent, does not arise in the concrete case. However from FY 2016, the taxpayer which considers as not abusive equity increases falling into anti-avoidance provisions and does not want to submit the ruling, can settle income taxes and fulfil relevant payment and reporting obligations without considering the anti-abuse rules. The proper demonstration and related documentation have to be submitted to the Tax Office upon request.

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

Check if the eligible net increases in equity do not fall into anti-avoidance provisions.

If the eligible net increases in equity fall into anti-avoidance provisions, ask for the non-application of the anti-abuse rules by ruling duly documented or, alternatively, arrange a proper set of supporting documentation to be submitted to the Tax Office upon request.

Capital dotation of Italian branches of foreign entities

Legislative Decree No 147/2015 has updated the provision of the Italian Income Tax Code concerning the permanent establishment in Italy of foreign entities (e.g., branch). In particular, it has been also explicitly stated that an Italian branch must have a 'congruous' capital dotation (free capital) for tax purposes (it may be also a notional dotation, made by way of treating as undetectable the relevant portion of interest accrued on the financing by the head office). Such capital dotation has to be determined according to the OECD guidelines, taking into account the specific features of the branch (i.e., business activity and related risks and assets used to perform it).

The quantification capital dotation has direct impact on the calculation of the deductible interest expenses, as well as on the computation of the ACE deduction of the branch.

The new provision is effective from FY 2016, but it may be used by the Tax Office to carry on assessments on previous fiscal years with regard to the redetermination of the 'congruous' capital dotation (however, without penalties for the past).

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

Transfer pricing documentary requirements

The setup of a Transfer Pricing ('TP') documentation according to certain parameters allows avoidance of tax penalties in case of assessment on transfer pricing matters carried out by Italian tax authority (penalties range from 90% to 180% of the higher tax). The existence of such documentation has to be declared in the annual income tax return. It is worth to note that the Financial Bill 2014 has expressly extended the application of transfer pricing rules also to IRAP.

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

Local property tax (IMU) for builders

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

Consider the favourable impact of the provision for builders.

Revaluation of buildings – monitoring of recapture period

According to revaluation laws, companies which do not apply IAS/IFRS could step-up, inter alia, real estate properties owned (other than stock inventory).

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

The revaluation surplus is allocated to capital or to a special reserve, taxable in case of utilization, unless a further 10% substitute tax is paid.
This specific chance has been provided by:

- Financial Bill 2014, for the purpose of the fiscal year in course on December 31st 2013 (year 2013, for calendar-year tax payers);
- Financial Bill 2016, for the purpose of the fiscal year in course on December 31st 2015 (year 2015, for calendar-year tax payers);
- Financial Bill 2017, for the purpose of the fiscal year in course on December 31st 2016 (year 2016, for calendar-year tax payers).

It applies to depreciable and non-depreciable assets owned by the company at the end of the same year and already shown in the financial statements of the previous one.

The higher value is recognized: i) for tax depreciation purpose, from the third year following the one of step-up (thus, for the three provisions stated above from year, respectively, 2016, 2018 and 2019); ii) for capital gain/loss from disposal, from the fourth year following the option (i.e., from year, respectively, 2017, 2019 and 2020).

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

Consider that once the increased values are recognized for tax purposes they are relevant for depreciation, but also for 'passive' company legislation.

Shareholders' debt waivers

With regard to shareholders' debt waivers executed after October 6th 2015, the debt waived is taxable for IRES purposes in the hands of the subsidiary to the extent its accounting value, as booked in the subsidiary's general ledger, exceeds its related tax value in the hands of the shareholder.

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

Obtain the shareholder's communication in order to prevent taxation of the contingent income, in case there would be ground not to tax it).

Domestic Tax Group regime extended to 'sister' companies

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

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

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

New tax ruling for new relevant investments

Enterprises which intend to make investments in Italy for at least €30 million and with relevant positive effects on employment with regard to the activity object of the investments, will be entitled to submit a ruling to the Tax Office to address: (i) the tax treatment of the investment plan and of any eventual extraordinary operations that may be performed to implement the investment; (ii) eventual abuse of law and/or tax avoidance profiles of the intended investments; (iii) the request of disapplication of anti-avoidance provisions and/or of access to specific tax regimes. For this purpose, the intended investment and related plan have to be disclosed and detailed in the ruling.

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

Ministerial Decree dated April 29th 2016 and Tax Authorities provision dated May 20th 2016 set forth relevant application guidance.

Legal definition of 'abuse of law' principle

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

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

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

For the purpose of the above:
- operations without economic substance are acts, facts and contracts, even related, without any economic substance and not able to produce any significant effects other than tax advantages;
- undue tax advantages mean benefits, even future, which do not comply with the tax laws' purposes or the tax system's principles.

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

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

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

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

Statute of limitation regarding tax assessment

Pursuant to Financial Bill 2016, starting from fiscal year in progress at December 31st 2016, tax assessments (for both Income Taxes and VAT purposes) can be notified within December 31st of the fifth year following the one in which the relevant tax return is filed (e.g.,: tax year 2016; filing of the tax return in 2017; tax assessment expiry term on December 31st 2022).

The statute of limitation can be extended by further two years in case of omitted filing of the tax return.

In case of filing of an amended tax return pursuant to the self-curing procedure, the aforesaid expiry terms shall run from the date of the amendment itself (e.g.,: tax year 2016; original filing of the tax return in 2017; filing of the amended tax return in 2018; tax assessment expiry term on December 31st 2023).

For tax years before the one in progress on December 31st 2016, tax assessments (for both Income Taxes and VAT purposes) can be notified within December 31st of the fourth year following the one in which the relevant tax return is filed (e.g.,: tax year 2015; filing of the tax return in 2016; tax assessment expiry term on December 31st 2020).

The statute of limitation can be extended as follows:
- in case of omitted filing of the tax return, the above term is extended by one further year;
- in case of violations relevant for tax criminal law, reported to the Public Prosecutor within the ordinary statute of limitation just above, the term is doubled (i.e., December 31st of the eight year following the year of filing tax return filing).

Reduction of the corporate income tax (IRES) rate

The Financial Bill 2016 has resolved the reduction of the corporate income tax (IRES) rate from 27.5% to 24%. The new rate applies with effect from FY2017 for all companies subject to IRES (with the exception of the financial entities, i.e., banks and other financial intermediaries other than the fund management companies, for which the IRES rate of 24% is increased by 3.5%).

Tax credit for companies without employees

Pursuant to Financial Bill 2015, with effect from fiscal year 2015, labour costs concerning open-ended jobs are fully deductible for IRAP purposes.

In this contest, in order not to disadvantage companies without employees, the latters can benefit from a tax credit, to be used to offset all kind of taxes, equal to 10% of the annual IRAP liability. Such tax credit gives rise to a non-contingent income subject to IRES taxation.

Country-by-Country Reporting (CbCR)

With effect from FY 2016, the Country-by-Country Reporting (CbCR) regulation has been enacted. In particular, multinational groups with global turnover exceeding €750 million and mandatorily drawing-up the consolidated financial statements, have to report specific data in each jurisdiction where they are present.

The Italian entities belonging to a multinational group in the scope of this regulation, has to:

- communicate to the Italian Tax Authority, in its income tax return:
  - its CbCR status (e.g., ultimate parent entity, constituent entity);
  - certain information of the ultimate parent entity and of the reporting entity (in principle, apart certain cases, the reporting obligation is in the hands of the ultimate parent entity – i.e., the one that prepares the consolidated financial statements);
- file to the Italian Tax Authority the CbCR related to the whole group, within 12 months from the last day of the year subject to reporting, if:
  - the ultimate parent entity is not required to file the CbCR in its jurisdiction, and/or
  - the jurisdiction where the ultimate parent entity is resident for tax purposes, does not have a Qualifying Competent Authority Agreement in force with Italy for the exchange of the CbCR.

Check if the requirements to file the CbCR are met (i.e., existence of a multinational group with turnover exceeding €750 million and obliged to draw-up consolidated financial statements).

If in CbCR scope, check the status of the Italian entity (e.g., parent entity, constituent entity).

Check if the ultimate parent entity is required to file the CbCR in its jurisdiction. If so, check if this jurisdiction has a Qualifying Competent Authority Agreement with Italy for the exchange of CbCR information.

In case the Italian entity has to file the CbCR for the whole multinational group (this should be if the questions in previous paragraph are negative), collection of all the information to be reported pursuant to the CbCR regulation.

10 Latvia

Changes from January 2018

Starting from January 1st 2018 the Latvian tax system will undergo major changes in the application and accounting of taxes. The new approach follows the Estonian tax model introducing 0% Corporate income tax (CIT) on re-invested profits and 20% on profit distribution including deemed profit distribution.

The New Personal income tax (PIT) Act will introduce a progressive PIT rate.

Taxation of dividends

Income from capital other than capital gains, including dividends, currently attracts a 10% PIT. Dividends are paid out of profits that have already been charged to a 15% corporate income tax (CIT). Thus dividends are first charged to CIT and then to PIT.

The new tax reform raise the rate of PIT on dividends to 20%. However, where a company has already charged its profits to 20% CIT, there will be no PIT to pay.

The proposals envisage a two-year period of transition during which dividends will continue to attract a 10% PIT. Accordingly, a 20% PIT on dividends is to apply from 2020.

Dividends received from qualifying companies would not be included in the CIT base.

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

Management fees

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

Based on the new CIT Act the general principle of applying taxes on the management fees in Latvia remains the same, however, starting from January 1st 2018 the WHT rate for management fees paid to non-residents increases to 20%.

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

Sale of shares and securities

Currently income arising on the disposal of any shares other than those in companies established in tax havens is not taxable (please note the specific rules for the sale of real estate company shares), and losses not deductible for CIT purposes. The same approach is applied to any publically traded EU/EEA securities. Losses from the sale of shares and securities cannot be carried forward.

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

The New CIT Act provides that Income arising on share disposals related to dividends will allow a reduction of the taxable base. However, such rule applies only to a disposal of direct participation shares held for at least 36 months (i.e. three years).

Year 2017 is the last year when capital gains on sale of shares and listed EU/EEA securities are non-taxable, but note the specific rules for sale of real estate company shares.

Sale of real estate/rental income

The sale of property is subject to 2% (3% as of January 1st 2018) WHT that has to be withheld by the Latvian registered buyer from the sales proceeds. The same applies also to the sale of company shares, if at least 50% of the assets in this company at the beginning of the year of disposal or in the previous year are formed by real estate.

Non-resident from the EU or tax treaty country can choose whether to pay 2% (3% as of January 1st 2018) WHT from the sales proceeds or 15% tax from the profit (20% as of January 1st 2018). The same principle applies to rental income and income from consulting services.

The change of real estate ownership attracts a stamp duty payable at 2% of the acquisition price, capped at €42,686.15 per commercial property (no caps for dwelling houses). The stamp duty is payable by the purchaser. If a real estate is invested in a company's share capital, the stamp duty is 1% of the amount to be invested as share capital.

In case of the sale of real estate or rental income EU/tax treaty resident may choose between 2% (3% as of January 1st 2018) WHT payment calculated on total income or 15% (20% as of January 1st 2018) tax on profit.

Losses carried forward

Year 2017 is the last year when it is possible to utilise tax losses carried forward under the current system, capped at 75% (of the taxable income for the tax period).

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

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

Review the possibilities to utilise tax losses carried in 2017 and after the tax reform comes into force.

Deductibility of interest payments

The current Latvian CIT Act provides that interest payments may be deducted from a company's taxable income with specific restrictions applied under thin capitalization and transfer pricing rules.

Under the New CIT regime CIT will be payable on the increased interest payments.

Starting from January 1st 2018 the new CIT Act does not envisage applying weighted average interest rate.

However, the first method Debt to equity ratio remains at the level 4:1.

The second method states that if interest charges for the financial year exceed €3 million and, at the same time exceed 30% of company's profit before deducting interest, depreciation and CIT, the amount of interest exceeding 30% of the company's profit before deducting interest, depreciation and corporate income tax below should be calculated, and the higher of the two amounts should be added to the taxable base.

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

Declining method depreciation for fixed assets

Currently, the declining balance depreciation of 10% for real estate should be used for tax purposes.

Starting from January 1st 2018 the New CIT Act does not provide depreciation for tax purposes.

Year 2017 is the last year when capital allowances are used. The deferred tax losses would be eliminated as of January 1st 2018.

Exchange of shares

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

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

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

Provision for bad debts

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

The New CIT Act provides that provisions for bad debts do not become a subject to CIT if debts are repaid during 36 months period.

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

Write-offs for bad debts

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

Consider whether the particular debt complies with these criteria.

Transfer pricing

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

According to Latvian Taxes and Duties Act full TP documentation is mandatory for companies with sales exceeding €1,430,000, and related-party transactions amounting to €14,300 or more. Taxpayers are obliged to submit full TP documentation within a month after receiving a request from the Latvian tax authorities.

In line with the New CIT Act TP adjustments will also be needed for transactions with Latvian related companies – a shareholding of 20% or more. The adjustments should increase the company's taxable base and be included in the tax return for the last month of the financial year.

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

Real estate tax

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

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

In accordance with The National Cadastre of Real Estate Act the cadastral values will change once every two years if the property market or factors affecting the value of an area have changed.

Consider the RET payments taking into account available exemptions and possible changes in cadastral value.

Value Added Tax (VAT) legislation regarding sale of real estate in Latvia

According to VAT Act sale of unused real estate (RE) and development land attracts the standard VAT rate.

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

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

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

Option to tax allows a registered taxable person to charge VAT on supplies of used RE transactions. This option is available only where property is registered with Latvian tax authorities and sold to a registered taxable person.

Make sure that VAT for the sale of RE has been applied correctly.

VAT grouping

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

Consider the option of creating a VAT group.

Reverse-charge VAT on construction services

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

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

Income from partnership

According to the PIT Act, the allocation of a partnership's taxable income to an individual partner should be increased by the corresponding part of the partnership's income from –

- selling shares in companies that are not resident in a tax haven,
- dividends the partnership receives from companies that are not resident in a tax haven, and
- selling EU/EEA publicly traded securities that are not central or local government securities (including interest payments received on bonds).

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

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

Permanent establishments

If you have not registered a legal entity or a branch in Latvia, consider if your business operations have not created a permanent establishment (PE), which requires a CIT compliance in Latvia.

Consider the requirements for registering a PE in Latvia.

11 Lithuania

Investment in Real Estate and Land

There are no restrictions for foreigners to acquire the immovable property in Lithuania (except for land). Land (except for agricultural and forestry) can be acquired only by companies or individuals who are established or residing in the EU, in countries that have signed the €opean Treaty with the EU member states or in countries that are the members of OECD, NATO or EEA. There are restrictions in respect of acquisition of agricultural and forestry land – foreign residents and companies are allowed to buy up to 500 hectares of farmland (or more if the buyer is a stockbreeder), provided that the buyer has at least 3 years of farming experience or has completed studies leading to agriculture-related profession.

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

Group taxation

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

Real Estate Tax (RET)

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

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

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

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

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

Procedure of Filing advance Real Estate Tax Return

As of January 1st 2016, legal entities have an obligation to submit advance RET return which is calculated according to the value of real estate. Advance RET return for the first 9 months of the current tax period should be submitted together with the annual RET return.

Value Added Tax (VAT)

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

However, taxable persons are entitled to opt for taxation of sale of buildings older than 24 months or land and buildings' rental services with VAT if such buildings/land are sold or rented to VAT payers. If option is exercised, it has to be applied consistently for 24 months.

Lithuanian VAT payer can adjust output VAT payable to the Lithuanian budget due to bad debts if certain conditions are met.

VAT Treatment of Services related to Accommodation Services

The official Commentary on application of 9% VAT rate to the supply of accommodation services was supplemented with additional explanations based on the decisions of the European Union Court of Justice.

In cases when together with accommodation services secondary services, which make the accommodation services more appealing are provided (without additional fees, e.g. access to water entertainment area), the secondary services should be considered to be inseparable from the main services, i.e. accommodation services. 9% VAT rate should be applied for such composite supply.

Corporate Income Tax

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

Generally, the taxable period for corporate income tax is the calendar year. The tax return has to be filed and corporate income tax due has to be paid before June 15th of the next taxable period. Subject to permission from the State Tax Authorities, a taxable period other than the calendar year may also be used by companies. In that case, the payment and declaring terms should be changed accordingly.

Dividends Exemption Rule

As of March 26th 2016, dividend exemption to the taxation of dividends paid to and/or received from foreign legal entities are not applicable to the structure or several structures if the main purpose or one of the main purposes of them is to obtain a tax advantage, which contradicts to the object and purpose of EU Council Directive (2011/96/EU Directive and its partial amendments 2014/86/EU and 2015/121/EU) regarding common tax system, which is applicable for parent and subsidiary companies of various EU member states. The taxation exemption of dividends received from a foreign legal entities, are not applicable to dividends which were used to reduce the profit of foreign legal entities which is subject to corporate income tax or an equivalent tax.

Due to the recent initiatives to fight against tax avoidance and aggressive tax planning Lithuanian Tax Authority pays more attention to the substance of holding companies. Therefore, holding companies investing in RE subsidiaries should have an adequate substance in order to benefit from dividend exemption rule.

Changes in the Procedures of Calculation, Declaring and Paying the advance Corporate Income Tax (CIT)

As of January 1st 2017, advance CIT, derived from the result of the historic tax periods, is calculated differently:
- advanced CIT for the first six months of the tax period (I and II quarters) is calculated according to the CIT liability from the tax period which was before the last tax period (advance CIT for the first six months of 2017 is calculated according to the actual amount of CIT payed for the year 2015);
- advanced CIT for the seventh-twelfth month of the tax period (III and IV quarters) – according to the CIT liability of the previous tax period (advance CIT for the second half of 2017 is calculated according to the actual amount of CIT payed for the year 2016).

The annual CIT return should be submitted and tax should be paid until the 15th day of the sixth month of the next tax period.

The advance CIT return when CIT is calculated according to historic CIT liability, should be filed:
- for the first six months of the tax period – not later than on the 15th day of the third month of the tax period;
- for the seventh-twelfth months of the tax period – not later than on 15th day of the ninth month of the tax period.

The advance CIT return, when CIT is calculated according to the anticipated result should be submitted not later than on the 15th day of the third month of the tax period. Advance CIT should be paid not later than on the 15th day of the last month of each quarter of tax period.

Depreciation of fixed Assets

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

Withholding tax on Sale of Real Estate

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

Withholding Tax on Interest

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

Transfer Princing

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

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

From January 1st 2017 personal penalties for CEO in the range from €1,400 to €4,300 could be imposed for non-compliance with the transfer pricing documentation requirements. Penalties in the range from €2,900 to €5,800 could be imposed for repeated offences, if any.

Thin Capitalisation Rule

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

As a result of BEPS initiative, new interest limitation rules related to the company's EBITDA (30% EBITDA rule) may be introduced in 2019 (but may be delayed up to 2024 since Lithuanian Ministry of Finance believes that local thin capitalization rules (debt to equity; 4:1) are enough to prevent the tax avoidance).

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

Loses Carried Forward

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

Land Tax

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

As of January 1st 2017, the tax base depends on the full average market value according to the mass valuation.

The mass valuation is performed not rarer than every five years. There will be a possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20%.

Land Lease Tax

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

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

Procedure of Tax Return Filing

It should be noted that as of October 1st 2016 tax payers can submit tax returns only electronically.

12 Luxembourg

Corporate tax rate

The aggregate income tax rate for 2017 is 27.08% and 26.01% for 2018 for entities registered in Luxembourg City:

- Standard corporate income tax rate is 19% for taxable income exceeding €30,000. Companies with a tax base of less than €25,000 benefit from a reduced rate corporate income tax rate of 15%. Companies with a tax base between €25,000 and €30,001 are subject to a corporate income tax of €3,750 plus 39% of the basis above €25,000. The standard corporate income tax rate will be reduced to 18% for the taxable income exceeding €30,000 for FY 2018;
- Municipal business tax is also levied at rate generally varying from 6.75% to 12.60% depending on where the company is located (the municipal business tax rate is 6.75% if the company has its registered office in the Luxembourg City);

Luxembourg undertakings are also contributing to the Luxembourg employment fund for 1.33% of their taxable income (i.e. 7% rate assessed on the 19% income tax).

Losses carried forward

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

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

Tax losses cannot be carried back in Luxembourg.

Net Wealth Tax

Luxembourg levies annual Net Wealth Tax (NWT) of 0.5% on the net assets of Luxembourg companies.

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

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

Minimum Net Wealth Tax

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

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

Withholding tax

There is no withholding tax on interest.

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

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

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

Value Added Tax (VAT)

Since January 1st 2017, directors' fees paid to directors (private individuals) are subject to 17% VAT, based on the Circular issued on September 30th 2016.
Since January 1st 2017, increase of the enforcement powers of the VAT authorities:
- Personal liability of the delegated administrators, directors and 'de jure' or 'de facto' managers is engaged in case of VAT underpayments/late payments/non-compliance with VAT law if it can be proved that they failed in the performance of their duties.
- General increase of penalties.

Automatic exchange of information

Following BEPS Action 5 on spontaneous exchange of information, Advance Pricing Agreement and Advance Tax Confirmations should be summarised in Form 777.

In line with the provisions of BEPS Action 5 and the 'ATA' Directive, the Form 777 would be exchanged with the relevant foreign tax authorities. In case of questions from the foreign tax authorities, Advanced Tax Agreement and Advance Pricing Agreement obtained since 2010 may also be exchanged.

Transfer Pricing

On December 27th 2016, the Luxembourg tax authorities issued a new transfer pricing Circular in relation to corporations that are engaged in intra-group on-lending activities financed by borrowings, on the basis of new article 56bis Luxembourg Income Tax Law which is providing general transfer pricing rules.

The Circular explicitly brings some of the key principles set out in the OECD Guidelines in their 2016 form (i.e. the requirement for comparability analysis that looks at functions, risks and contractual terms) into the Luxembourg Income Tax Law.

This Circular is reinforcing the principles already highlighted in the 2011 circulars (no longer applicable), where Luxembourg companies should be in a position to demonstrate sound and appropriate levels of economic and operational substance and beneficial ownership. Both of these are attributes are of growing importance in a global fiscal environment that increasingly focuses on tax treatments that are congruent with the underlying business economics.

There are two main new requirements that have been strengthened in the Circular:
- Substance – sufficiently qualified personnel in Luxembourg to bear and control the risks associated to the financing activities;
- Equity – equity at risk to be evaluated based on the credit risk of the Borrower/ Corporation.

In addition to the two main requirements, the Circular provides for the following key changes:
- Arm's length remuneration
- Commercial rationale;
- Substance over form;

Companies falling in scope of the Circular that do not comply with the substance and/or equity requirements, may be subject to the exchange of information.

The new transfer pricing circular is applicable since January 1st 2017.

Advance Pricing Agreement ('APA')

The Luxembourg tax authorities consider that all existing APA's to be no longer binding. For new APA's detailed requirements are provided in the aforementioned Circular.

Substance in Luxembourg

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

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

To avoid the risk of challenge by other tax authorities, it is usually recommended that it can be evidenced that a Luxembourg company is effectively managed and controlled in Luxembourg and that minimum substance exists in Luxembourg (e.g. bookkeeping, phone line, etc.).

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

Parent Subsidiary General Anti-Avoidance Rules

The Luxembourg Government has implemented into domestic law changes to the EU Parent/Subsidiary Directive which impact the dividends received and dividends distributed exemptions of the Luxembourg participation exemption regime.

The law states that such exemptions would be denied if the dividend received or dividend distribution was part of an arrangement or a series of arrangements which, having been put in place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the Directive, are 'not genuine' having regard to all relevant facts and circumstances.

The law also states that an arrangement may comprise more than one step. In this context, an arrangement or a series of arrangements shall be regarded as 'not genuine' to the extent that they are not put in place for valid commercial reasons which reflect economic reality.

Also, benefit from the dividend exemption will not apply where the paying company receives a tax deduction for the dividend payment.

Intellectual Property regime

A bill has been submitted in August 2017 to introduce the new Intellectual Property (IP) regime based on the 'modified nexus' approach. This approach follows BEPS Action 5 which requires a direct connection between expenditures, the IP assets and the income that can benefit from a beneficial regime.

Under the nexus approach, a ratio should apply, ensuring that the proportion of income that may benefit from the exemption regime is the same as the one existing between qualifying expenditures and overall expenditures.

Similarly to the previous regime, eligible net income from qualifying IP rights would benefit from a 80% tax exemption.

IP income benefiting from the transitional rules under the former IP regime can switch to the new regime, such election being non-cumulative and irrevocable.

If enacted, the provisions would be effective as from FY 2018.

13 Netherlands

Notification

Country-by-Country-Reporting (CbCR)

A Dutch resident entity, for which the CbCR notification rules apply, must notify the Dutch tax authorities by the last day of the reporting period. The notification requires the Dutch taxpayer to, among other things, identify the top company of the group and identify which group company will file the Country Report.

When the reporting period is equal to a calendar year, the last day to submit the notification timely is December 31st 2017 for the reporting year 2017.

The CbCR notification rules apply when your company is a part of, or at the top of, a multinational group with a consolidated turnover of €750 million or more. The 'turnover assessment' is made based on the consolidated turnover of the year preceding the reporting year. So for the financial year 2016, the assessment is based on the consolidated turnover of the financial year 2015.

In principle all companies of a group that are included in the consolidated accounts, are part of a such group. Multinational group in this context already exists when 2 companies belonging to the group are resident in different countries.

One notification can be submitted for all Dutch companies of one group. The notification is to be submitted electronically with the Dutch tax authorities.

When not submitted in time, penalties apply (max. €820,000).

Country Report

If the ultimate parent company of the multinational group is a Dutch resident, or if the Dutch resident has elected to submit the Country Report, this company is obliged to submit the Country Report within twelve months after the end of the group's financial year.

This means that the Country Report for the financial year 2016 must be submitted on December 31st 2017 at the latest, when the financial year is equal to the calendar year. When not submitted in time, penalties apply (max. €820,000).

Master File/Local File

When CbCR does not apply, companies may still be obliged to prepare a Master File and/or Local File.

Companies resident the Netherlands, that are a part of a multinational group, with a consolidated turnover between €50 million and €750 million, have to prepare a Master File and Local File as part of the transfer pricing documentation requirements.

The Master File is to contain an overview of the business of the multinational group, including a description of the nature of the business activities, its general transfer pricing policy and the worldwide allocation of income and economic activities. The Local File is to contain information that is relevant for the transfer pricing analysis relating to intercompany transactions where the Dutch taxpayer is involved.

For the Master File and the Local File the same deadlines apply as for submitting the corporate income tax return. When the corporate income return is submitted prior to the ultimate deadline however, the taxpayer should already have the Master and/or Local File available. The Local File and the Master File should only be provided to the Dutch tax authorities upon their request.

We recommend companies resident in the Netherlands to timely assess whether there is an obligation to prepare a Master and/or Local File for the reporting year 2016 and/or 2017 and if so, prepare the required documents.

Functional currency

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

If the company's fiscal year concurs with the calendar year, the request for application of this provision from 2018 onwards needs to be filed on December 31st 2017 ultimately.

No retroactive effect of separation from a fiscal unity

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

If it is desired that one or more companies are separated from a fiscal unity per January 1st 2018, the request for separation needs to be filed on December 31st 2017 ultimately.

Reinvestment reserve

In case a reinvestment reserve for tax purposes has been formed using profits made with the disposition of a business asset, the imposed three-year period for reinvestment needs to be taken into account. For example, the three-year period may end per December 31st 2017 if you have formed a reinvestment reserve with respect to the disposition of a business asset in 2014 (and the fiscal year is equal to the calendar year).

If reinvestment does not take place within the three-year period, the amount of the reinvestment reserve is released and subject to taxation. When the company no longer has the intention to reinvest the reinvestment reserve is released and subject to taxation irrespective of the three-year period. The existence of such an intention is verified at December 31st, but must be present throughout the entire year.

The burden of proof for existence of the intention is with the taxpayer and therefore it is recommended to officially document the reinvestment intention continuously.

Possibility of loss compensation

As a general rule, losses can be carried forward for nine years, after which they can no longer be offset. Please note that certain amendments have been proposed. We refer to the Section 'Dutch Tax Package 2018 and the Coalition Document'.

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

Financing participations

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

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

Negative declaration after purchase or sale of immovable property

If seller and purchaser have opted for a VAT taxed transfer of an immovable property, the purchaser has to declare in writing that it will be using the immovable property for purposes for which it is entitled to deduct VAT for at least 90%. If purchaser does not meet this 90%-criterion (i.e. should it not use the property for activities for which it is entitled to deduct at least 90% of the input VAT) in the period covering both the financial year of transfer and the subsequent financial year, it must notify the seller in writing within four weeks after the subsequent financial year and provide the Dutch tax authorities with a copy of the notification.

Note, that if an immovable property is transferred while a VAT revision period (i.e. the (approx.) ten year period during which the (non) recovery of investment VAT is monitored based on the VAT law) is applicable to the immovable property, it is deemed to be used by the seller for VAT taxed purposes (in case of a VAT taxed transfer) or for VAT exempt purposes (in case of a VAT exempt transfer) for the remaining VAT revision period. Therefore, if parties opt for a VAT taxed transfer, it is deemed that the seller uses the immovable property for VAT taxed purposes for the remaining VAT revision period and seller can deduct the VAT incurred with respect to the acquisition at once for the whole remaining period (insofar not yet deducted). Should parties have opted for a VAT taxed transfer, while the purchaser does not meet the 90%-criterion, the transfer is VAT exempt and the immovable property is deemed to be used by the seller for VAT exempt activities for the remaining VAT revision period. VAT incurred with respect to the acquisition should be paid back to the Dutch tax authorities at once by the seller for the whole remaining VAT revision period.

It is market practice to agree upon a clause in the sale and purchase agreement that if this event occurs Purchaser will compensate Seller for the VAT due in this respect.

We advise sellers to include clauses in their purchase agreements regarding the liability for this VAT loss and purchasers should be aware of a possible compensation for VAT leakage as a result of a VAT exempt transfer.

VAT taxable lease or let of immovable property

In order to be eligible for a VAT taxable lease, the tenant must be entitled to recover at least 90% of the VAT due on the rent. To accomplish a VAT taxable lease the lessor and tenant should opt for a VAT taxable lease which can be done by either filing a joint request for a VAT taxed lease with the Dutch tax authorities, or including specific clauses in the lease agreement. The tenant should always declare (in writing) that he will use the leased property for activities which entitles him to recover at least 90% of the VAT due on the rent.

If the tenant is no longer entitled to recover at least 90% of the VAT due on the rent, he must inform the lessor accordingly. The tenant must do so within four weeks after the financial year, in which the tenant is no longer entitled to recover at least 90% of the VAT due on the rent, has ended, through a signed declaration. A copy of this declaration must be sent to the Dutch tax authorities.

In case of VAT taxable lease and abovementioned is the case, then this 'negative' declaration must be provided in January 2018.

Dutch Tax Package 2018

The Dutch government (which was at that time under resignation) published the 2018 Tax Package on September 19th 2017. This publication give insight in the most important tax measures for the real estate market. The relevant measures concern Dutch personal income tax, corporate income tax, dividend withholding tax and value added tax. As the legislative process for this publication still runs, the plans may still change. Most proposals are set to take effect on January 1st 2018. If not, the effective date is mentioned separately.

Coalition Agreement

Shortly after the publication of the 2018 Tax Package, the newly elected government published plans in its Coalition Agreement. Also this publication includes several measures for the real estate market.

As the plans in the Coalition Agreement has to be turned into legislative proposals, all plans may still change.

Corporate income tax rate

The Coalition Agreement intends to lower the corporate income tax rate over the next few years down to 21% per 2021. The rate applicable to the first bracket of €200,000 will be lowered from 20% to 16%. As a result, the extensions of the first bracket, which was published in the Dutch Tax Package, will not be carried out.

Loss compensation

The Coalition Agreement proposed to shorten the carry forward period from nine to six years. It is not yet clear from when this measure will be effective.

Liquidation losses

In a judgement the court in Den Bosch appealed directly to the legislator to amend the text of the liquidation loss scheme. The participation exemption means that both positive and negative revenues from a participation are not taxed, except in the event of liquidation. The so-called liquidation loss is deductible. The text of the law relating to the liquidation of intermediate holding companies has raised a lot of questions. The legislator has now responded to the request by the court and is proposing that the legal text be clarified and this deserves a compliment. Unequivocal laws enhance legal certainty.

Foreign substantial interest holder

A foreign entity holding a substantial interest (5%) in a company domiciled in the Netherlands may be treated as a non-resident company subject to (Dutch) corporate income tax if one of its main purposes of holding the shares in the Dutch company is the avoidance of Dutch personal income tax. Any dividend tax withheld may be credited.

Impaired debts within a fiscal unity

In the case of a fiscal unity, the impairment of a debt payable by an entity that was related to it at any point in time may not be taken into account insofar as it relates to losses incurred by a company included in the fiscal unity.

When determining the adjusted acquisition price, account is taken of the impairment of a debt payable by the liquidated entity insofar as this relates to losses already incurred within the fiscal unity in order to avoid double loss set-off.

Adjusted acquisition price participations leaving fiscal unity

To determine the adjusted acquisition price of a company that is no longer part of the fiscal unity, the fair market value of this company is taken as a basis to calculate the shareholder's equity of this company if the fair market value is lower than the shareholder's equity.

Double tax relief fiscal unity

For the purposes of determining double tax relief available to a fiscal unity in relation to a (deemed) permanent establishment, not only intra-group financing costs must be taken into account, but also intra-group user fees such as royalty, rent and lease payments. The profits for purposes of double taxation relief are calculated on a stand-alone basis of the company that has the permanent establishment. In other words, the fiscal unity is ignored for the purpose of the calculation of the amount of exempt foreign profit. Deductibility of costs is based on Dutch law and reporting standards.

Depreciation of real estate assets

The Coalition Agreement proposes to amend the deprecation limitation on real estate assets used by a business itself. Currently, depreciation is possible down to 50% of the WOZ-value. It is intended to change this to 100% of the WOZ-value, resulting in less room to depreciate such assets.

Energy Investment Allowance (EIA)

Under the EIA, businesses are allowed to deduct a percentage of the investment from their profits. The investments must be listed on the so-called Energy List. To benefit from the deduction, a request must be filed with the Rijksdienst voor Ondernemend Nederland (Netherlands Enterprise Agency) (RVO.nl). The percentage of the deduction will be reduced from 55% to 54.5%.

Partial abolishment of dividend withholding tax

The Coalition Agreement provide for a partial abolishment of the dividend withholding tax. Dividend withholding tax is only to be levied in the case a structure can be deemed as abusive or if a dividend is distributed to a low tax jurisdictions. It is expected that this measure is implemented in 2020.

As this is only a proposal and the proposed implementation date is 2020, current envisaged legislative changes to the Dividend Withholding Tax Act, such as the one below, are still relevant.

Dividend withholding tax for Dutch Cooperatives

Dutch cooperatives that are usually predominantly (at least for 70%) engaged in passive holding of participations and/or intra-group financing activities, will fall within the scope of the Dutch dividend withholding tax act as of 2018 ('holding cooperatives').

For the purpose of this test the activities of the cooperative during the 12 months preceding to the dividend distribution are also taken into account. Holding cooperatives engaged in the active management of their participations, might not qualify as a 'holding cooperative' in this sense. Specifically cooperatives in private equity structures could potentially remain outside the scope if the dividend withholding tax act.

Dividend distributions made by 'holding cooperatives' to parties that have a qualifying membership right will in principle be subject to a 15% dividend withholding tax.

A party owns a qualifying membership right when it is entitled to at least 5% of the annual profits and/or the liquidation proceeds, alone or together with related parties.

A reduction, refund or exemption of the 15% dividend withholding tax may be available pursuant to either Dutch domestic law (that includes the implementation of the EU Parent Subsidiary Directive) or a double tax treaty.

It is recommended to timely reassess the dividend withholding tax position of the Dutch cooperative and its members when used in a structure.

Broadened reach dividend withholding tax exemption

Subject to certain requirements, the withholding tax exemption is available to interest holders in all Dutch resident entities that fall within the scope of the Dutch dividend withholding tax act, including BVs, NVs and holding cooperatives.

According to a legislative proposal, as of January 2018, the reach of the dividend withholding tax exemption will be broadened.

The dividend withholding tax exemption applies if:
- the recipient of the dividends is a resident of the EU, EEA or of a country that has concluded a tax treaty with the Netherlands that includes a dividend article or a state within the Kingdom of the Netherlands; and
- the recipient of the dividends would have been able to apply the Dutch participation exemption or participation credit to the dividends if it would have been a resident of the Netherlands.

Currently this exemption is only available to corporate shareholders established within the EU or EEA and have a qualifying interest in a Dutch entity (at least 5%). The legislative proposal therefore substantially broadens the scope of the exemption.

When a Dutch entity distributes a dividend under this exemption, a notification of this must be made to the Dutch Tax Authorities within one month of the distribution. When failed to comply with this obligation in time, the tax inspector may impose a penalty for an amount up to €5,278.

Anti-abuse rules dividend withholding tax exemption

The anti-abuse rules applicable to the dividend withholding tax exemption have been updated with relevant changes.

The exemption for the withholding of Dutch dividend withholding tax will be subject to targeted anti-abuse rules, which are to be interpreted in accordance with Action 6 of the OECD BEPS Project.

Under the anti-abuse rules it should be assessed if the interest in the Dutch entity is held with the main purpose, or one of the main purposes, to avoid the levy of dividend withholding tax (subjective test) and if the structure should be considered part of an artificial arrangement (objective test).

A structure is considered artificial if it is not put in place for business reasons that reflect economic reality.

For the subjective test it should be assessed whether the direct shareholder of the Dutch entity has been interposed to obtain a more favorable Dutch dividend withholding tax position. If so, it should still be determined whether the structure should be considered an artificial arrangement (objective test).

The legislative proposal states as an example that a structure should not be considered an artificial arrangement when the immediate shareholder of the Dutch entity carries on an active business itself.

Passive investment structures could potentially still qualify, although no examples have been given in the legislative proposal.

When the immediate shareholder of the Dutch entity is an intermediate holding company that is considered to generate a more favorable Dutch dividend withholding tax position compared to the indirect shareholder that carries on an active business, the anti-abuse rules should still not be applicable if the immediate shareholder avails of sufficient relevant substance.

Two new requirements have been added for such intermediate holding companies: (i) a minimal wage costs requirement of €100,000; and (ii) the intermediate holding company must have office space in the jurisdiction of its residence.

The legislative proposal should take effect as from January 1st 2018 and does not propose transitional provisions or grandfathering rules, except the two additional substance requirements that should enter into force as per April 1st 2018 for existing structures. We currently do not expect that the legislative proposal will be subject to significant amendments during the parliamentary proceedings and we expect that these rules will be timely adopted.

We recommend both shareholders of Dutch entities as well as Dutch entities themselves to engage in conversations with their tax counsel to assess their current dividend withholding tax position.

Fiscal investment institution

The 2016 budget adopted a simplification for payments to bodies exempted from corporate income tax, such as an exempted foundation. The idea is simple: if dividend tax is deducted and paid first and then exactly the same amount is reclaimed, you might as well leave out this process.

However, this deduction exemption is detrimental to a fiscal investment institution. The fiscal investment institution then loses the possibility to set off withholding tax deducted at its expense. This issue was overlooked last year and is now being rectified.

The withholding exemption of dividend withholding tax from proceeds paid to fully or partially exempt entities is therefore still not applicable in respect of a fiscal investment institution for tax purposes (FBI) that is liable to deduct and transfer such tax. Such entities can request a refund of the dividend tax withheld.

In addition to the above, the Coalition Agreement include a proposal for a prohibition for FBIs to hold real estate investments directly. Further details are currently unknown.

Value Added Tax (VAT): Farmers scheme

The special scheme for farmers will be abolished. The reduced VAT rate for some products and services supplied to farmers will no longer apply. Farmers will be entitled to deduct input VAT and will have to pay VAT on their supplies. This VAT can subsequently be deducted by their customers in accordance with regular rules (the flat-rate compensation expires).

The abolishment of the farmers scheme entails that VAT on capital investments that have been put into use before January 1st 2018 and to which the adjustment period still applies, will be adjusted in the first 2018 VAT return.

In respect of products and services that have been purchased before January 1st 2018 but have not been put into use yet, input VAT can be deducted in the first 2018 VAT return in accordance with the intended use.

Inspector's powers (excise duty)

Inspector's powers to examine buildings will be extended. From now on, inspectors will be allowed to examine all non-residential rooms in premises (and all grounds), instead of merely excise warehouses and other locations that are relevant in respect of excises.

14 Poland

Significant Corporate Income Tax changes

There is a draft amendment to the Polish Corporate Income Tax (CIT) Law (currently subject to modifications of the Ministry of Finance), introducing a set of solutions aimed at limitation of base erosion and profit shifting practices. The amendment will i.a. partly implement provisions of the EU Anti-Tax Avoidance Directive in Poland, although Polish legislator goes beyond what is required by the Directive. The most important amendments for the Polish real estate market players cover the following:

1. Introduction of 'minimum income tax level' for taxpayers holding commercial real estate with initial value exceeding PLN10 million: Taxation would be applicable to the taxpayers holding buildings classified as shopping centers, department stores, stand-alone shops and boutiques, other sales and service buildings, as well as office buildings (although – as recently proposed – taxpayers holding office buildings used for their own purposes (e.g. where their premises is located) would not be subject to this tax). As such, it seems that currently draft bill does not mention explicitly e.g. hotels or logistic centers (it should be monitored whether any such additional categories of buildings will not be added in further legislative process). As recently proposed, the tax would be paid monthly in the amount of 0.035% (translating into 0.42% annually) of excess of the initial value of the commercial building over PLN10 million. As such, the tax would be due in practice regardless of any income being derived by taxpayer. The amount of 'minimum tax' paid according to the above rules would be deducted from 'regular' monthly CIT payments and included in annual CIT liability.
   As recently proposed, this tax would also be applicable to Polish close-ended investment funds, holding commercial real estate.
2. introduction of 'revenue baskets': The draft bill provides that starting form FY18 there will be a separation of income/loss sourced from capital transactions from other income/loss sources of a taxpayer (based on the latest proposal of the Ministry of Finance, this will not apply to banks and some other entities). Selected non-operational income (from dividends, sale of shares, receivables, redemption of shares, liquidation proceeds, merger/division, in-kind contribution and intangibles) will be classified as falling into separate capital gains basket (subject to standard CIT rate of 19%). Taxpayers will no longer be able e.g. to set-off income derived from one basket with loss borne on the other basket. The above rules on basket separation will also affect the methodology of tax loss utilization. Namely, carried forward tax losses incurred in the given basket may be utilized over the period of 5 consecutive years solely to set-off taxable income from the same basket. No more than 50% of the carried forward loss may be utilized in a single tax year.

Note that this CIT amendment may adversely affect structures being already in place, i.a. taxpayers that undergone restructuring leading to debt-push down in the past.

3. New thin capitalization restrictions: Current thin capitalization rules (based on which the level of interest deductibility on intra-group loans depends on amount of equity) will be fully replaced with new rules, where tax deductibility restrictions will be applicable both to internal and external financing and it will be correlated with the level of 'tax EBITDA' of the taxpayer. In particular, interest cost (excess of interest costs over interest revenue) will be tax deductible up to 30% of 'tax EBITDA'. The amount of non-deductible interest costs in a given tax year could be carried-forward and deducted for tax purposes in subsequent years, still subject to the same restrictions. Restrictions would not be applicable, if the excess of interest costs over interest revenue does not exceed PLN 3m in a given tax year. Under the draft grandfathering rules, loans granted and effectively disbursed by the moment of entry of the amendments into force will still be subject to currently binding thin capitalization rules, but no longer than by December 31st 2018.
4. Limitation of tax deductibility of costs borne on certain intangible services and license fees: As we understand the latest proposal of the Ministry of Finance, related-party payments for intangible services and license fees for rights to selected intangible assets could be tax deductible up to PLN3 million (provided that general conditions for tax deductibility are met). Costs of related-party intangible services and license fees that exceed the said limit could be treated as tax deductible up to 5% of 'tax EBITDA'. Non-deductible costs could be carried forward and deducted for tax purposes in subsequent years (still subject to the same restrictions). The limitation would not apply to specifically enumerated costs such as e.g. accounting, legal, recruitment and personnel management services fees. Moreover, the limitations would not apply to the costs of services capitalized to the tax value of a fixed asset developed by a taxpayer.
5. Narrowing down of the scope of withholding tax exemption applicable to dividend-like payments: As proposed in the draft bill, the participation exemption will be applicable only to the profit sharing payments (mainly dividends) and will no longer apply to other flows like redemption of shares and liquidation proceeds. Note that this CIT amendment may significantly adversely affect the flexibility of cash distributions up the corporate structure in the future.

Although the said CIT amendments are still at the very early stage of legislative process, these are intended to enter into force as of January 1st 2018. For this purpose, these would need to be officially published until the end of November 2017. Thus, the legislative process should be closely monitored, in order to assess whether and how these changes may impact your operations in Poland.

Method of recognizing interest subject to thin capitalization restrictions

Currently, the Polish CIT Law provides for two methods of calculating interest subject to thin capitalization restrictions, i.e. standard method (based on 1:1 debt-to-equity ratio) and alternative method (so called 'interest ceiling method').

Assuming that the above-mentioned planned amendments to the Polish CIT Law introducing completely new thin capitalization restrictions do not enter into force as of January 1st 2018, taxpayers could still choose which method of recognizing interest subject to thin capitalization restrictions being more suitable. If the 'interest ceiling method' is to be chosen starting from FY18, the tax authorities must be notified by the end of the first month of the tax year, i.e. generally by January 30th 2018.

Losses carried forward

Tax losses may be carried forward for 5 consecutive tax years. However, no more than 50% of the tax loss from any previous tax year may be utilized in any single subsequent year. Note that – as already mentioned above – the planned amendments to the Polish CIT Law, introducing rules on basket separation, could affect the methodology of tax loss utilization (i.e. carried forward tax losses incurred in the given basket may be utilized over the period of 5 consecutive years solely to set-off taxable income from the same basket).

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

Standard Audit File for Tax (SAF-T) – new VAT reporting obligation

As of January 1st 2018 new obligations concerning monthly VAT reporting (in the SAF-T data format) will be applicable to called 'Micro Entrepreneurs'. Under the SAF-T regulations, entities using computer software to keep tax records are obliged, without summons from the tax authorities, to generate and transfer electronically on a monthly basis to relevant tax authorities information on VAT records (i.e. VAT registers must be sent, covering inter alia amounts of input and output VAT resulting from conducted transactions, objects of taxation, tax base, as well as amounts of VAT due/VAT refund). This obligation already concerns the largest entities (so called 'Large Entrepreneurs') for monthly periods since July 1st 2016, as well as the so-called 'Small Entrepreneurs' and 'Medium Entrepreneurs' – as of January 1st 2017.

In each case, you should determine the date when the new administrative burden is imposed on you, as well as make sure that your tax and accounting systems are able to fulfil the new reporting obligations.

Change of tax year

If the taxpayer currently has tax year in line with the calendar year and would like to adopt a different tax year, the required procedures comprise change of the articles of association of the company and notification of the tax authorities, generally, until January 30th 2018. It should be noted that there is practice, according to which the change of the company's tax year is legally effective, provided that the change of the article of association was registered in the commercial register prior to the end of its last year prior to the change.

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

Simplified corporate income tax advance payments

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

If the simplified monthly CIT reconciliation method is chosen, the taxpayer is obliged to notify the local tax office by 20th day of the second month of its tax year, i.e. generally by February 20th 2018.

Method of recognizing foreign exchange differences

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

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

Certificates of tax residence

In case of certificates of tax residence that do not specify the time period of their validity, they are generally treated as valid for 12 months from the date of issue. Valid certificates of tax residence are required in order to apply withholding tax reliefs under double tax treaties and European Union directives.

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

Transfer pricing

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

As of January 1st 2017 the Polish transfer pricing rules have been substantially changed and new, more extensive documentation and reporting obligations were imposed on taxpayers conducting related-party transactions. Generally, FY17 is the first year, for which documentation and reporting under new rules should be made and the taxpayers are be obliged to:

- by October 31st 2017 – provide the tax authorities with a notification concerning country-by-country reporting for FY16;
- by December 31st 2017 – provide the tax authorities with a notification concerning country-by-country reporting for FY17;
- by December 31st 2017 – provide the tax authorities with country-by-country reporting for FY16 (relevant for taxpayers with revenues or costs exceeding €750 million);
- by March 31st 2018 – prepare the 'Local File' for FY17 (relevant for taxpayers with revenues or costs exceeding €2 million), along with a benchmark study (relevant for taxpayers with revenues or costs exceeding €10 million), as well as prepare the 'Master File' (relevant for taxpayers with revenues or costs exceeding €20 million);

- by March 31st 2018 – provide the tax authorities with a statement confirming that the required transfer pricing documentation was prepared (relevant for taxpayers with revenues or costs exceeding €2 million);
- by March 31st 2018 – provide the tax authorities with CIT-TP return (relevant for taxpayers with revenues or costs exceeding €10 million).

It is high time to determine whether you fall under the transfer pricing documentation and reporting obligations for FY17 and what is the scope of documentation and reporting required from you. Since – at present – the transfer pricing documentation has to be prepared upfront within the said tight deadlines (i.e. in practice, the taxpayers may not be able to delay preparation of the transfer pricing documentation until receiving request of tax authorities, as it often happened under previous regulations), it is also the highest time to commence works on preparation of relevant transfer pricing documentation for FY17.

Corporate income tax exemption for close-ended investment funds

Starting from January 1st 2017 an amendment to the Polish CIT Act regarding taxation of investment funds entered into force. As a result, close-ended investment funds (Polish FIZ and similar EU-based investment funds) no longer benefit from the full CIT exemption in Poland. In particular, the said amendment excluded the CIT exemption for close-ended investment funds with respect to income generated through tax transparent partnerships, disposal of interest or shares in such partnerships and other income related to participation in such partnerships (including interest). Thus, investment structures envisaging Polish FIZ indirectly holding real estate located in Poland (that – over the last years – were frequently used on the Polish market), generally, have lost on their tax efficiency. On the other hand, please note that investment structures envisaging Polish FIZ directly holding and operating real estate located in Poland still retain their tax efficiency, as all rental income generated by FIZ directly may still benefit from full CIT exemption in Poland.

The above should be considered by all investors holding or considering investments on the Polish real estate market.

15 Portugal

Losses carried forward

From January 2017 onwards, tax losses can be used to offset taxable profits arising in the following 5 years. No carry back is allowed. Deduction of tax losses is limited to 70% of the taxable profit of the year, with the possibility of carrying forward the remaining 30% within the carry forward period. Furthermore, rules regarding the utilisation of carry forward tax losses under the FIFO method were revoked.

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

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

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

Dividends Distribution

Dividends can be exempt from WHT under the application of the domestic participation exemption regime, if the following conditions are met:
- The Portuguese company is subject and not exempt from CIT and it is not subject to the tax transparency regime;
- The beneficial owner of the income is an entity resident (i) in other EU Member State, (ii) in other EEA Member State (provided such EEA country is bound by an agreement for tax cooperation within the scope agreed within the EU), or (iii) in a country that has a DTT concluded with Portugal that foresees the exchange of information;
- The beneficial owner is subject to and not exempt from a tax mentioned in the EU P/S Directive, or a tax of a similar or identical nature to CIT (for non-EU cases) and it cannot be 60% lower of the CIT rate;
- The entity that pays the dividends cannot be resident in an blacklisted jurisdiction;
- Minimum shareholding held for a consecutive period of 1 year; and
- Shareholding threshold of at least 10%.

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

Transfer Pricing

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

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

Interest Capping Rules

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

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

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

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

There should be in place a control of the amounts of non-deductible NFE and unused 30%that can be carry forward for 5 years.

Cross-border financing

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

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

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

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

Real Estate Municipal Taxes

Real estate municipal tax (IMI) (and other charges related to real estate ownership) are due by the real estate owner as per December 31st of each year (and paid on the following year). From 2017 onwards, the IMI rates range between 0.3% and 0.45%.

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

In case a direct investment is completed before the end of 2017, it should be taken into consideration that the owner of the real estate is responsible for the payment of the amount for the entire year (and not only from the period after the real estate is acquired) on December 31st 2017. The IMI impact will increase in case the owner of the real estate (corporation) of the real estate is resident in blacklisted jurisdiction.

Real Estate Taxes

From 2017 onwards, there is a new real estate tax on certain types of urban properties, dwellings and plots of land for construction located in Portugal, called the Additional to the IMI (AIMI).

The owners, usufructuaries, surface rights or undivided inheritances of dwellings and plots of land for construction as at January 1st of each year, are liable to the payment of AIMI.

For corporations, as a general rule, the AIMI rate is of 0.4% of the sum of the Tax Registration Value (TRV) of all applicable urban properties held by each taxpayer, reported as at January 1st of each year.

Properties that benefited from IMI exemption in the previous year are excluded from the taxable basis.

CIT tax credit

Taxpayers have the option of deduct the AIMI paid, limited to the fraction of the tax corresponding to the income generated by properties subject to AIMI, in the scope of lease or accommodation activities. This deduction option (deduction to the CIT fraction) jeopardises the deduction of AIMI in the determination of CIT taxable income.

AIMI is assessed by the Portuguese Tax Authorities in June of each year, being the respective payment made in September.

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

A new real estate tax (AIMI) is due in case of owing plots of land for construction or dwellings. The tax base is the same as per IMI, i.e. the tax registration value.

Value Added Tax (VAT) claw-back rules

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

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

16 Romania

Interest capping rules

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

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

Thin capitalisation rule – if the borrower's debt-to-equity ratio is more than 3:1 or negative, the entire interest expenses and net foreign exchange losses in relation to long-term loans (i.e. maturity of over one year, including loans with an initial maturity below a year but subsequently prolonged, so that the cumulated individual maturities surpass a year) will be non-deductible. However, these interest expenses within the above limitation cap and net foreign exchange losses incurred in relation to long-term debt may be carried forward indefinitely and deducted once the debt-to-equity ratio meets the criteria.

For the purpose of applying the thin capitalisation rule, credit/loan is defined as any convention concluded between the parties that generates for one of the parties the obligation to pay interest and refund the borrowed capital. On this note, borrowed capital includes credits/loans with a refund period above one year for which no obligation to pay interest has been established in the conventions concluded.

Please also note that interest is defined as any amount required to be paid or received for the use of money, whether to be paid or received under a debt arrangement, in relation to a deposit or under a finance lease, sale in instalments or any sales with deferred payment.

On a separate note, please note that starting with January 1st 2018, new deductibility rules regarding interest expenses shall apply. Romania has recently implemented the provisions of anti-tax avoidance Directive (EU Directive 1164/2016), and therefore amended the existing tax legislation. As a consequence, the above thin cap and safe harbour rules will no longer be valid, and new deductibility limitation rules will replace them.

In the light of the above, net interest expenses will only be deductible up to a limit of €200,000 per year; any net interest expenses exceeding this threshold will be subject to a second deductibility limitation, based on a fixed ratio of 10% of the taxpayer's gross operating profit. The excess net interest can be carried forward indefinitely.

Companies should review their debt position to determine whether adjustments are necessary to maximise interest and next FX losses deductions for 2017 or going forward.

Holding legislation

Starting January 1st 2014, favourable fiscal measures for the setting up of holding companies have been introduced, as follows:

Dividend income obtained by a Romanian holding company from a Romanian subsidiary is non-taxable subject to no conditions, whereas dividend income obtained by the same Romanian holding company from a non-resident subsidiary situated in (i) an EU member state, as well as (ii) in a non-EU member state with which Romania concluded a Double Tax Treaty (DTT) is also non-taxable if the participation exemption requirements are met (e.g. minimum 10% stake held for at least one year at dividend distribution date).

Capital gains derived by (i) a Romanian holding company from the disposal of shares in a Romanian/DTT state based subsidiary, as well as by (ii) a non-resident located in a state Romania has a Double Tax Treaty (DTT) with, further to the disposal of shares in a Romanian subsidiary, are also non-taxable if the above participation exemption criteria are met.

Liquidation income derived by a Romanian holding company further to liquidating a resident/DTT state based entity is non-taxable, subject to the same participation conditions referred to above.

As of January 1st 2018, companies with annual turnover of less than €1 million will automatically fall in a turnover tax regime (1% or 3% of turnover, depending on certain conditions). Thus for such companies the participation exemption will only apply for 99% of the income.

Nevertheless, anti-abuse rules must also be observed. Thus, a thorough analysis of the economic substance of the holding structures situated outside Romania should be conducted in order to ensure the applicability of the DTTs and EU Directives.

Withholding tax exemption

Dividends received by Romanian legal entities from other Romanian legal entities are not subject to Withholding Tax (WHT). Outbound dividends are subject to a 5% WHT rate. This rate can be further reduced under the more favourable provisions of applicable DTT and/or of the EU Parent Subsidiary Directive (e.g. minimum 10% stake held directly for a minimum one-year period), if conditions are met.

On this note, Romania implemented the provisions of the EU Interest and Royalties Directive and the EU Parent Subsidiary Directive in the local tax legislation. Namely, interest and royalty payments arising in Romania and beneficially earned by an EU/EEA (e.g. Switzerland, Liechtenstein, Norway) member state entity are WHT exempt in Romania, provided a direct minimum 25% stake in the Romanian income payer’s share capital is held for an uninterrupted minimum two-year period at the payment date. These provisions apply to direct payments made between affiliated companies or between sister companies (e.g. companies with common shareholder having a minimum 25% stake).

Dividends arising in Romania and earned by an EU member state are WHT exempt in Romania, provided a direct minimum 10% stake in the Romanian income payer’s share capital is held for an uninterrupted minimum one year period at the payment date.

As a general rule, 16% WHT applies to Romanian-sourced gross interest income. As of June 1st 2015, non-residents from EU/EEA member states concluding a DTT with Romania can register as Corporate Income Tax (CIT) payers in Romania and opt for the net basis taxation, i.e. they can reduce their initial WHT liabilities by claiming expenses (e.g. refinancing costs, foreign exchange losses, commissions, operational costs, all strictly in regards to the loan offered to the Romanian resident), against the interest income. 16% CIT tax would thus apply on the fiscal profits derived from Romania. Any WHT paid in excess of the CIT such assessed may be claimed subsequently. To do so, non-residents can appoint a tax agent in Romania.

There is also a 50% WHT rate applicable if income is paid to a state with which Romania has no exchange of information treaty and the income is connected to an artificial transaction.

Companies should conduct a cost benefit analysis before opting for the net basis interest taxation, namely taxes to be recovered against compliance costs with the CIT registration.

Anti-abuse rules

There is a general anti-abuse rule and a rule aimed at cross-border artificial transactions. Such transactions are excluded from the application of DTTs. Moreover, these provisions may be coupled with anti-abuse rules for preventing unlawful tax practices, aimed at obtaining tax benefits contrary to the principles of the EU Parent-Subsidiary Directive. On this note, the Romanian dividend tax exemption under this Directive does not apply to hybrid instruments (i.e. amounts qualifying as dividends in the paying entity's jurisdiction have an interest nature in the recipient's jurisdiction).

Romania will also implement the provisions of the anti-tax avoidance Directive (EU Directive 1164/2016) starting with January 1st 2018, and is a signatory party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Companies should review whether the EU Interest and Royalties Directive and Parent Subsidiary Directive requirements are met, in order to be in a position to claim the imbedded WHT benefits provided by law.

Losses carried forward

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

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

Tax credits

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

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

Tax prepayments

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

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

Accounting and fiscal period

Companies can opt for a fiscal year different from the calendar year. The first amended fiscal year also includes the previous period of the calendar (i.e. January 1st-the day preceding the first day of the amended fiscal year), representing a single fiscal year. Taxpayers have to communicate to the territorial fiscal authorities the change in the fiscal year at least 15 calendar days after the start of the amended fiscal year.

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

Tax incentives

Tax exemption applies for the profit invested in new technological equipment, electronic computers and peripheral equipment, cash and cash registers, control and billing, software, and the right to use software, manufactured and/or purchased or acquired under financial leasing agreements, used for the purpose of carrying out economic activity.

In order to benefit from this incentive, the taxpayer should use the technological equipment for business purposes for more than half of its useful life, but for no longer than five years. The technological equipment for which this tax incentive applies cannot be depreciated by using the accelerated depreciation method.

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

Another tax incentive refers to additional 50% depreciation for research and development expenses that qualify as such based on specific conditions.

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

Depreciation methods for movable fixed assets

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

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

Revaluation of real estate property

Property taxes

Companies are required to treat part of the revaluation reserve built by revaluations performed starting January 1st 2004 as a taxable item together with each depreciation expense (quarterly) or with the asset expense (if the asset is sold or written off). Thus, in substance, revaluations are not recognized for tax purposes.

As of January 1st 2016, building tax will follow property status (residential vs. non-residential properties, or mix purpose building). Based on this criterion, different percent applies, such as:

- for residential building: 0.08%–0.2%,
- for non-residential building: 0.2%–1.3%.
- for non-residential buildings owned and used by legal entities in agricultural activities: 0.4%.

In order to determine the taxable value of the building, the taxpayer may revalue the property every three years. Such revaluation should not be reflected accounting wise and is performed on the basis of specific valuation standards approved only for tax purposes, which may trigger different tax values by reference to fair values and accounting values. Not exercising the right to revalue will result in higher taxation percentage, i.e. 5%.

Changes in the building legal title does not attract further local taxes. The local taxes are owed for a full year by the owner of the building as of December of the previous year.

Owner of more than one residential building will no longer be taxed differently.

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

The amount of land tax is determined taking into account the surface of the land plot, the rank of the region in which the land is located, the area and the economic destination of the land plot according to the classification made by the local authorities.

Transfer pricing rules

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

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

Effective January 1st 2016, contemporaneous Transfer Pricing Documentation (TPD) requirements have been introduced for large taxpayers performing related party transactions above specific thresholds. Such TPD rules must be met by March 25th of the year following the one transactions were done.

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

Transfer of business

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

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

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

Note that in case the business transfer includes a transfer of a real estate property, the transferring deed should be performed under authenticated form. Fees for transferring real estate in Romania among companies are of approximatively 1% of the value of the real estate transferred, depending on such value.

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

Micro-company tax regime

Newly setup companies with a share capital below RON45,000 (equivalent of approximate €10,000) or companies that meet certain indicators (e.g. main conditions: total income is less than €500,000, management and advisory income is less than 20% of total income) at prior year-end report under a micro-company tax regime and are taxed on overall income and not on profits. The tax applied varies depending on the number of employees, namely:
- 1% for companies that have one or more employees,
- 3% for companies with no employees.

No fiscal losses can be cumulated while a micro-company.

As of January 1st 2018, all companies with an annual turnover less than €1 million, irrespective of the level of share capital or the activities carried out, shall automatically be transferred into the micro-company tax regime.

Companies should review the switch from a CIT payer to a micro-company taxpayer (or vice versa), as well as any cumulated fiscal loss position, so that they may consider methods to refresh, if appropriate.

Social security contributions

Starting July 2015 provisions were introduced to determine the conditions under which an activity could qualify as independent (such as IP rights and commercial/ service contracts). Should the independence conditions not be met, the activity could be reclassified into a dependent relationship (i.e. employer – employee). In the case of such a reclassification, employer and employee social security contributions are due.

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

Net rental income

Starting with January 1st 2016 deductible expenses applicable for determining the net rental income, as well as the net income from the lease of agricultural assets, was increased to 40%.

Starting with January 1st 2018, the tax rate shall be decreased from 16% to 10%.

Income registered by individuals from selling immovable properties

Income derived from the transfer of immovable properties based on transactions concluded on or after February 1st 2017 is subject to an income tax rate of 3%. The income tax is applicable on incomes exceeding RON450,000 (equivalent of approximately €100,000) resulted from such transactions. The proceeds up to this limit are not taxable.

Reporting obligations

A new aspect regarding tax practices in Romania should be mentioned, that Romanian Tax Authorities notified the individual real estate developers to reassess the tax treatment they applied on the proceeds obtained from selling real estate properties. Such individuals were asked to report by July 30th 2017 the proceeds which qualify as income from independent activities. After this date, the authorities will start, based on risk assessments, tax audits targeting individual real estate developers.

Value Added Ttax (VAT) rates

Starting with January 1st 2017 the standard VAT rate in Romania is of 19%. However, for certain operations expressly provided by the Romanian VAT legislation, the reduced rate of 5%, respectively 9% is applicable.

The reduced VAT rate of 5% applies to dwellings delivered as part of social policy, including retirement homes, orphanages and rehabilitation centres for children with disabilities. The category also includes dwellings and parts thereof supplied as housing with a maximum useful surface of 120sqm, excluding outbuildings. The reduced rate applies if the value of the dwelling acquired by any single person or family is less than RON450,000 exclusive of VAT. The reduced VAT rate will also apply to the supply of the land beneath the dwelling on the condition that it does not exceed 250sqm, including the footprint of the dwelling.

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

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

VAT-exemption

The VAT-exemption regime is applicable for rental of buildings, sale of buildings and land. However, such operations can be taxed, provided that a notification for taxation is submitted with the Romanian tax authorities.

The exemption does not apply in case of new buildings, parts of new buildings or building land.

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

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

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

VAT deduction right

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

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

As of January 2017, the beneficiaries who acquire goods and/or services during the period when the supplier does not have a valid VAT code may exercise the right to deduct the VAT related to such acquisitions based on the invoices issued by the supplier after the re-registration for VAT purposes, by including such invoices in the VAT return.

The taxable persons that re-register for VAT purposes after January 1st 2017 will be able to deduct VAT on purchases made during the period they had their VAT number cancelled. Such persons will invoice with VAT all clients to which they performed supplies in the period they did not have their valid VAT code, thereby being able to recover the output VAT they collected.

VAT registration

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

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

VAT for taxable supplies

The decision ruled by the Court of Justice of the European Union in the joint cases C-249/12 and C-250/12 was transposed in the Romanian VAT legislation, by virtue of which, when the price for a supply of goods was established with no reference to VAT, and the supplier should account for the related VAT, it should be considered that VAT is already included in the agreed price, in case the supplier is not able to recover the VAT from the beneficiary of the supply.

In case of reclassification of VAT treatment for real estate transactions, in order to avail of this provision, Companies should prove that they have no legal means to recover the paid VAT. A statement of own responsibility signed by the supplier attesting that it is not able to recover the VAT from the beneficiary can be considered as proof.

VAT Cash Accounting Scheme

The companies with a taxable turnover of less than €500,000 or by newly set-up companies can choose to apply this scheme. The taxable persons who choose the cash accounting VAT scheme must apply this system at least until the end of the calendar year in which it opted to apply the system, except when during the same year the turnover exceeds the threshold of RON2,250,000. If such threshold is exceed during the year, the VAT cash accounting scheme will be applied until the end of the fiscal period (month/quarter) following that in which the limit was exceed.

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

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

VAT transfer of business

The partial or total transfer of assets performed further to a merger or a spin-off is not subject to VAT, as long as the beneficiary is a company established in Romania.

Under certain conditions, also the partial or total transfer of assets performed to a Romanian established company through to a sale or contribution in kind qualifies as a transfer of going concern which is not subject to VAT. Specifically, the operation is seen as a transfer of assets if the transferred assets form from a technical point of view an independent structure capable of carrying out economic activities. Also, the beneficiary must continue the economic activity or part thereof which was transferred to him and not to immediately liquidate it or sell the assets which were transferred to him. In this respect, the beneficiary must send to the transferor an own responsibility statement attesting that this condition is met.

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

VAT related to the demolition of a building

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

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

Reverse-charge mechanism

The reverse charge mechanism applies to the supply of buildings, part of buildings and plots of land for which VAT is due in accordance with the law or in case the supplier opted to tax the transaction, provided that both the supplier and the beneficiary are registered for VAT purposes in Romania.

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

VAT adjustment for capital goods

Starting with January 1st 2017, the VAT adjustment for capital goods will be carried out annually within the adjustment period for 1/5 or 1/20 of the VAT costs incurred in the acquisition, manufacture or construction of those goods. For certain exceptions, such as the supply of capital assets, the goods ceasing to exist or the taxable person transitioning from small business special scheme to the taxation regime, the adjustment will be performed only once.

The annual adjustment has to be performed by companies for the remaining adjustment period (5 years or 20 years).

The VAT adjustment will be performed either in the period in which the event that generates the adjustment occurs or in the last fiscal period of each year.

These provisions also apply in the case of capital goods which are in the adjustment period as at January 1st 2017 for events that generate VAT adjustments incurred after January 1st 2017.

VAT split payment system

Starting with January 1st 2018, the VAT split payment system will be mandatory for certain category of taxpayers (insolvent companies, companies with outstanding VAT payables). At the date of writing this report, the law has not been published yet.

Taxable persons registered in VAT purposes in Romania (i.e. companies, individuals, public institutions and non-resident companies registered directly or through fiscal representatives) are required to apply the VAT split payment mechanism if they fall in one of the categories mentioned above.

Taxpayers applying the system will have the obligation to open a VAT account at state treasury units or credit institutions. The account that will have a special IBAN that will include the character string 'VAT' and inform their clients about the VAT account in which they will collect the VAT for taxable supplies of goods/services.

Analyse the impact of the VAT split payment mechanism and ensure that such system has been applied correctly.

17 Russian Federation

'Beneficial ownership' concept, signing of MLI, double tax treaties application

From January 1st 2017 foreign companies receiving income from Russian sources should present to Russian tax agents (Russian companies and Russian permanent establishments of foreign companies that are paying relevant income) apart from a certificate of tax residency a confirmation of beneficial ownership to relevant income. There is no precise form of this confirmation and in practice the requirements of tax agents as to the contents of the confirmation vary. Tax agents may also request additional documents that could make them more comfortable in relation to the beneficial ownership position of the recipient of income. Tax agents could be cautious in this relation as in case the tax authorities disagree with the position taken by a tax agent they could collect the tax, penalties and interest for late payment from the tax agent.

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

The issue of beneficial ownership to income is frequently raised by the tax authorities and the relevant court practice is growing. Still there is significant uncertainty as to the particular cases where a foreign company could be considered beneficial owner of income or not.

Among many other countries in 2017 Russia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). In relation to the principles of determination the right to use treaty benefits Russia chose in addition to the Principal Purpose Test (PPT) the simplified Limitation of Benefits (LOB) provisions. In practice we understand in most cases the PPT would be used as most countries have not chosen the LOB provisions. The impact of the future application of the MLI principles are yet to be seen.

In 2016, Russia signed the CRS Multilateral Competent Authority Agreement. The exchange of information will be carried out in electronic form and will start for Russia since 2018 in relation to the data for 2017. The Russian tax authorities will provide to the foreign tax authorities information about their tax residents and receive from the foreign tax authorities information about Russian taxpayers. The Russian tax authorities will be able to obtain information on Russian taxpayers from overseas banks, depositories, brokers, investment funds, as well as from some insurance companies. Currently, such exchange of information is carried out only at the specific request from the Russian Tax Service. The exchange of information should inter alia become another factor for development of beneficial ownership concept application practice.

Introduction of general anti-abuse article

From August 19th 2017 a general anti-abuse article of the Tax Code has been enacted. This article allows taxpayers to reduce the tax base if the primary goal of the transaction is not underpayment or offset of tax and the obligation under the contract was executed by an appropriate party. Before introduction of this article the general anti-abuse principles were applied on the basis of court precedents and in particular Resolution #53 of October 12th 2006 of the Supreme Arbitration Court.

Indirect sale of immovable property

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

Application of thin capitalisation rules to loans from foreign sister companies

From January 1st 2017 the scope of thin capitalisation rules has been expanded to include

- debt to a foreign related party if such a party has a direct or indirect equity interest in the borrower,
- debt to a party related to the foreign related party referred above,
- debt to another party if parties referred above guaranteed the debt.

There are exemptions from application of these rules. In particular, loans from independent banks are shielded from the thin capitalization rules if the debt (both principal and interest) was not repaid by a foreign shareholder or its affiliates as a result of execution of a guarantee to the bank. Also, loans from a Russian related company would not be subject to the thin capitalization rules if there is no a corresponding indebtedness of the Russian creditor in front of related foreign entities.

Property tax

Starting from 2014 some objects of property are taxed based on cadastral value of property in accordance with Article 378.2 of Russian Tax Code. The property tax is a regional tax. The system of payment of property tax based on cadastral value of property instead of the annual book value has been now widely in the regions of the Russian Federation. The maximum tax rate for such properties is 2%. It varies by region and is gradually increasing. For example, in Moscow it is 1.4% in 2017 and 1.5% in 2018.

Notification obligations

In case of direct immovable property ownership by a foreign company it shall disclose the whole ownership chain. Non-disclosure of this information will lead to the fine in the amount of 100% of the relevant property tax. The disclosure should be made annually in accordance with a special form and filed together with the property annual tax return.

18 Slovakia

Real estate transfer tax

There is no real estate transfer tax in Slovakia.

Capital gains on the sale of real estate

There is no specific capital gains tax.

Slovak tax resident corporate owners of real estate are subject to tax on profits realised on the sale of real estate at the flat corporate income tax rate of 21%. Losses realised on the sale of buildings, but not land and real estate depreciated for tax purposes in 6th depreciation group (this limitation does not apply to technical improvement of real estate done by tenant), are generally tax-deductible for corporate income tax purposes.

Capital gains of non-resident corporate owners from sale of Slovak real estate are also subject to 21% corporate income tax.

Other alternatives for disposal of real estate should be considered.

Rental income

Rental income is part of the corporate income tax base of Slovak tax resident and is taxed as an ordinary income. It is subject to the standard corporate tax rate, which is 21%. Rent paid to legal entities or individuals is tax-deductible on a cash (paid) basis. Nevertheless, rental payments are tax-deductible up to the amount, which actually relates to the particular tax period.

The cash flow model should be reviewed in order to assess the level of tax burden.

Taxation on non-resident capital gain

Under the Slovak legislation capital gain of non-resident from disposal of shares in Slovak real estate rich company (i.e. company owning Slovak immovable property with book value higher than 50% of its equity) is subject to 21% corporate income tax in Slovakia. Tax structuring options are available to eliminate taxation.

In case of real estate acquisition, a careful structuring is required in order to reach tax neutral exit from investment.

Tax depreciation

Real estate, as other fixed assets, is subject to tax depreciation on an annual basis. There are six tax depreciation groups for assets, with depreciation periods ranging from 4 to 40 years. Most buildings of a permanent nature fall into the fifth and sixth group, and are depreciated 20 or 40 years respectively using a straight-line method of tax depreciation.

In case that an asset is rented, the annual tax depreciation costs on leased fixed asset (including real estate) cannot exceed the annual rental income on such asset. The unclaimed tax depreciation costs on leased assets due to the above limit can be claimed after the end of statutory tax depreciation period.

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

Tenants can depreciate technical enhancements done in rented premises if it is agreed in the rental agreement in writing and such enhancements were not included into the rental payments.

Land cannot be depreciated.

The company's fixed assets register should be reviewed to ensure correct depreciation. Interruption (deferring) of tax depreciation may provide the possibility to utilise tax losses which would be lost otherwise.

Tax losses carried forward

From January 1st 2014, the tax losses carried forward can be utilised equally during four consecutive tax periods immediately following the period for which the tax loss was reported (i.e.one ¼ of the loss per period). Each year's tax loss is considered separately and can be utilised over its own four-year utilisation period starting with the tax period immediately following that in which the taxpayer reported the tax loss. If a tax payer is not able to utilise the full portion of the tax loss available for deduction in that respective period, such unutilized part of the loss is lost for deduction permanently.

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

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

Tax-deductible costs

A company owning property in Slovakia can deduct interest expenses and property-related costs, e.g. tax depreciation (with exceptions as stated above), repairs, maintenance and utilities, from its taxable rental income, subject to the general conditions in the Slovak Tax Act. Property management fees can also generally be treated as tax-deductible.

The costs of the company should be properly documented in order to support its relation to taxable income generating activity of the company and its tax deductibility.

Thin capitalisation

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

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

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

Transfer pricing

Under Slovak legislation the transaction of Slovak corporate taxpayer with its foreign-related parties and Slovak related parties are subject to transfer pricing control.

The tax legislation reflects the transfer pricing methods commonly used in OECD member countries. These transfer pricing methods include comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods. The legislation provides local tax authorities with the flexibility to use these methods, or a combination thereof, when reviewing related party transactions.

Taxpayers are obliged to keep transfer pricing documentation supporting the arm's length level of prices used in transactions with their foreign and Slovak related parties.

The arm's length principle should be followed and the appropriate documentation should be in place for tax assessment. Proper transfer pricing review and planning is crucial.

Business combinations

There are following alternatives for the business combinations:
- Sale of business as a going concern (further – 'BGC').
- Contribution of the BGC to share capital.
- Sale of individual assets and liabilities.
- Contribution of individual assets to share capital.
- Mergers and demergers.

From a corporate tax general perspective, the application of alternatives 2, 4 and 5 may be done in a tax neutral way (immediate or long term).

From Value Added Tax (VAT) point of view, sale of company's shares is VAT exempt in Slovakia. In case of mergers and acquisitions when the taxpayer dissolves without liquidation, such a business transfer should be out of scope of Slovak VAT if certain formal conditions are fulfilled. Similarly, transfer of a set of assets/obligations which meets the conditions for transfer of going concern should be also out of scope of Slovak VAT.

The effectiveness of each option depends on the particular situations in hands. Therefore, a detailed analyses is required to choose the best option. Sale of shares, mergers/acquisitions of business, transfer of going concern should be normally neutral from VAT perspective.

Anti-avoidance rules

General: Under the Slovak legislation, Slovak tax authorities have the right to reclassify the transactions based on its substance and not formal nature in case of lack of economic reasoning and intention of the taxpayer to get tax benefit not available otherwise.

Dividends: Slovak tax law states that dividends received by taxpayer (i) as a result of a measure or multiple measures which cannot be considered as based on proper business reasons corresponding to the economic reality, and (ii) where the main or one of the main purpose of such measure(s) was obtaining of benefits which would not be granted otherwise, such dividends should be subject to tax in Slovakia.

Double tax treaty (DTT) application: In June 2017 Slovakia signed the Multilateral convention to implement tax treaty to prevent base erosion and profit shifting (MLI). After completion of ratification process the MLI will introduce various anti-tax avoidance rules. The application of anti-avoidance rules may restrict the right to apply benefits of DTTs.

The new and existing structures should be reviewed in order to assess the impact of Slovak anti-tax avoidance rules.

Slovak source income

Generally, the gain from disposal of real estate located in Slovakia or the rental income from the real estate located in Slovakia is subject to Slovak taxation (21%) if paid to foreign tax resident under Slovak tax legislation.

A tax securement of 19% applies to rent and sales price paid by a Slovak entity or individual to a non-EEA entity/individual for real estate located in Slovakia. A 35% securement tax rate applies on payments to taxpayers from 'non-contracting states' (i.e. states that did not either conclude a double tax treaty or tax information exchange agreement with the Slovak Republic).

No tax securement is required for rental payments to EEA-resident entities.

The tax securement is considered a tax advance. The entity/individual receiving the rental income should file a Slovak tax return, and calculate its Slovak tax base (i.e. income less tax-deductible costs attributable to earning the income under Slovak tax law). If the tax return is not filed, the tax authorities can consider the tax securement to be a final tax.

The following income of non-resident (among others) is also subject to withholding tax (WHT) in Slovakia:
- Dividends (7%/35%)
- Interest (19%/35%)
- Royalties (19%/35%).

There is 35% WHT applicable to entities residing in 'non-contracting states' (i.e. states that did not either conclude a DTT or tax information exchange agreement with the Slovak Republic).

The domestic WHT rates may be decreased or eliminated in case of application of DTTs or EU directives.

There are options to reduce Slovak WHT burden.

Real estate tax (local tax)

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

The taxable period for land, buildings, and apartments is the calendar year.

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

Local development fee

From 2017, the municipality may establish in its territory or part of cadastral area a local one-off development fee. The development fee may vary from €3 to €35 per each square meter of ground space occupied by the finished building. The municipality can set the fee rate for various buildings differently. The municipality issues decision on application of the development fee once building permit is valid and the development fee is due within 15 days after the decision became valid.

Constructor should check if the local development fee for a building applies in its area and consider a budget for additional payments in relation to this fee.

Slovak tax law amendment

There is a draft tax law which propose various changes to the Slovak tax environment, including the following:
- Introduction of exit taxation and CFC rules;
- Introduction of 35% WHT rate, if the taxpayer is not able to identify a beneficial owner of the income
- Introduction of rules against double deduction of expenses or deduction of expenses without taxation of respective income.

The changes in the legislation should be monitored in order to assess the impact on the business.

Value added tax (VAT)

Transactions with real estate (sale or lease) can be either subject to 20% VAT or exempt from VAT in Slovakia.

Supply of real estate or part thereof with related construction land is always subject to 20% VAT exempt if supply is made within first five years from the first building approval or putting it into operation for the first time. After this five year period supply of real estate is normally VAT exempt without a right to deduct related input VAT. However, the supplier can decide not to apply the VAT exemption. In this case, VAT reverse-charge should apply for supplies to the Slovak VAT payers. In all other cases, VAT should be charged by the supplier.

Supply of land is VAT-exempt, except for construction land.

Lease of real estate is generally VAT exempt without a right to deduct related input VAT. However, leasing real estate to another taxable person, a taxpayer can decide whether to exempt it or not. At the same time, certain transactions such as e.g. letting of accommodation facilities (accommodation services) or parking premises, should be always taxable.

The following transactions in the construction sphere falling under the Section F of CPA Statistical classification of products performed between two Slovak VAT payers are subject to VAT reverse-charge:
- supply of construction works;
- supply of building or parts of buildings under the framework of the construction or similar agreements;
- supply of goods along with assembly and installation, if assembly and installation can be considered as construction works.

Slovak established taxable person not registered for VAT supplying a building, part of building or construction land automatically becomes a Slovak VAT payer upon such a supply and will have to charge VAT on it if upon its performance they reach VAT registration turnover threshold of €49,790.

A taxpayer is obliged to adjust the tax deduction, if during a 20 year period from acquisition/construction of real estate, he changes the purpose of its use (from VATable to VAT exempt and vice versa, or from business to non-business and vice versa).

The period for archiving invoices received in relation to immovable property is 20 years.

In many cases, Slovak VAT payers can decide whether to charge VAT on lease or sale of real estate or not. In certain cases for VATable supplies of real estate between two Slovak VAT payers VAT reverse-charge should apply.

VAT group

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

VAT grouping makes sense when VAT group members are performing VATable supplies within the group and supply recipients are not entitled to full deduction of related input VAT.

19 Spain

Corporate Income Tax (CIT)

A new CIT Act came into force for tax periods starting 2015. The standard tax rate were reduced from 30% to 28% in 2015, and to 25% in 2016 onwards.

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

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

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

CIT Payments on account

New CIT payments on account rules has come into force. According to these new rules the rate for payments on account for companies with a turnover of €10 million or over is increased to 24% with effect from the payment on account for October 2016 (2nd CIT payment on account) and a minimum payment on account rate of 23% of accounting profits is reintroduced for companies which exceed this threshold.

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

Domestic withholding tax rate

Domestic withholding taxes applicable in 2016 onwards is 19%. It will be due unless an exemption or reduced rates are applicable to the case at hand.

Tax losses carried forward

Tax losses may be carried forward with no time limitation. However a general restriction has been introduced for 2017 onwards:
- Companies with a turnover below €20 million during the previous 12 months should be entitled to offset 70% of the taxable profits.
- Companies with a turnover of €20 million or more but below €60 million during the previous 12 months should only be entitled to offset 50% of the taxable profits.
- Companies with a turnover of at least €60 million during the previous 12 months should only be entitled to offset 25% of the taxable profits.
- €1 million of losses will be compensated in any event.

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

Transfer pricing

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

In addition, it must be noted that a new tax form (No 232) has been approved by the end of August 2017 to declare transactions carried out between related parties.

The tax return should be filed during the month following the ten months after the end of the tax period which the information to be provided refers to. That is, for fiscal years ending December 31st 2016 the tax return should be filed between November 1st and November 30th 2017. Temporarily, for financial years commencing in 2016 and ending before December 31st 2016 (short fiscal year), the tax return should be filed also between November 1st and November 30th 2017.

Prepare a transfer pricing study covering the relevant transactions carried out with related parties in the period in accordance with the applicable regulations. File the new tax form 232 in November.

Country by Country report (CbCR)

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

This CbCR must be filed electronically through the tax form No 231 within 12 months of the end of every tax period. Note that, unlike the Master and Local Files that will need to be 'at the disposal' of the Tax Administration, the CbCR has to be filed every year.

We recommend to analyse if the CbCR obligation is applicable and prepare the relevant report, if necessary, in accordance with the applicable regulations.

Residence certificates

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

Request and collect the corresponding residence certificates.

Real estate investment trust

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

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

Value Added Tax (VAT) – Immediate supply of information

From July 1st 2017, large companies (whose turnover for the prior year will have exceeded €6 million) and any other companies which file monthly VAT returns are required to provide their invoicing records and VAT books for issued and received invoices to the Spanish Tax Authorities in real time.

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

Tax on the Increase of Urban Land

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

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

The Spanish Constitutional Court, in a judgement dated May 11th 2017, has ruled the unconstitutionality of the TIVUL tax base calculation method.

It is expected that a modification of the TIVUL legislation will take place. It is not clear if a new tax base calculation method will be introduced or the former rules will be modified to address the situation in which capital losses exist.

20 Sweden

Stamp duty

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

Limitation of deductions on capital loss

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

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

Group taxation

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

Ensure that any acquisition is completed before the end of the current fiscal year to benefit from the group contribution rules the following fiscal year. As group contributions need to be recognised in the accounts, make sure to discuss the possibilities before closing the accounts.

Losses carried forward

Mergers and acquisitions which imply a change of control (even if the indirect ownership does not change) over a company can limit the possibility to utilise tax losses carried forward in the following years. Tax losses from the year before the change of control may be forfeited and/or restricted in time. Exemptions may apply in case the companies were part of the same group before as well as after the acquisition or reorganisation.

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

Tax allocation reserve

Companies can delay tax payments for up to six years on 25% of the annual profit by means of a tax allocation reserve. This can benefit liquidity and balance out occasional annual losses since the latent tax debts can be used against future losses for the upcoming six years. Companies using this reserve are taxed annually on a hypothetical income/interest. The income/interest is calculated by multiplying the reserve by 72% of the interest rate on governmental loans. The rate on governmental loans (government bond yield) is normally between 2% and 5%, but since 2014 the governmental bond yield has been below 1%. However, for financial years starting after December 31st 2016, the government bond yield, can never be lower than 0.5% for the purpose of this calculation.

Cash flow models and profit forecasts should be checked to assess the situation. As tax allocation reserves have to be recognised in the accounts, make sure to discuss the possibilities before closing the accounts.

Capitalisation of investments

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

Consider carefully what kind of investments that has been made and what asset types the investment should relate to.

Transfer pricing

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

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

Limitation of interest deduction

Sweden has certain rules limiting interest deductions between affiliated entities.

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

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

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

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

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

Value Added Tax (VAT) regarding letting of premises

Letting of premises can be subject to voluntary VAT liability if the tenant is invoiced with VAT. Please note that the following requirements must be met;

1. the premises must be used for VAT-able purposes and
2. the letting must be for a continuous period of time longer than approximately 12 months.

However, voluntary VAT liability during the construction phase may be obtained by application to the Tax Agency.

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

VAT adjustments

If the VATable usage of any premises has changed during the year, such as from VATable to non-VATable, any liability to adjust VAT should be considered. Any adjustment should be submitted to the Tax Agency the first reporting period the years after the change of use of the premises occurred.

Check the VATable status of the premises at year end.

Simplification of rules regarding letting of premises

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

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

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

Pop-up stores

The Supreme Administrative Court has approved to the usage of pop-up store in VATable vacant premises. The fact that the letting is shorter than 12 months does not infringe on the premises VATable status if let in shorter periods while the landlord is trying to find a long term tenant.

Interest deductions

Major and significant upcoming changes

On June 21st 2016, the European Commission agreed on a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (Anti Tax Avoidance Directive, or ATAD).

As a result of the EU regulation, on June 20th 2017 the Swedish Government released an extensive memorandum called New Tax Rules in the Corporate Sector. In accordance with the ATAD, the Government announced that the rules for interest deduction will be revised. It is still not clear how these rules will be designed, but the Government has suggested two different alternatives:

1. The first alternative is that the deduction should be capped at a percentage of the taxable EBIT (earnings before financial items and taxes). Net interest expenses would be deductible at up to 35% of taxable EBIT result.
2. The second alternative is that the deduction should be capped at a percentage of the taxable EBITDA (profit before financial items, taxes and depreciation). Net interest expenses would be deductible at up to 25% of the taxable EBITDA result.

The government proposes that companies with net interest income have the ability to deduct another company's non-utilised net interest income. A condition for this is that the companies can exchange group contributions with each other under the Swedish tax consolidation rules, and that both of the companies report the deduction in their income tax returns. Furthermore, the government has proposed a simplification rule in the form of an amount limit. A negative net interest income may be deducted up to SEK100,000. If associated enterprises make use of the simplification rule, the total deductions of the companies may not exceed SEK100,000.

The government also proposes that the current interest deduction limitation rules will be narrowed in scope, which according to the government should mean that a deduction would be available in more cases than under the 2013 rules currently in place.

Interest expenses on loans from related companies are now proposed to be deductible if the company being the beneficial owner of the corresponding interest income:

- is resident in the European Economic Area, or
- is resident in a country with which Sweden has a full double tax treaty and the company is resident in that country under the treaty, or
- would be taxed at a rate of at least 10% if the interest income was the only income for the company.

A deduction would however still not be available if the debt relationship arose exclusively, or almost exclusively, in order to create a substantial tax benefit for the group. The expression 'exclusively or almost exclusively', means 90–95%.

Other upcoming changes

New Tax Rules in the Corporate Sector also include a number of other proposals, including:

- Lowering of the corporate income tax from 22% to 20%.
- The right to deduct tax losses carried forward from previous financial years will be temporarily limited to 50% of a company's taxable profit. The portion of the tax losses that are non-deductible, will be carried forward to the following financial year. In reality, this implies that that tax will be levied at an earlier stage. Regarding the EBIT rule, the temporary limitation of deduction of tax losses carried forward from previous years should apply for financial years beginning after June 30th 2018 and prior to July 1st 2020. Regarding the EBITDA rule, the temporary limitation should apply for financial years beginning after June 30th 2018 and prior to July 1st 2021.

- Buildings classified as rental properties will be subject to primary deduction, implying that ten percent of acquisition values, in addition to ordinary depreciation deductions, may be deducted over a five-year period from completion of a building. If a newly constructed rental building is depreciated by 2% per year and the primary deduction is fully utilized, i.e. ten percent of the depreciation base, the rental building will consequently have a depreciation time of 45 years. The rule will only be applicable for buildings that are new constructions and not in the case of the acquisition of existing buildings.
- The standardized income attributable to deduction for provision to the tax allocation reserve is increased. This also implies an increase of the cost of financing with the tax allocation reserve. In this case, the standard income will correspond to the government bond yield multiplied by the sum of deductions made for provisions to the tax allocation reserve (instead of multiplying the tax allocation reserve by 72% of the government bond yield). However, the government bond yield should, in this instance, never be lower than 0.5%.
- A company's deduction for provision to the tax allocation reserve, before the company is allowed to apply the reduced corporate tax rate of 20%, shall be given a tax value of 22% of the deduction. Simultaneously, reversal of provision to the tax allocation reserve will be taxed by 20% as the corporate tax is reduced. Consequently, the Government proposes that reversals of provision to the tax allocation reserve performed within a financial year starting before July 1st 2018 shall be made with 110% of the deduction, if the reversal is performed by a legal person with a financial year beginning after June 30th 2018. This temporary standard income will result in an effective corporate tax of 22% for deduction for provision to the tax allocation reserve. This regulation will only be applied for a limited period of time and will apply to provisions to the tax allocation reserve made during a financial year when the current corporate tax rate of 22% still applies and should be reversed when the proposed 20% tax rate is incorporated.
- As a result of the proposal regarding a general deduction limitation and as the economic implication of leasing can be seen to be equal to the lending of funds, the Government is of the opinion that it is necessary to also introduce specific rules regarding the fiscal treatment of leasing. The regulations are to be applied to inventories, equipment, buildings, land improvements and land included in financial leasing agreements. For the lessee, the proposed regulations imply that the rights and obligations stipulated in a financial leasing agreement are to be treated as assets and liabilities. An asset is treated in the same manner as other assets of the same category, that is, it is subject to depreciations as applicable. The acquisition value of the asset is to be the lowest of the asset's fair value and the present value of the minimum leasing fees determined in conjunction with the establishment of the leasing agreement. For lessors, the proposal implies that the leased asset is not to be treated as an asset. Instead, the lessor is to report a receivable according to a financial leasing agreement. The acquisition value of the receivable is to be equivalent to the present value of the total minimum leasing fees and the portion of the leased asset's salvage value which is not guaranteed and which belongs to the lessor when the agreement is terminated.
- The government proposes a prohibition on the deduction of interest costs in certain cross-border transactions. In short, the intention is to have rules that limit the possibility of deducting interest costs in Sweden to situations where no taxable income is reported abroad or where a deduction of the same interest expense would otherwise have been granted to companies in two different countries.

Group commissioned to review tax rules for the real estate sector

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

On March 30th 2017 the commissioned group issued the report 'Certain issues within the real estate and stamp duty area'. In brief, this proposal can be summarized as follows:

- When real estate is sold in a packaged form (in the form of a company), the real estate company is considered as having disposed of the property and then acquired it for market value, thus being forced to pay taxes on a fictive transaction (market value – tax residual value = taxable gain). This is not meant to be applied on intra-group transfers/reorganizations, only external transactions. According to the proposal, the fictive tax is triggered if the controlling influence over the real estate company ceases.
- The real estate company will also need to report a standardized amount of income to compensate for not having to pay stamp duties ('RETT'), as would have been the case if the property was directly disposed of.
- The previous exemption from stamp duties applying to the sale of real estate involving certain types of land amalgamation procedures will no longer be in effect.
- Stamp duty should no longer be levied on intra-group property transactions.
- The stamp duty tax rate for legal entities will be lowered from 4.25% to 2%.
- The classification of real estate as either inventory or capital assets will be eliminated from the corporate sector and all real estate will be treated as capital assets.
- Intra-group real estate transactions of land and buildings that can be carried out below market value are to support continuity in terms of acquisition values, accumulated depreciation and the tax residual value.
- An adaptation of the tax legislation based on the EU Merger Directive to prevent the tax avoidance. The amendment is an adaption to the Directive's wording through new rules on the maximum reimbursement that can be paid in cash in such a restructuring.

New view on the right of deduction of input VAT by holding companies

The Swedish Tax Agency has further developed its view of the right of deduction of input VAT by holding companies in conjunction with their acquisition and management of, for example, subsidiaries.

The Tax Agency states, amongst other things, that as a requirement for full right of deduction, the holding company is to execute VAT liable services to all subsidiaries. Furthermore, the Tax Agency presents its view of how the right of deduction of input VAT is to be calculated in a holding company having mixed operations and/or is passive in relation to a given subsidiary/subsidiaries.

The Tax Agency presents its understanding that a holding company, which is a so-called risk capital or fund company, is to incur special treatment amongst active holding companies in terms of the right to deduct VAT in establishing new operations and, also, in the ongoing management of those operations. The Tax Agency believes that such holding companies are to be seen to have VAT exempt operations in the start-up phase and, therefore, incur limited right of deduction of input VAT. According to the Tax Agency, this is in accordance with the holding company's purpose of selling the subsidiary after the acquisition and development processes.

At this stage we are not aware if the Tax Agency is going to apply the new guidelines on historical periods open for reassessment or if the guidelines only will be applied from now on.

It is necessary to review any structure that includes any Swedish holding company to see if the holding company could be affected by the new guidelines. It is also recommended to take measures such as enter management agreements with all subsidiaries and start to invoice the subsidiaries.

New guidelines regarding VAT exempt management of 'special investment funds'

On the April 21st 2017, the Swedish Tax Agency (STA) published two guidelines regarding the definition of VAT exempt management of 'special investment funds' (Sw. Särskilda investeringsfonder, mervärdesskatt, dnr 131 173025-17/111). The guidelines were published due to recent court practice from the ECJ, e.g. the case C-595/13, Fiscale Eenheid X. In these guidelines, the STA stipulates four specific criterions that a fund must meet to be considered 'a Special investment fund for VAT purposes'.

The STA states that the determination of whether a fund constitutes a special investment fund is to be made in an EU conform manner. Hence, if four requirements are met, the fund should be treated as a special investment fund, and accordingly the management of the fund is exempt from VAT.
The four criteria are that:

- The fund pools capital from several investors;
- The investors bears the economic risk connected to the management of the fund assets;
- The fund applies the principle of risk-spreading; and
- The fund is subject to specific state supervision.

New case law regarding purchaser's obligation to adjust input VAT on investments

Following the ECJ case C-622/11, Pactor Vastgoed, a case regarding a purchaser's obligation to adjust input VAT on investments made by the previous seller. The Swedish Administrative Court of Appeal found that Pactor Vastgoed was applicable in the current case and that a purchaser of a property should in general not be obliged to adjust input VAT on investments made by the previous owner. The case has been appealed by the Swedish Tax Agency to the Supreme Administrative Court and is in September 2017 pending a leave to appeal.

21 Switzerland

Increased focus on substance

In previous court cases, treaty benefits were denied due to treaty abuse to foreign holding companies upon the sale of a Swiss real estate company. Accordingly, Swiss tax authorities pay particular attention to substance requirements.

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

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

In case (i) the only purpose of the holding is to benefit from the advantageous provision in the applicable double tax treaty regarding the allocation resulting in a double non-taxation of the real estate gain, (ii) not sufficient substance is available at the holding level and (iii) the beneficial owners are non-eligible persons, the structure as such is considered to be abusive in the opinion of the court and therefore treaty benefits are denied.

The Swiss tax authorities review the substance requirements at the level of foreign companies regularly. Hence, a robust structure is key.

Tax Proposal 17

In February 2017 the Swiss Corporate Tax Reform III ('CTR III') was rejected by the Swiss public vote. On September 6th 2017 the Federal Council initiated the consultation procedure with respect to the Tax Proposal 17. The overall objectives of the reform remain unchanged, i.e. improve the attractiveness of Switzerland as a business location, maintain and create jobs and adjust the corporate tax law to the new international standards.

The consultation on Tax Proposal 17 contains the following core elements:
- Patent box: introduction of a mandatory patent box in accordance with the OECD standard at cantonal level;
- Research and development deductions: the additional deduction for R&D costs may not exceed 50% of the actual costs. The deductions should focus primarily on personnel expenses;
- Maximum burden: the tax relief on profits arising from the two aforementioned instruments may not exceed 70%. The relief leeway is thus restricted relative to the third series of corporate tax reforms;
- Partial taxation of dividends: the partial taxation of dividends from qualified participations (minimum stake of 10%) held by individuals should be 70% at the federal and at least 70% at cantonal and communal level.

The Federal Council has decided not to include the introduction of a tax deduction on a reasonable level of interest on surplus equity companies in the current consultation proposal, despite the importance of this measure and its direct impact on the attractiveness of Switzerland as a business location. Nevertheless, some cantons are lobbying in this matter.

The consultation period will last until December 6th 2017. It is foreseen that the draft bill will make its way back to the Federal Council for further submission to the Parliament, in spring 2018. The earliest anticipated entry into force would be 2020.

With regards to the real estate business in Switzerland it is expected that these measures will only have a limited effect.

As an accompanying measure to the Tax Proposal 17 some cantons have already announced to reduce their corporate income tax rates. While real estate companies generally did not particularly benefit from these tax regimes the reduction of the cantonal tax rates will result in a reduction of the current tax charge on real estate income. With regards to capital gains taxation, a reduction of the tax rate would reduce the deferred taxes on such gain provided the gain is subject to income tax instead of real estate gains tax (depends on the canton where the real estate is located).

22 Turkey

Corporate tax

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

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

Transfer pricing

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

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

Thin capitalisation rule

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

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

Controlled foreign corporation (CFC)

Corporations that are established abroad and are at least 50% controlled directly or indirectly by tax resident companies are considered controlled foreign corporations (CFC) when certain requirements are met, such as being subject to an effective income tax rate lower than 10% in its home country, having a gross revenue more than TRY100,000 in the related period and having passive income (at least 25% of gross revenue). CFC profits would be included in the corporate income tax base of the controlling resident corporation irrespective of whether it is distributed or not.

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

Depreciation

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

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

Foreign currency revaluation

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

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

Prepaid income

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

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

Doubtful receivables

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

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

Value Added Tax (VAT) rate for the residential units

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

The determination of the VAT rate to be applied (1%, 8% or 18%) on the deliveries of houses starting from the year 2013 will vary based on several different factors such as;

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

In accordance with the Cabinet Decrees numbered 2016/9153 and 2017/9759, changes had been made in the VAT rate to be applied on the delivery of residential units. Within the scope of the latest update in the legislation, VAT implementation for the houses which are subject to 18% VAT is updated and decreased to 8% until September 30th 2017.

Also according to the very recent change in the VAT law, first sale of new residential units and offices to the foreign individuals and foreign companies will be exempt from VAT if the sales amount is paid in foreign currency and that property is held for at least one year after the acquisition. Please also note that there are other certain conditions to be fulfilled for the application of the exemption.

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

Stamp Tax

Stamp tax is calculated over the sales price of the real estate property indicated in the asset purchase agreement (if any) at a rate of 0.948% with a ceiling of TRY1,865,946.80 (approximately €460,000 under current foreign exchange rate; subject to annual revaluation) for the year 2017.

The new amendments under Stamp Tax Law on reducing stamp tax rate on preliminary sales and residential sales agreements with down payment to 0% was published on February 2017.

For Turkish corporate income tax purposes, stamp tax that relates to real property can either be deducted as an expense, or capitalized with the real estate and depreciated. If the stamp tax is not related to the real estate, it has to be deducted as an expense.

Resource Utilisation Support Fund (RUSF) rates

RUSF rates are to be applied on foreign loans obtained by Turkish resident individuals or legal entities (except for banks or financial institutions) in terms of foreign currency or gold (except for fiduciary transactions) was restructured based on the average maturities as follows;

- 3% on the principal if the average maturity period of the foreign currency credit does not exceed one year.
- 1% on the principal if the average maturity period of the foreign currency credit which is between one and two years.
- 0.5% on the principal if the average maturity period of the foreign currency credit which is between two and three years.
- 0% on the principal if the average maturity period of the foreign currency credit over three years.
- 1% on the interest amount if the average maturity period of the foreign loan denominated in Turkish Liras does not exceed one year.
- 0% on the interest amount if the average maturity period of the foreign loan denominated in Turkish Liras which is over one year.

Before March 15th 2017, RUSF was applicable at 3% over the interest amount for Turkish Liras dominated loans regardless of the maturity of the loan. With the latest amendment announced on March 15th 2017 by the Council of Ministers Decision, RUSF rates for Turkish Liras dominated loans has been changed to 1% on the interest amount whose average maturity does not exceed one year and 0% on the interest amount whose average maturity period exceeds one year. Therefore, Companies should evaluate their financing situation according to the new RUSF rates.

Deductibility of finance expenses

Law No 6322, which has entered into force on June 15th 2012, amends the general principles of the deductibility of the finance expenses for Turkish taxpayers. The arrangement shall be effective as of January 1st 2013. According to the related Law, a portion – yet to be determined by the Council of Ministers – of interest and similar expenses incurred on foreign resources will not qualify deduction for corporate tax purposes. According to the arrangement;

- Credit institutions, financial institutions, financial leasing, factoring and financing companies shall not be subject to finance cost restrictions,
- Cost restrictions shall apply exclusively to the portion of liabilities that exceed a company's shareholder's equity,
- Restrictions shall not exceed 10% and the rate may be amended per industry by the Council of Ministers,
- Restrictions shall not apply to interest rates and similar payments added to investment costs.

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

Deemed interest deduction on cash injection as capital

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

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

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

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

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

- The companies that are publicly traded in Borsa İstanbul (BIST) at the last day of the year in which the 50% interest deduction is benefited, the rate would be increased by,
  - 25 points, if the publicly traded rate of nominal/value or the amount of the registered shares of the company is 50% or less (totally 75%),
  - 50 points, if more than 50% of the nominal/registered shares of the company are traded in BIST (totally 100%).
- In the case, the capital increase made in cash has been used for investments with Investment Incentive Certificate on manufacturing or industrial plants, purchase of machines or equipment required for such plants or lands or states for building of such plants, the 50% rate has been increased by 25 points.

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

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

23 United Kingdom

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

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

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

Arm's length nature of financing

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

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

Capital allowances

Capital allowances provide tax relief for capital expenditure on UK properties.

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

Accounting changes

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

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

Residential property

The taxation of residential property in the UK has changed significantly over the last number of years.

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

Individual non-resident owners of residential property in the UK have from April 2017 been subject to restrictions in relief for finance costs against their higher (40%) and additional rate (45%) income tax liabilities. Between 2017 and 2020, current reliefs are being phased out and replaced with a basic rate (20%) tax reduction.

Landlords of fully furnished residential properties have historically been able to claim an annual ‘wear and tear’ allowance of 10% of the rental income. From April 2016, the wear and tear allowance has been replaced by relief for the actual cost of replacement furniture, furnishings, appliances and kitchenware provided for the tenant’s use.

Other changes

The UK government is consulting on whether or not to bring non-UK resident companies within the charge to UK corporation tax in respect of their income and NRCGT gains.

Consequently restrictions to be introduced for UK companies from April 2017 in respect of interest relief and carried forward losses may also apply to non-resident landlords in the near future.

Asia Pacific

1 Australia

Thin capitalisation rule

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

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

Transfer pricing reform

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

Key features of the Australian transfer pricing rules include:
- Rules are based on the arm's length principle.
- Rules apply to cross-border transactions only (not to domestic transactions, although certain rules around 'stapled' structures effectively require some domestic transactions to be arm's length).
- No requirement for parties to be related (only for cross-border dealings to be inconsistent with arm's length dealings).
- Taxpayers are required to self-assess the transfer pricing position on an annual basis (in line with self-assessment regime for corporate tax).
- Seven year limit for the Australian Taxation Office (ATO) to make transfer pricing adjustments.
- Transfer pricing laws must be applied to best achieve consistency with the OECD's transfer pricing guidelines.
- Specific reconstruction provisions which allow actual transactions to be disregarded, and hypothetical arm's length transactions to be substituted.
- Specific provisions dealing with the interaction between the transfer pricing and thin capitalisation rules.
- Requirement to have contemporaneous transfer pricing documentation, to be eligible to establish a reasonably arguable position (RAP) for potential penalty mitigation. Simplified transfer pricing documentation measures are available to taxpayers in certain circumstances.

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

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

Country by country reporting (CbCR)

The Australian Government has implemented the OECD's new CbCR transfer pricing reporting standards, meaning that Australian taxpayers part of a multinational group with annual turnover greater than A$1 billion are required to provide certain additional information to the Australian Taxation Office (ATO) on an annual basis.

Australian CbC reporting rules apply to income years starting on or after January 1st 2016.

Under CbC reporting, applicable entities are required to lodge with the ATO a transfer pricing 'global master file' covering information on the global group's operations and related party dealings, and a transfer pricing 'local file' covering more detailed information on the group's Australian operations and related party dealings. The requirements for the global master file are similar to those outlined in the OECD CbCR guidance. However, the Australian local file is different in form and content from an OECD local file.

The Australian local file must be filed in a specific electronic format and will require detailed disclosures on the Australian business and related party dealings, as well as requiring copies of intercompany agreements and financial statements to be provided to the ATO. The Australian local file will be more in the nature of a transfer pricing disclosure form/information return than a transfer pricing report, and there is no requirement for a taxpayer's transfer pricing analysis to be included in the local file submitted to the ATO other than the transfer pricing methods applied and level of documentary support.

Importantly, the preparation of an Australian local file under CbCR is a new requirement in addition to the existing transfer pricing documentation rules. The local file will not constitute a RAP for Australian transfer pricing documentation purposes or provide related penalty mitigation benefits.

Taxpayers will be required to lodge the relevant CbCR documents with the ATO within 12 months of their income tax year-end. The Australian government has announced (but not enacted) a proposal to also increased the administrative penalties that can apply for failing to meet a filing obligation from July 1st. The proposal would increase the maximum penalty from AU$4,500 to AU$525,000.

The CbCR rules should be considered to determine whether the reporting obligations should apply and whether the obligation can be met by the entity's current reporting systems.

Tax losses

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

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

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

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

Distributions

Trusts that are not Attribution Managed Investment Trusts (refer below) must carefully manage their distributions from year to year in accordance with the trust deed and the tax legislation. If not managed properly it could cause the trustee to be taxed at 45% (to the extent non-resident investors hold units in the trust).

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

Current tax concessions

Withholding managed investment trust

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

Note also that on September 15th, the Government released draft legislation aimed at increasing the supply of 'affordable housing' in Australia. These measures were previously announced in the 2017/2018 Federal Budget, and include an increased CGT discount for Australian resident individuals investing in affordable housing and the introduction an Affordable Housing MIT. In a surprise move, the Government has also announced a so-called 'integrity measure' to prevent MITs from holding residential premises other than affordable housing and commercial residential premises. The draft legislation is open for comment until September 28th.

The MIT rules are a current focus area for the Australian Taxation Office (ATO). It is therefore critical that taxpayers confirm MIT eligibility prior to an acquisition of property.

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

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

Attributable Managed Investment Trust (AMIT)

On May 5th 2016, the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016, received Royal Assent, introducing a new system of taxation for MITs, referred to as AMITs, which applies by election from July 1st 2016 (but eligible taxpayers can elect early from the income year commencing July 1st 2015).

Broadly, the new AMIT regime applies an attribution model to the taxation of unitholders rather than the current system of present entitlement. Any trusts that are AMITs will also be deemed fixed trusts for Australian income tax purposes.

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

The pros and cons of electing into the AMIT regime must be carefully considered as there are likely to be changes required to systems, documentation (including trust deeds) and processes.

New CIV Regime

The 2016 Australian Federal Budget announced the introduction of two new collective investment vehicles (CIV) which may impact on fund structuring in Australia. The new rules introduce a corporate CIV (which were meant to be introduced from July 1st) and a limited partnership CIV (introduced from July 1st 2018).

The new CIVs will be required to meet similar eligibility criteria as managed investment trusts, such as being widely held and engaging in primarily passive investment. Investors in these new CIVs will generally be taxed as if they had invested directly.

The legislation has not been released however, the potential application of this new regime for future investments into Australia should be considered.

Investors should consider these new rules when structuring investments into Australia.

Public trading trust

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

Division 6C Working Group

The ATO has formed a 'Division 6C' working group with industry representatives. Division 6C of the Income Tax Assessment Act (ITAA) 1936 is relevant not only to determining whether a trust is a public trading trust, but also whether it can qualify as a MIT. This is because a key requirement for a trust to qualify as a MIT is that it cannot be a 'trading trust', which is a defined term in Division 6C. The objective of the ATO is to issue tailored public advice and guidance (including examples) on Division 6C matters (such as Taxation Rulings, Taxation Determinations and/or Practical Compliance Guidelines). To date, there has been no guidance issued.

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

Taxpayer Alert 2017/1 and Framework Document

Stapled structures

On January 31st, the Commissioner's concerns regarding stapled and fragmented structures and the Commissioner's position on a wider range of issues relating more specifically to the infrastructure industry were documented in the draft 'Privatisation and Infrastructure – Australian Federal Tax Framework' report (the Framework).

In the Taxpayer Alert 2017/1 (the Alert), the ATO highlighted its concerns with the 'fragmentation' of a single business in a 'contrived' manner through the use of staple or staple-type structures which seek to re-characterise trading income to passive income via leasing arrangements.

Treasury consultation

On March 24th, the Government released a Consultation Paper which seeks stakeholder views on potential policy options in relation to stapled structures, the taxation of real property investments and the re-characterisation of trading income. This comes following the release of Taxpayer Alert TA 2017/1 and the draft Privatisation and Infrastructure – Australian Federal Tax Framework (the Framework) by the Commissioner of Taxation in January 2017.

Taxation of Financial Arrangements (TOFA)

Submissions on the Consultation Paper were due on April 20th. Whilst an initial four week consultation period was set by Treasury, this has now been extended and a series of private and confidential targeted consultations with key interested taxpayers have been ongoing since April and were set to complete by July 31st. It is expected that Treasury will respond in the fourth quarter of 2017.

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

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

Non-resident capital gains tax (CGT)

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

The non-resident CGT rules should be considered for all disposals of real estate in Australia to determine whether an Australian tax obligation exists.

Withholding tax on capital gains

For transactions entered into after July 1st, a 12.5% non-final withholding tax will apply to the disposal of taxable Australian property by non-residents (including real property assets and interests in 'land rich' entities in certain cases), unless one of the following exclusions apply:
- Transactions involving real property valued under A$750,000
- On-market transactions
- Transactions involving vendors that are subject to formal insolvency or bankruptcy
- For non-TARP matters for which the vendor provides a 'residency' or 'interests' declaration

In certain circumstances, the vendor may apply to the ATO to obtain a 'clearance certificate' that confirms the vendor is not a foreign resident or a 'variation certificate' confirming that a lower withholding tax rate applies which can reduce the rate of withholding to 0%.

Be aware of 12.5% withholding tax to be withheld from the purchase price by acquirer of real property interests from July 1st (where a carve out does not apply).

Stamp duty

The Australian states impose stamp duty on a range of transactions, including the acquisition of real property (up to 7%). The rates vary slightly between states. There are landholder' rules that apply to the transfers of shares in companies or interests in trusts where the value of real estate assets directly or indirectly exceed a threshold (the actual tests vary by state).

Certain Australian states have also introduced a foreign purchaser surcharge which can impose additional duty of up to 8% on the purchase of Australian residential real estate.

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

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

The United States of America (US) introduced rules in 2010 (known as FATCA) intended to prevent tax evasion by US tax residents through the use of offshore investments. Australia has implemented FATCA by entering into an inter-governmental agreement with the US and introducing legislation in 2014. Broadly, the rules require Australian financial institutions to collect information in relation to certain accounts held by US persons and provide this information to the Australian Taxation Office (ATO).

In addition, Australia has implemented the Organisation for Economic Cooperation and Development's approach for the automatic exchange of tax information (the Common Reporting Standard or 'CRS') which is also known as 'global FATCA'. The CRS requires Australian financial institutions to collect information in relation to certain foreign persons and provide this information to the ATO. The CRS applies to Australian financial institutions from July 1st, with a first reporting deadline of July 31st 2018.

You should consider the impact of FATCA and the CRS on your Australian entities.

Foreign Investment Review Board (FIRB)

The new foreign investment laws were enacted on December 1st 2015, establishing a new regime for assessment of foreign investment in Australia; the first major change to the law in 40 years. The law has been substantially re-written, featuring stronger compliance and enforcement provisions, a new 'user-pay' philosophy and new operational concepts and procedures. The key 'national interest' screening test remains, along with most, if not all, of the criteria used to determine whether an investment requires screening.

In addition, they have introduced application and notification fees to the FIRB screening process, Increased penalties for non-compliance, focus on role of advisers, and announced the formalisation of the role of tax in the FIRB screening process (including compliance with tax laws, provision of information to the ATO, and consideration of 'significant tax risks').

The new FIRB rules should be considered early in a transaction as the more stringent screening process may impact on timing for receiving approval.

DPT

The new 'diverted profits tax' (DPT) applies for income years starting on or after July 1st. The DPT will impose a penalty tax rate of 40% on profits transferred by large multinationals offshore through related party transactions with insufficient economic substance, that reduce the tax paid on the profits generated in Australia by more than 20%.

The DPT will apply where it is reasonable to conclude based on the information available to the ATO at the time that the arrangement is designed to secure a tax reduction. Administrative measures will accompany the rules, including the imposition of a liability when an assessment is issued by the ATO (that is, it will not operate on a self-assessment basis) and require upfront payment of any DPT liability, which can only be adjusted following a successful review of the assessment. The onus will be put on taxpayers to provide relevant and timely information to the ATO on offshore related party transactions to prove why the DPT should not apply.

It should be noted that unlike the UK equivalent, the Australian DPT has no specific carveout for financing arrangements.

The new DPT rules should be considered to determine whether there is any risk of these rules applying.

Multinational Anti-Avoidance Law (MAAL)

The Australian Government has enacted the MAAL which took effect from January 1st 2016. The MAAL rules amend Australia's general anti-avoidance rules to counter the erosion of the tax base by multinational entities with AU$1 billion or more global annual group income. The MAAL targets arrangements where sales are made by a multinational group entity outside Australia directly to third party Australian customers, with local sales/marketing support provided by an Australian entity of the multinational group, but where that Australian entity does not book sales revenue in Australia.

The new MAAL rules should be considered to determine whether there is any risk of these rules applying.

2 India

Real estate tax and regulatory summary

A foreign investor is not permitted to own immovable property directly in India. However, this restriction does not apply to a Non-resident Indian, Person of Indian Origin (other than for agricultural land, plantation property, farm house) and a foreign company acquiring immovable property (through a branch or project office or other place of business in India) for carrying out its business activities. However, a foreign investor can invest in permitted securities of an Indian company undertaking construction and development of real estate projects, Special Economic Zones (SEZs), industrial parks, business centres, townships, hotels, etc., subject to certain conditions provided under the Foreign Direct Investment (FDI) policy of the Government of India.

Corporate tax

The profits of an Indian company are generally subject to a corporate tax rate of 30% (plus applicable surcharge and education cess).

The manner of taxation for an Indian company engaged in real estate sector depends on the nature of the activity carried out by the company.

Build to sell model

Indian companies engaged in development and construction of residential projects, typically, follow a 'build to sell' model.

Income from sale of property under this model is characterised as business income and taxable at applicable rates, on a net income basis. Development and borrowing cost incurred to develop the property is considered as part of inventory and allowed as deduction in a phased manner in line with the accounting policy followed by the company. Generally, Indian companies follow percentage completion method for recognising income and accruing expenses.

Build to lease model

Indian companies engaged in development of office space e.g. SEZ development follow 'build to lease' model. Certain Indian companies also follow hybrid models e.g. retail mall assets, where it could be combination of fixed lease and revenue share of the tenants.

The taxability under 'build to lease' model would largely depend on the facts of each case. In a case where the primary objective of the company is to lease property together with provision of other related facilities/amenities, it should be characterised as business income and would be taxed in a manner similar to 'build to sell' model other than the fact that, in this case, the borrowing cost incurred to develop the property is usually capitalised and depreciation allowance can be claimed by the company in that respect.

In case, the company earns rental income only from leasing (without provision of related facilities/amenities), such rental income is characterised as income from house property. There is a specific tax computation mechanism prescribed to determine the quantum of income taxable under the head income from house property.

A standard deduction of 30% of rental income, in addition to deduction for interest expenses and property taxes paid at actuals is provided for before arriving at taxable income under this head.

Characterisation of income earned by a company engaged in earning rental income from leasing activity has been a matter of debate and been subject to protracted litigation. The taxability is a function of systematic/organised activities carried out by the taxpayer to provide services to the lessees.

Taxation of notional rental income

Notional rental income of building or land appurtenant thereto is chargeable to tax under the head income from house property.

Notional rental income, in respect of building and land appurtenant thereto should be considered to be nil for a period up to one year from the end of the financial year (FY) in which the construction completion certificate is obtained from the relevant authority.

The above is, however, subject to the following:
- The building and land appurtenant thereto is held as stock-in-trade; and
- The building and land appurtenant thereto is not let out during the whole (or any part) of the year.

Thus, post one year from the said date, tax on the notional rental income would be payable in respect of stock-in-trade which is not let during the whole or a part of the year. For Illustration, refer to Annexure 1.

Joint development agreement (JDA)

Execution of JDA between the owner of immovable property and the developer triggers capital gains tax liability in the hands of the owner.

Currently, there are divergent views and practices as regards the timing and computation of such capital gains tax liability in the hands of the property owners.

Generally, the capital gains tax liability is triggered in the hands of the property owner in the year in which the possession of immovable property is handed over to the developer for development of a project. This has been the cause of undue hardship for the land owners, where the arrangement provides that the consideration is realisable only when the project has been completed (land owners are usually remunerated by way of an area/revenue sharing arrangement on the completion of the project).

With a view to minimise the sufferings caused due to timing difference, specific provisions for taxability of capital gains from JDA's were introduced, vide Finance Act, 2017, covering situations where consideration to the property owner is in the form of an area/revenue share in the project. Provided below are the key provisions:

- Type of tax payer – Individual or Hindu Undivided Family (HUF)
- Timing of taxability – Year in which the completion certificate for the project (whole or part) is issued by the relevant authority. If the share in the project is sold prior to the receipt of the completion certificate, taxability in the year of actual sale
- Deemed consideration for levying tax on share in the project – Aggregate of the stamp duty value of the relevant share of project on the date of issue of the completion certificate and cash consideration received
- Tax cost base for eventual sale of built up area – Deemed consideration to be treated as cost of acquisition for computing taxable income on subsequent transfer of share in the project
- Tax deduction at source – Tax deduction at the rate of 10 per cent on the portion of cash consideration

For Illustration, refer to Annexure 2.

Thin Capitalisation Norms

Where an Indian company or a permanent establishment of a foreign company incurs expense by way of interest or similar consideration exceeding INR10 million, in respect of any debt from a non-resident Associated Enterprise (AE), any excess interest as defined shall not be deductible in computation of income from business.

Excess interest is defined as the (i) total interest in excess of 30% earnings before interest, tax, depreciation and amortization (EBITDA) or (ii) interest paid to AEs, whichever is lower.

The excess interest, which is disallowed can be carried forward to the following FY and allowed as a deduction against profits of the subsequent years, subject to the maximum allowable interest expenditure stated above. The excess interest can be carried forward for a period of 8 assessment years immediately succeeding the FY in which excess interest is computed. For Illustration, refer to Annexure 3.

Sale of properties

Sale of properties held as capital assets (i.e. not held with purpose of as short-term in nature. Long-term capital gains are generally taxable at 20% (plus applicable surcharge and education cess) and short-term capital gains are taxable at 30% (plus applicable surcharge and education cess).

Anti-abuse provision

Sale of properties without consideration or for a nominal consideration is subject to taxation at a deemed value (usually determined based on the values imputed for stamp duty purposes).

Corporate restructing

Transfer of properties which may occur by way of corporate restructuring (such as amalgamations, demergers, etc.) could be tax neutral subject to conditions.

Investment linked tax incentives

Tax incentives

Investment linked tax incentives are available for certain asset classes (such as certain affordable housing projects, slum redevelopment projects, hotels meeting certain criteria, etc.).

Profit linked tax incentives

Profit linked tax incentives are provided, amongst others, to companies, (i) engaged in development of a SEZ; (ii) developing and building affordable housing projects; (iii) SEZ units, subject to conditions.

However, the profit linked incentive for SEZ developers has been withdrawn for cases where the development is not commenced by April 1st. Similarly, profit linked incentives to SEZ units has been phased out for units not commencing activities by April 1st 2020.

Minimum Alternative Tax (MAT)

Where the tax liability of an Indian company (computed in the manner prescribed) is less than 18.5% of its adjusted book profits, tax at 18.5% (plus applicable surcharge and education cess) on such adjusted book profits is payable by it.

MAT credit is available to be carried forward for 15 years.

Real Estate Investment Trusts (REITs)

REIT is an investment vehicle launched by a Sponsor in the form of a trust duly registered with the Securities and Exchange Board of India (SEBI). REITs are required to list and hold completed and rent-generating properties in India either directly or through holding company (Hold Co) or Special Purpose Vehicles (SPVs) that hold rent-generating properties in India.

Typically, income producing real estate assets owned by a REIT include office buildings, shopping malls, apartments, warehouses, etc.

Conditions associated with REIT, inter alia, include the following:
- REITs must distribute at least 90% of its net distributable cash flows to the unit holders
- REITs are prohibited from investing in vacant land or agricultural land or mortgages (with certain exceptions)
- At least 80% of the value of a REIT to be in completed and rent generating assets, with a lock-in period of 3 years from the date of acquisition.

REITs have been accorded effective tax pass through status, whereby certain specified income of the REITs are taxable in the hands of the unitholders of the REIT – for non-residents, relief under the applicable tax treaty is available, if any. There is, however, no specific pass through for distributions of gains from disposal of property or shares.

Dividend income[1] received by the REIT from SPVs should be exempt from tax in the hands of the REIT. However, where the total income of the REIT includes dividend income received from Indian companies, in excess of INR1 million, such excess dividends would be taxed at the rate of 10% (plus applicable surcharge and education cess).

[1] The company declaring dividend is liable to pay dividend distribution tax ("DDT") at the rate of 15 per cent to be grossed up, plus surcharge at 12 per cent and education cess at 3 per cent on tax and surcharge. In order to further rationalise the taxation regime for REITs, Finance Act, 2016 has provided for an exemption from the levy of DDT in respect of dividend declared, distributed or paid by the company to the REIT, subject to the REIT holding 100 per cent of the equity share capital of the company and the dividend declared being out of current income.

Sale of units of the REIT is subject to a preferential tax regime i.e. long-term capital gains are exempt and short-term capital gains is taxable at 15% (plus applicable surcharge and education cess). These preferential rates are however applicable subject to payment of Securities Transaction Tax (STT) on the sale transaction.

Where, however, STT is not paid on sale of REIT units, the long-term capital gains would be taxable at 20% and short-term capital-gains at 30%.

Tax on repatriation to investor

Income earned on investments made by non-residents in an Indian company is typically in the form of capital gains, interest and dividends.

Ordinarily, long-term capital gains on sale of unlisted shares are taxable at 10% (without indexation benefit). Long-term capital gains on sale of listed shares is exempt from tax (subject to payment of STT). Short-term capital gains on sale of equity shares is taxable at 15% (plus applicable surcharge and education cess), subject to payment of STT. Further, short-term capital gains on sale of other securities are usually taxable at 40% (plus applicable surcharge and education cess) in case of foreign companies.

Dividend is exempt from tax in the hands of the recipient.

Interest income is usually taxable at 40% (plus applicable surcharge and education cess) in case of foreign companies. In certain specified cases, interest income could be subject to concessional tax rate of 5% (plus applicable surcharge and education cess), subject to conditions. For non-residents, relief under the applicable tax treaty should be available, subject to conditions.

Transfer pricing

The Indian transfer pricing code provides that the price of any international transaction between associated enterprises is to be computed with regard to the arm's length principle. However, the transfer pricing legislation is not applicable when the computation of the arm's length price has the effect of reducing income chargeable to tax or increasing losses in India. This is aligned with the legislative intent to protect the Indian tax base.

Further, the provisions relating to domestic transactions have been rationalised vide the Finance Act, 2017 so as to reduce compliance burden and ensure effective reporting.

Losses carried forward

Losses under the Income-tax Act 1961 are typically allowed to be carried forward for eight years, subject to conditions. There are no time limits for carrying forward unabsorbed depreciation. Where there is a change in ownership or control of closely held companies beyond 49%, unexpired losses (but not unabsorbed depreciation) should lapse.

However, to be eligible to carry forward losses, it is important to file annual income-tax returns on or before the prescribed due dates.

General Anti-Avoidance Rule (GAAR)

GAAR provisions could be invoked by the Indian income-tax authorities in case an arrangement are found to be 'impermissible avoidance arrangement'.

GAAR provisions are effective from FY 2017–2018. The guidelines for application of the provisions of GAAR have also been prescribed.

The onus to prove that the main purpose of an arrangement was to obtain any tax benefit is on the income-tax authorities. The tax payer can approach the Authority of Advance Rulings for a ruling to determine whether an arrangement can be regarded as an impermissible avoidance arrangement.

However, GAAR applies to impermissible avoidance arrangements, irrespective of the date on which they have been entered into, in respect of tax benefits obtained from the arrangements on or after April 1st.

Stamp duty

Stamp duty is generally applicable on document of sale of immovable property. The rate of stamp duty varies from state to state. Typically, the stamp duty ranges from 5% to 15%. Corporate restructurings/transfer of shares (other than shares held in demat form) also attract stamp duty.

Municipal tax

Municipal corporations or other local bodies are entitled to recover property taxes from buildings constructed in cities and towns. The property taxes are levied on 'rateable values', fixed on the basis of market value of the property or the rental returns, which the property owners derive from the property.

Indirect taxes

Goods and Services Tax (GST) has been implemented in India effective July 1st. GST subsumes majority of indirect taxes in India. Under the erstwhile regime, Value Added Tax (VAT) and service tax was applicable to Indian companies engaged in real estate business, customs duties were applicable on import of goods and excise duty was applicable on procurement of manufactured goods. Most of the taxes were not available as credit in the system and hence, led to higher tax cost. Under the GST regime, one of the key benefit is elimination of cascading effect of taxes.

The real estate sector would benefit on account of increased availability of input tax credits, specifically with regard to taxes paid on the key inputs such as steel, cement which were earlier a cost.

The GST rate on construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer has been notified to be 18%. However, the notification also deems the value of land to be one-third of the total amount charged for such supplies and this has been allowed as a deduction. Which means the effective rate of tax on such services would be 12%. On other construction services, the rate of tax has been prescribed to be 18%.

Under the erstwhile regime, both VAT and service tax was applicable on under construction property (works contract service), which has resulted in numerous litigations. Under GST regime, works contract service (i.e. in relation to immovable property) has been deemed to be a service, which is a welcome move and would provide certainty on taxability of under construction properties.

For developers who subsequently let out the buildings, the rate of tax on renting is 18%. However, the input tax credit of GST paid by the said developer with regard to works contract services and goods/services or both received for construction of immovable property (other than plant and machinery), has specifically been restricted.

Overall, while optically the tax rate may appear to be higher, increased availability of credits to real estate developers should lead to reduction in prices in the long run. Further, GST has also introduced anti-profiteering provisions, mandating the businesses to pass on the benefit of reduced tax incidence on goods or services to the consumers. This would in turn ensure reduction in prices for the consumers.

Real Estate (Regulation and Development) Act 2016

The Real Estate (Regulation and Development) Act 2016, that seeks to protect the interests of the large number of aspiring buyers and to promote transparency, accountability and efficiency in the sector has become effective from May 1st and seeks to put in place an effective regulatory mechanism for orderly growth of the sector.

3 Indonesia

Rental income

Final withholding taxes

A rental income from real estate property is subject to final income tax of 10% based on the gross rental fee. The final tax on rental of land and/or buildings (L&B) is withheld by third parties (i.e. tenants) and constitutes the final settlement of the income tax for that particular income. In the case that the tenant is a non-tax withholder or do not withhold the tax, the Company still need to pay the withholding tax to the tax office by self-assessment method. Consequently, any corresponding expenses (e.g. depreciation of the relevant buildings) will be non-deductible for tax purposes.

Companies shall be aware of this regulation. Otherwise, the Indonesian Tax Authority (ITA) may issue a tax assessment letter to impose the tax underpayment along with an interest penalty of 2% per month.

Transfer of Land and Buildings

In the event of transfer of L&B, the income is subject to a 2.5% final income tax based on the transaction value. Furthermore, the income from Transfers of Rights on L&B involving Sale and Purchase Binding Agreements on L&B (PPJB) are also included in the final tax object.

For transfers of simple houses and apartments conducted by taxpayers engaged in a property development business, the tax rate is 1% of the final income tax.

Transfers of rights on L&B to government (including State-Owned Enterprises and Regional-Owned Enterprises), in relation to procurement of land for developments of public interest, continues to be exempt, which is referred as a 0% rate.

The final tax on the transfer of L&B must be paid prior to the signing of the transfer deed by the notary. For taxpayers earning income from an L&B Sale and Purchase Binding Agreement, the final tax is now due at the time of full or partial payment, including a down payment, interest, charges and any other payments by the buyer.

When there is a change in the buyer's name in the PPJB due to a subsequent sale the L&B to a third party, the subsequent seller must pay the final tax prior to the amendment of the PPJB. The seller, whose name appears in the PPJB when it was first signed, signs the amended PPJB only if a copy of the validated final tax payment slips is made available. The seller has the obligation to report the amendment of the PPJB to the Directorate General of Tax.

On the transferee side, an acquisition of L&B rights will give rise to 5% duty (Bea Perolehan Hak atas Tanah dan Bangunan, or BPHTB). The 5% duty is imposed on the higher amount of the transaction value or the NJOP (Government Taxable Value).

Companies shall be aware of this regulation. Without completing this obligation, the notary will not proceed with the transfer.

The deductibility of expenses related to final taxed income

Some income derived from business activities involving L&B is subject to a final withholding tax (e.g. building rental, and sale of L&B. Income, which has already been subject to final withholding tax, shall be excluded from the corporate income tax calculation.

According to Indonesian Tax Law, expenses for generating, collecting and maintaining income subject to final tax and non-assessable income are non-tax corporate income tax.

Starting in the 2010 fiscal year, the ITA requires the taxpayer to maintain separate bookkeeping in the event of a business being subject to both final withholding tax and regular corporate tax. Specifically for joint expenses, i.e. expenses that cannot be separated, the deductibility of the expenses should be allocated proportionally when calculating taxable income.

Corporate tax reduction facility

Starting from the 2009 fiscal year, the ITA grants a corporate tax reduction facility for certain taxpayers, such as:

Public companies that satisfy a minimum listing requirement of 40% and other conditions are entitled to a tax cut of 5% off the standard rate, giving them an effective rate of 20%.

Small enterprises, i.e. corporate taxpayers with an annual turnover not more than IDR50 billion, are entitled to a 50% discount off the standard tax rate, which is imposed proportionally on taxable income of the part of gross turnover up to IDR4.8 billion.

Companies should review whether they are eligible to enjoy (or continue to enjoy) the corporate tax reduction facility for their corporate tax calculation.

Tax loss carried forward

Losses may be carried forward for a maximum of five consecutive years.

Companies should review their tax loss positions based on their previous fiscal year corporate tax figure in order to determine the current fiscal position and whether there are any expiring losses to be dealt with.

Fiscal depreciation

For tax purposes, buildings are typically depreciated over their useful life of 20 years. Thus, a 5% depreciation rate is applied every year (the straight line method). This depreciation must be included in the reported Corporate Income Tax Return, specifying the depreciation method, acquisition date and cost, the beginning book value and fiscal depreciation expenses.

Companies may have different methods to calculate the depreciation expenses for accounting and fiscal purposes. In this regard, companies must ensure that they have calculated the fiscal depreciation expenses in accordance with the prevailing tax regulation. Any discrepancy must be treated as temporary tax adjustment.

Transfer Pricing

The Indonesian Income Tax Law requires that related-party transactions must be conducted on an arm's length basis. Therefore, it is necessary for the Company to ensure that its related-party transactions are at arm's length, and supporting documents to substantiate this should be maintained.

Should the ITA not be satisfied with the documentation and explanation provided by the Company that the prices are commercially justified, there is a risk that the price may be re-determined by the tax office. The tax impact may be significant, depending on the item and type of taxes that are adjusted by the tax office.

The ITA has issued several tax regulations to govern the requirement for taxpayers to prepare transfer-pricing documentation (TPD) as follows:
- TPD is not required for domestic related-party transactions, unless they are carried out with the motive to enjoy different tax rates (e.g. transactions where one party is subject to final tax, transactions which are subject to Luxury Sales Tax, or transactions with Production Sharing Contract companies).
- The threshold to prepare TPD is IDR10 billion (i.e. circa US$760,000) for each counter-transacting party per year.
- When selecting transfer-pricing methods, the ITA has adopted the most appropriate method instead of the approach based on hierarchy.

For annual corporate income tax return purposes, the ITA requires taxpayers to complete disclosures regarding related-party transactions.

Furthermore, the ITA has issued a new on TPD requirements dated and effective since December 30th 2016. This new regulation does not revoke the existing transfer-pricing regulations, but prevails over the existing regulations to the extent that there are any inconsistencies. This new regulations add the following TPD requirements:
- Master file
- Local file
- Country by country report (CbCR)

The Master file and Local file must be prepared in the cases of taxpayers:
- Whose prior year annual gross turnover exceeds IDR50 billion,
- Whose prior year annual related-party transactions exceed IDR20 billion for tangible goods transactions or IDR5 billion for each transaction on services, interest, intangible goods or other,
- Have related-party transactions with parties domiciled in countries with lower income tax than Indonesia.

The master file and local file must be available no later than four months after the year end of the fiscal year. While the CbCR must be available 12 months after the year end of the fiscal year.

Companies who have related-party transactions must be aware that they may have to prepare TPD including the Master file, Local file, and CbCR. In the real estate industry, this may be necessary even for domestic related parties, given that some types of real estate income are subject to final income tax.

Value Added Tax

Real estate transactions are also subject to value added tax (VAT) at a rate of 10%. For these purposes, real estate transactions include rental and sales of real estate properties. Charges for common services for office buildings and the like are also subject to VAT at 10%.

Companies shall be aware of this regulation. Otherwise, the ITA may issue a tax assessment letter to impose the VAT underpayment along with the interest penalty of 2% per month. Furthermore, there is also an administrative sanction of 2% from the VAT base (transaction value) for corporate taxpayers if they did not issue VAT invoices.

Other regional taxes

Levy, stamp duty and other various regional taxes may be imposed on daily transactions in the real estate industry.

Companies shall be aware of this regulation.

4 Japan

Reduction of corporate tax rates and local corporate tax

The effective corporate tax rate for small and medium corporations is approximately 34.81% for tax years beginning on or after April 1st 2016 once local taxes are taken into account. A small and medium sized company is a company (i) whose paid in capital is no more than JPY100 million and (ii) that does not have a parent company whose paid in capital of JPY500 million or more. This rate will decrease to 34.59% for tax years beginning on or after April 1st 2018 and decrease further to 34.60% for tax years beginning on or after October 1st 2019 (depending on location, paid-in capital and other factors). Different rates apply to large corporations.

For foreign investors without a permanent establishment in Japan, the effective tax rate is approximately 24.43% (decreasing to 24.22% for tax years beginning on or after April 1st 2018, and increasing to 25.59% for tax years beginning on or after October 1st 2019).

Limitation on the net operating loss deduction and extension of the applicable period

Large corporations can offset up to 60% of their taxable income against tax losses for tax years beginning on or after April 1st 2016. This percentage will be reduced to 55% for tax years beginning on or after April 1st 2017 and further reduced to 50% for tax years beginning on or after April 1st 2018. The tax loss carry forward period is currently nine years but will change to 10 years for losses incurred in tax years beginning on or after April 1st 2018. For small and medium sized enterprises, the loss limitation percentages do not apply.

New invoice system rules – Consumption tax

The current consumption tax rate is 8%, which is scheduled to increase to 10% starting October 1st 2019. Some items, for example fresh food, will remain subject to consumption tax at 8%. Following the introduction of multiple rates, a new invoice system will commence from April 1st 2021 (replacing the existing system which relies on accounts). A modified book entry system will apply in the interim period.

Real estate acquisition tax and registration tax

The special taxation measures for registration tax (i.e. reduced tax rate of 1.3%) and real estate acquisition tax (i.e. reduction in tax base by 3/5ths) applicable to specific real properties acquired by J-REITs and TMKs will be extended for a another 2 years to March 31st 2019. The scope of real properties eligible for the reduced tax rate and tax base will also be expanded to include 'healthcare facilities' acquired by J-REITs.

Extension of concessionary measures regarding renewable energy facilities acquired by J-REITs

Renewable energy facilities acquired by a J-REIT are treated as qualified assets (for dividend deductibility test purposes) for fiscal periods ending on or before 10 years after the date the facilities are leased, provided the acquisition is made by March 31st 2020.

Transfer pricing

The 2016 Japanese tax reform introduced revisions to the transfer pricing documentation requirements for Japanese taxpayers. Under the new legislation, applicable entities must prepare four types of documentation, unless they meet exemption criteria based on transaction volume. The four transfer pricing documents required to be prepared are listed as follows:
- Notification of Ultimate Parent Entity form
- Country-by-Country Report (CbCR)
- Master File
- Local File

Submission of the Notification of Ultimate Parent Entity, Master File and CbCR will be required for fiscal years beginning on/after April 1st, 2016, if the taxpayer meets the threshold test of group consolidated revenues of over JPY100 billion in the preceding fiscal year. These three documents must be filed with the Japanese tax authorities via the e-tax system by the deadlines specified below.

Preparation of a contemporaneous Local File is required for all taxpayers with fiscal years beginning on/after April 1st, 2017, unless both of the following criteria are met: (i) transactions with a single counter-party amounted to less than JPY5 billion in the preceding tax year, and (ii) intangible property transactions with foreign related parties were less than JPY300 million in the preceding tax year. Submission of the Local File will be 'upon request' in an audit.

Notification of Ultimate Parent Entity form

The Notification of Ultimate Parent Entity form contains basic information on the ultimate parent entity, such as the location of the head office, corporate number, etc. The form is in Japanese and must be submitted by the close of the ultimate parent entity's fiscal year.

This is an earlier deadline than the CbCR, Master File and Local File. Accordingly, for taxpayers with a March year-end, the first Notification should have been submitted by March 31st (for taxpayers with a December year-end, the first deadline is by December 31st).

CbCR

The CbC Report content requirements are largely in line with the OECD BEPS Action 13 initiative and can be submitted in English. For domestic ultimate parent entities, the deadline for submission is within one year following the close of the ultimate parent entity's fiscal year.

Where the CbCR is submitted by the parent entity in a jurisdiction which is a member of the Multilateral Competent Authority Agreement (MCAA), the CbCR will be obtained by the Japanese tax authorities via automatic exchange. Where Japan cannot obtain the CbCR via automatic exchange, the CbCR must be filed either by a Surrogate Parent Entity or a nominated subsidiary in Japan by the relevant deadline.

Master File

The contents of the Master File closely align with the requirements set out in the OECD BEPS Action 13 initiative, with some minor differences. Submission of the Master File can be in either Japanese or English and must be filed within one year following the close of the ultimate parent entity's fiscal year.

Local File

Japan has a mandatory transfer pricing documentation requirement and this has not changed with the revisions to the legislation. However, under the new rules, applicable taxpayers must prepare Local File documentation by time of their tax return filing. Submission of the Local File is 'upon request' in an audit, which for taxpayers who meet the threshold has been clarified to mean within the time specified by the tax examiners (up to a maximum of 45 days).

If the taxpayer falls under the exemption threshold described above, the contemporaneous preparation deadline will not apply. Instead, the only requirement is submission of the Local File within the time specified by the tax authorities (up to a maximum of 60 days). Regardless of the lack of a contemporaneous requirement however, preparation of transfer pricing documentation well in advance of any audit commencing is always recommended, as there is no guarantee the full 60-day period will be specified by the tax authorities. Moreover, even if it is, 60 days is insufficient to prepare good documentation, particularly if any unusual/unexpected results arise.

Common Reporting Standard (CRS) self-certifications

In accordance with the tax reform of 2015 (effective January 1st), on or after January 1st, those who open a financial account with a reporting financial institution located in Japan must submit a self-certification indicating the name of the jurisdiction of residence, etc. to the reporting financial institution.

Beginning in 2018, each reporting financial institution will report information pertaining to financial accounts of specific non-residents by April 30th of each year, and the information on financial accounts reported will be automatically exchanged with tax administrations of each jurisdiction in accordance with the provision of exchange of information set forth in bilateral tax agreements, etc.

5 Saudi Arabia

Corporate Tax & Zakat

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

No depreciation is allowed for land. A 5% depreciation is applicable on Buildings Saudi Arabian companies are subject to 20% corporate tax on profits attributable to non-GCC[2] shareholders.

Zakat at 2.5% is applicable on GCC part of shareholding. Zakat is calculated at 2.5% of the adjusted net income or net worth, whatever is higher.

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

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

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

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

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

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

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

White Land Tax

Recent update

Pursuant to Royal Decree No M/4 dated November 24th 2015 and to Council of Ministers Decision No 377 dated June 13th 2016, the Saudi Arabian authorities issued the White Land Tax Law of 2.5%.

Undeveloped land plots located in the industrial area(s) are not included in the white/Idle tax law (i.e. would not be subject to the 2.5% land tax).

The tax will be collected by the Ministry of Housing ('MOH') which will be responsible for spending the tax as designated. The MOH has issued the White/Idle land tax law and implementing regulations.

The MOH will introduce/apply the tax law in 4-phases:
- Phase 1: Undeveloped lands equal to 10,000sqm and more, within a specific area determined by the MOH.
- Phase 2: Developed lands owned by ONE person in ONE district with a total size equals to more than 10,000sqm.
- Phase 3: Developed lands owned by ONE person in ONE district with a total size equal to more than 5,000sqm.
- Phase 4: Developed lands owned by ONE person in ONE city with a total size equal to more than 10,000sqm.

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

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

Value Added Tax

With the implantation of Value Added Tax (VAT), the Kingdom of Saudi Arabia (KSA) on January 1st 2018, businesses are required to register and to comply with a number of VAT obligations: i.e. registration, charging VAT, issuing tax invoices, filing periodical VAT returns and paying any VAT due to the tax authority. The standard rate of VAT is 5%.

With regard to VAT, lease or license of residential real estate are exempt. The exemption includes the following:
- Immovable property intended to be used as a home, and
- Real estate intended to be a primary residence including school dorms.

Moreover, any hotels, guests' houses, motel, serviced accommodation or any other building which is designed to offer temporary accommodation to visitors or travellers are not considered as residential real estate (not exempt from VAT).

6 South Korea

Asset Deal vs. Share Deal

In a Korean real estate market, Real Estate Fund (REF) is commonly used as an onshore vehicle to acquire real estate in Korea. Given that income tax relief is provided at the REF level, it is common to do real estate transaction on an asset deal whereby a new REF is established to acquire the target asset.

Recently, a share deal is increasingly considered when the property is held by REF even if the buyer has to assume REF's existing liability. One of benefits for the share deal is to save transfer tax (4.6% for asset deal vs. 0%~2.2% for share deal)

Period available for claiming a tax refund

When a foreign investor receives a Korean source income that is subject to withholding tax, the foreign investor is required to submit certain application form to the Korean withholding agent in order to claim treaty benefits (e.g. reduced withholding tax or exemption). If domestic withholding tax is imposed due to failing to comply with the requirements, the foreign investor (or withholding agent) is entitled for claiming a tax refund. With effect from January 1st 2017, the period available for claiming the tax refund was extended 5 years from the date of withholding, which was 3 years before the amendment.

Sale of Shares in a Real Estate Holding Company

Many tax treaties concluded by Korea has a provision that sale of shares in a Korean land-rich company by a foreign investor is taxable in Korea. The land-rich company is defined as a company of which real estate value consists of 50% or more of the company's total assets. With effect from January 1st, 2016, a Korean company holding real estate indirectly through another Korean company is also deemed to be a land-rich company for this purpose. This may impact two-tier Korean SPC structure (i.e. HoldCo-PropCo structure).

Thin Capitalisation Rule

The Korean thin capitalization rules disallow the deduction of interest relating to the debt from an overseas controlling shareholder (and debt from a third party as guaranteed by an overseas controlling shareholder) if the debt to equity ratio exceeds 2:1 (6:1 in case of a financial institution). The disallowed interest expense on the debt from a foreign controlling shareholder is further treated as dividends to the shareholder. Under the latest proposal, in line with the OECD's recommendation on the limitation of interest expense deductions (BEPS Action 4), the following new rule to restrict interest deduction on top of the existing thin capitalization rule would be introduced:
- The proposed rules will apply to the domestic company (including a Korean PE of a foreign corporation) having intercompany transactions with overseas related parties with the exceptions for banks and insurance companies.
- Net interest deduction claimed by a domestic company for the international transactions will be limited to 30% of the adjusted taxable income of the domestic company, meaning the interest expenses in excess of the 30% threshold will not be deductible.

The adjusted taxable income will be calculated by adding depreciation expense on fixed assets and net interest expense to the domestic company's taxable income.

The limitations will apply to the net interest expenses payable to overseas related parties (i.e. the amount of interest expense to be paid to overseas related parties minus the amount of interest income to be received from overseas related parties).

In applying the existing thin capitalization rule and the new interest deduction rule, a domestic company should apply the rule which would result in more denial of interest expense. If approved by the National Assembly, the proposed rules will be implemented from the fiscal year beginning on or after January 1st 2019.

America

1 Argentina

Sale of Stock by non-residents and dividend distributions

On September 23rd 2013 published Law 26,893 was disclosed which means that there is now a tax on capital gains arising from the transfer of shares, bonds and other securities. It also includes a tax on dividend distributions. It should be clarified that the exemption available for foreign beneficiaries (Section 78 of Decree No 2,284/1991) on income derived from Argentine share transfer was repealed. Thus foreign beneficiaries would become subject to a 13.5% effective income tax withholding rate on gross proceeds or, alternatively, a 15% income tax on the actual capital gain if the seller's cost basis can be duly documented for Argentine tax purposes.

On July 22nd 2016, Argentina published Law 27,260 (the Law) in the Argentine Official Gazette, which makes significant changes to the Argentine tax laws and establishes new tax regimes that may significantly affect individuals and companies doing business in the country.

One of the amendments introduced by this law to Income Tax Law is the elimination of the 10% withholding tax on dividend distributions that applied to foreign investors and to Argentine resident individuals that had been established on September 2013 by Law 26,893.

It is important to analyse the new impact that these measures may have in structuring projects.

Rollover of fixed assets

Income Tax Law establishes that in the event of disposal and replacement of fixed assets, the gain obtained from that disposal may be applied to the cost of the new fixed asset. Therefore, the result is charged in the following years, through the computation of lower amortisation and/or cost of a possible future sale of new goods.

It is important to consider the implications of applying of the roll-over mechanism in the income tax return.

The use of real estate trust

The use of real estate trusts is regulated by the Civil and Commercial Code, which provides a very flexible legal framework. It has been the preferred vehicle for real estate projects in Argentina and is commonly used in building construction, especially in structures where small and medium-sized investors are involved. There are no major taxation differences compared to other corporate entities.

Real estate investment trusts should be examined as an alternative to structure real estate projects in Argentina.

Transfer Pricing

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

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

Tax prepayments

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

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

Tax Treaty Network

Argentina has concluded tax treaties for the avoidance of double taxation with various countries, under which reduced withholding tax rates can generally be applied on dividends, interest, royalties and certain capital gains. Currently, there are more than 20 double tax treaties signed by Argentina.

It is strongly recommended to verify substance requirements to apply double tax treaty benefits.

Losses may be used to offset Argentinean profits arising in the same company. Any amount of tax losses that could not be used in the year in which they were incurred can be carried forward for five years. Tax losses cannot be carried back. Losses in transfers of shares generate specific tax loss carry-forwards and may only be used to compensate profits of the same origin.

It is important to monitor taxable profits and losses during the project and when you intend to reorganize your investment structure.

Foreign exchange control regulations

From December 2015, the Argentine Central Bank (*Banco Central de la República Argentina*, or BCRA) and other institutes such as the Ministry of Economy and Public Finance and the Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos*, or AFIP) among others, have been introducing important amendments to the Exchange Currency Market (*Mercado Único y Libre de Cambios*, or MULC). In this sense, regarding incoming flows of currency (as financial loans or capital contributions), the minimum permanence term for keeping in Argentina the inflow of funds were removed. Thus, resident entities can obtain access to the MULC for cancelling the principal of a financial loan in any term and non-resident investors can repatriate their investment in any term as well. Also, the requirement to place a non-interest bearing deposit equivalent to 30% of the inflow of funds (the so-called *'Encaje'*) was repealed.

Another topic that has been significantly modified relates to the option granted to residents to form foreign assets. It should be mentioned that prior to the introduction of the new set of regulations this alternative was cancelled. Nowadays, resident individuals and corporations and local governments may access the MULC to purchase foreign currency without the prior approval of the BCRA.

As to payments of debts arising from imports of goods, all existing requirements about documentation, amount limits or specific terms for having access to the MULC to make payments abroad were removed. In line with this, the provisions related to advanced payments have also been repealed; i.e. the access to the MULC for these transactions has now no special requirements.

For the payment of services rendered by non-residents, the formal prior approval of the BCRA was eliminated for payments exceeding the equivalent of US$100,000 in the calendar year for debtor and when the cancellation is to be made to a related company abroad or to beneficiaries and/or accounts established in countries not considered cooperative with fiscal transparency. The obligation to register the import of service through the Advanced Services Sworn Statement (DJAS) has been abolished and all existing requirements about documentation for having access to the MULC to pay abroad were removed.

As far as exports of services is concerned, the obligation to bring in and settle the foreign currency arising from these operations is no longer in force.

Although the functioning of the MULC has faced substantial changes, it should be noted that regulations regarding the entrance of funds into the country and the obligation of exchange of foreign currency in the MULC corresponding to payments of exports of goods are still in force. The terms in which the exporters have to comply with these obligations have been extended to 3,650 days (10 years) from the date of fulfilment of the shipping permit.

Besides this, there are no formal restrictions on the payment abroad of interest, dividends or profits, royalties and other commercial payments.

The Exchange Control Regime, even when it has been mitigated, by the softening of strict international trade controls and the abrogation of informal restrictions, is still in sight. Consequently, in each project a careful analysis should be performed.

Corporate Law Impacts

In case the purchaser of land is a foreign company, the purchase of real estate may either be treated as either an 'isolated act' or as an act evidencing some degree of continuous presence in Argentina. Recent administrative precedents and judicial case law tend to treat the purchase of real estate property by foreign companies under the second view and, hence, a permanent representation of the company in the country (e.g. a subsidiary or a branch) may be required by the local Office of Corporations.

A local presence in the country may be needed in other to acquire real estate property.

Rural land ownership law

Pursuant to Law 26,737, enacted on December 2011, foreigners shall not hold more than 15% of the total amount of land in the whole country, or in any province or municipality. An additional restriction prevents foreigners of a given nationality from owning more than 30% within the previously referred cap of 15%. The law specifically prevents any foreigner from owning more than 1,000 hectares (approx. 2,500 acres) of rural land in the Argentine *'zona núcleo'*, or an equivalent area determined in view of its location; and from owning rural lands containing or bordering significant and permanent water bodies, such as seas, rivers, streams, lakes and glaciers.

Decree 820/2016 recently issued by the Federal Government has introduced certain interpretation criteria in order to not over restrict foreign investment in rural land.

It is necessary to review hypothetical effects of this law in real estate investment with foreign investors.

Surface Right in the new Civil and Commercial Code

A surface right involves a temporary property right over real property not personally owned, which allows its holder to use, enjoy and dispose the property subject to the right to build (or right over what is built) in relation to the said real property. Maximum legal term for this surface right is 70 years.

The surface right holder is entitled to build, and be the owner of the proceeds. In turn, the landowner has the right of ownership provided that he does not intervene on the right of the surface right holder.

The surface right terminates upon completion of the established term (or by operation of law), or by express resignation, occurrence of a condition, consolidation, or upon 10 years from the last use in cases of construction. The landowner owns what is built by the surface right holder and thus, the landowner must compensate the surface right holder unless otherwise provided by agreement.

It is worth noting that this new legal mechanism is available for Real Estate projects in Argentina.

Simplified Companies

Law 27,349 provide different new tools for developing entrepreneurial capital. Among other legal mechanisms a trust for developing and financing such capital (FONDCE) has been created, as well as a new legal corporate type: Simplified Companies. The referred Simplified Companies has been created for providing every entrepreneur the possibility of incorporating a company, obtaining it tax code and a bank account in a short period and with a much more flexible structure than the one in force for regular Companies.

It is worth noting that this new legal mechanism is available for any kind of projects in Argentina.

Limits to the Property Right in the new Civil and Commercial Code

The new Civil and Commercial Code establishes that the exercise of individual rights over goods must be compatible with the collective influence rights. Such exercise must meet national and local administrative laws passed upon the public interest and must affect neither the performance nor the sustainability of flora and fauna ecosystems, biodiversity, water, cultural values, landscape, among others, according to the criteria foreseen in the particular legislation. This broad limitation over the exercise of property rights in Argentina is still to be interpreted and applied by local courts.

This is a current legal concern when exercising property rights.

2 Canada

Investment structures

Foreign investors may invest in property in Canada using a Canadian legal entity (corporation, partnership or trust) or may acquire property directly.

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

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

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

Compare the various structures that can be used to invest in property in Canada.

Corporate income tax rates

The combined federal and provincial/territorial income tax rates for the 2017 taxation year range from 26% to 31%, depending on the province or territory. The combined rates include the 15% federal rate plus the provincial or territorial rate which is applied when income is earned in one of Canada's ten provinces and three territories.

Corporate income tax rates have been stable, except for the province of Quebec which reduced from 11.9% to 11.8% effective January 1st 2017 (with further annual reductions of 0.1% to reach 11.5% in 2020), and the Yukon territory which reduced from 15% to 12% effective July 1st 2017.

Compare corporate income tax rates for different jurisdictions.

Capital cost allowance (tax depreciation)

Capital cost allowance (CCA) may be claimed on buildings and other structures at rates which range from 4% to 10% depending on the age and use of the property (i.e. commercial, residential, manufacturing, etc.).

CCA is calculated on a pool basis, with separate tax classes provided for various types of property. The deduction for CCA is calculated on the tax cost of the entire pool. Most rental properties (i.e. buildings costing more than C$50,000) are required to have separate tax pools so that CCA is claimed on a property by property basis and not on a combined pool of properties.

CCA is a discretionary deduction and cannot be claimed on a rental property to create or increase a tax loss unless the CCA claim is being made by a corporation, the principal business of which is the leasing, rental, development or sale of real property, or a partnership, the partners of which are all such corporations.

Ensure additions to a CCA class include the original acquisition price plus related transaction costs incurred to acquire the asset.

Thin capitalization rules

The Canadian thin capitalization rules may apply when the lender to a Canadian corporation is a non-resident person who alone or with other related persons owns more than 25% of the Canadian corporation's shares, and interest expense on the loan would otherwise be deductible to the Canadian corporation. If the ratio of these debts to equity exceeds 1.5:1, the interest on the excess is not deductible.

The thin capitalization rules will apply to debts owed by a partnership in which a Canadian-resident corporation is a member, as well as to Canadian-resident trusts and to non-resident corporations and trusts that operate in Canada, including when these entities are members of partnerships.

Disallowed interest under the thin capitalization rules will be deemed to be a dividend for Canadian withholding tax purposes that will be subject to dividend withholding tax of 25%, which may be reduced under a tax treaty.

Consider whether the thin capitalization rules limit the deduction of interest on debt and trigger a withholding tax liability.

Disposition of property by non-residents

A non-resident that disposes of capital property is subject to Canadian tax on the taxable capital gain, i.e. 50% of the gain (proceeds of disposition less capital cost of the property).

In addition, to the extent that the proceeds of disposition of depreciable property (i.e. a building) exceed the property's undepreciated capital cost, the excess (up to the property's capital cost) is taxable to the non-resident as recaptured depreciation, at the tax rate that would apply if the non-resident were a resident of Canada.

A gain on the sale of shares of an unlisted non-resident corporation, or a foreign partnership or trust interest, may be taxable in Canada if the corporation, partnership, or trust owns certain types of properties, including real property in Canada and when the shares or interest derives its value primarily from these properties.

Generally, a non-resident vendor must report the disposition to the Canada Revenue Agency (CRA) and obtain a clearance certificate in respect of the disposition. If no certificate is obtained, the purchaser is required to withhold and remit to the CRA either 25% (in the case of sale of land that is capital property) or 50% (in the case of land that is not capital property, a building or other depreciable property) of the gross sales proceeds. Relief from the reporting and withholding requirements may be available in certain cases.

In addition to the federal reporting and withholding obligations noted above, a non-resident vendor must separately report the disposition of real property to the provincial authorities where the real property is situated in the province of Quebec. If no certificate is obtained from Revenu Quebec, the purchaser is required to withhold and remit 12.875% of the gross sales proceeds. Relief from the reporting and withholding requirements may be available in certain cases.

When the disposition is on income account, i.e. inventory, the non-resident will be taxed on the resulting profit less applicable expenses, subject to treaty relief.

Ensure the tax consequences of property dispositions are calculated properly and any withholding and reporting requirements are met.

Losses carried forward

Losses incurred in a taxation year from a business carried on in Canada are deductible from income, other than income from property. If these losses are not used in the year they are incurred, they can be carried back three years and forward twenty years. However, losses of a non-resident from a business carried on outside Canada are not deductible in Canada.

Capital losses, resulting from the disposition of taxable Canadian property of a capital nature, can be carried back three years, and forward indefinitely, to reduce taxable capital gains realized on the disposition of taxable Canadian property in those years.

Ensure a loss utilization plan is in place for losses set to expire.

Withholding tax

Certain payments by a Canadian resident entity to non-residents are subject to withholding tax of 25% of the gross amount of the payment. These payments may include interest paid to related parties, dividends, rents, or royalties. The withholding tax rate may be lower when the payment is made to a resident of a country with which Canada has a tax treaty.

Interest paid to arm's length non-resident lenders is generally exempt from Canadian withholding tax, unless paid in respect of a participating debt arrangement.

Planning may be available to minimize withholding taxes.

Transfer pricing

Canadian transfer pricing legislation and administrative guidelines are generally consistent with OECD Guidelines, and require that transactions between related parties be carried out under arm's-length terms and conditions.

Penalties may be imposed when contemporaneous documentation requirements are not met.

Ensure all transfer-pricing documentation meets the requirements imposed by the Canadian transfer-pricing rules and by the rules of the foreign country.

Land transfer tax and registration fees

All provinces and territories and some Canadian municipalities levy a land transfer tax or registrations fees on the purchaser of real property (land and building) within their boundaries. The tax is expressed as a percentage, usually on a sliding scale, of the sales price or the assessed value of the property purchased.

Rates may be up to 5% depending on the city in Canada. The tax is generally payable at the time the legal title of the property is registered or on the transfer of a beneficial interest.

Foreign entities and certain taxable trustees that purchase residential property in the Greater Vancouver Regional District in the Province of British Columbia after August 1st 2016 or in the Greater Golden Horseshoe in the province of Ontario after April 21st 2017, are liable for a new 15% property transfer tax (in addition to the provincial and municipal land transfer tax).

Take into account the land transfer tax and additional tax costs when acquiring real property.

Principal Residence Exemption

Historically, a gain realised on the sale of an individual's 'principal residence' has been exempt from tax in most instances. In certain circumstances, non-residents have structured their investments in Canada to take advantage of the principal residence exemption.

A change in CRA's administrative position means that if an individual sells their principal residence in 2016 or later years, they will be required to report the sale, and the principal residence exemption on their income tax return to claim the full principal residence exemption (this was previously not a requirement).

Furthermore, the Department of Finance has issued new rules for taxation years beginning after 2016 that limits the type of trusts that can claim the principal residence exemption and extends the period during which CRA can assess taxpayers that do not report the sale of real or immovable property. The new rules also have implications for non-residents who acquire residential properties, and may limit the availability of the principal residence exemption to non-residents.

Be aware of the legislative changes and administrative changes to the principal residence exemption and consider any impacts.

Sales tax

The 5% federal Goods and Services Tax (GST) will apply on the purchase of real property and on certain expenses incurred in connection with the operation of the property, although the GST paid is usually recoverable (subject to significant restrictions in respect of residential rental properties). In most cases, a landlord is required to collect and remit GST on commercial rents received. However, a non resident vendor of real property is not generally required to collect GST on the sale of real property.

In addition, some provinces impose have harmonized their sales taxes with the GST. The harmonized sales taxes function as the GST, described above.

If a non-resident owns a property in a province that imposes a sales tax that is not harmonized with the GST, the non-harmonized sales tax will be a non-recoverable additional cost on certain expenses incurred in connection with the operation of the property.

Take into account sales tax when acquiring or collecting rents on real property.

3 Mexico

Books vs. tax depreciation

For book purposes, assets can be depreciated using different methods. For income tax purposes, fixed assets are depreciated on a straight-line basis applying the rates established by law. In addition, tax depreciation is adjusted for inflation, resulting in differences with the amount of the book depreciation.

Review book and tax depreciation, including the adjustment for inflation in the latter, and determine whether the tax depreciation rates are the highest allowed. For taxpayers in a tax loss position, a decrease in the depreciation rates could be analysed.

Income tax vs. flat tax deduction for assets

For income tax purposes, fixed assets are depreciated on a straight-line basis (e.g. 5% maximum depreciation rate for buildings, as land does not depreciate). There is not an alternative minimum tax (e.g. flat tax) in Mexico.

Asset impairment

Impairments are allowed under Mexican GAAP. However, impairments are not deductible for income tax purposes.

Check that no tax deduction from impairment of the assets is being taken by the company.

Confirm that impairment adjustments are not from obsolescence of fixed assets, because a tax deduction may be included.

Goodwill

Any amount paid in excess of the fair market value of the real estate is considered as goodwill, which is non-deductible for Mexican tax purposes. In addition to the amount being not deductible, the depreciation as well as any interest related to the goodwill will also become non-deductible.

Check if there is an amount related to goodwill, if such amount is being deducted, and whether the related amounts to depreciation and interest are being deducted.

Classification of real estate acquisition

Real estate must be classified for both book and tax purposes as inventory or fixed assets, depending on whether it is acquired for subsequent sale or for development. This will impact the way in which the real estate is deducted: as cost of goods sold (inventory) or via depreciation (fixed assets).

Review how the real estate is classified and determine how it must be deducted and whether this classification makes sense with respect to the business.

Thin capitalisation rules

Interest derived from debts granted by foreign related parties of the taxpayer that exceed three times its shareholders equity will not be deductible (several special rules apply).

Review the thin capitalisation position of the company and also the computation to determine the non-deductible interest, if this is the case.

Informative returns

Taxpayers are obliged to file informative returns related to several different matters. In general, the deadline to file said informative returns is February 15th of the following year, except for the informative return of transactions with related parties, which is filed together with the annual tax return. All taxpayers are subject to reporting relevant transactions on a quarterly basis. Relevant transactions are defined as share acquisitions or dispositions, extraordinary transactions with related parties, and corporate reorganisations, among others on form 76.

Prepare the documentation and ensure that the informative returns are duly filed, as it is a deductibility requirement for expenses and acquisitions made.

Transfer pricing

Mexican income tax regulations require that taxpayers conducting transactions with related parties (i) determine the price or value of such transactions at arm's length conditions and, (ii) secure the corresponding contemporaneous documentation. Otherwise, the tax authorities may determine the price or value that would have been used by independent parties in comparable transactions.

In connection with BEPS Action 13 (Country by Country reporting), local legislation aimed to comply with such reporting obligations has entered into force. In this regard, Mexican local entities with taxable income of MXN686,252,580 (i.e. approximately US$38 million) are obliged to file Local and Master Files, and Country-by-Country filing if worldwide consolidated revenues are equal or greater than MXN12 billion (i.e. US$665 million) on December 31st of the following year in which the obligation is triggered. Penalty for non-filing is MXN200,000 and may lead to disqualification from entering into contracts with Mexican public sector and cancelation of the taxpayer importer registry. Note that 2016 filing obligations must be complied with at the latest on December 31st of the current year.

Prepare a transfer pricing study covering each transaction carried out with related parties, including the country by country reporting requirements.

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

Pension fund exemption

Mexican tax law establishes a tax exempt regime for foreign pension and retirement funds investing in Mexican real estate. Such tax exempt regime on interest, leasing income and capital gains, if certain rules are complied with. Please note that income tax exemptions for foreign pension funds in connection with the sale of real estate or shares (which value is comprised in more than 50% of immovable property located in Mexico), should be available to the extent the real estate property was leased for at least a minimum period of four years before the transaction takes place.

Specific analysis of the structures involving foreign pension funds should be carried out in order to apply the tax exemption granted by the Mexican Income Tax Law.

Mexican REITs

A special tax regime is granted for Mexican REITs providing certain advantages, such as the no obligation to file monthly advanced income tax payments (among other tax benefits). In addition, the Mexican tax rules enacted a new type of REIT for developing hydrocarbon related activities in Mexico (known as REIT-E) that also provides tax benefits.

Review the applicable tax benefits for Mexican REITs.

Creditable VAT for specific business transactions

VAT paid on costs and expenses should only be creditable when the taxpayer carries out taxable activities. For VAT purposes, for example, the sale of land, houses and dwellings is VAT-exempt. Therefore, VAT may be a cost for those real estate companies performing VAT-exempt activities.

Specific review of VAT-able and non-VAT-able activities of Mexican real estate companies should be carried out.

Tax incentive for real estate developers

Taxpayers engaged in construction and sale of immovable property projects may elect to take a deduction for income tax purposes on the acquisition cost of land in the fiscal year that the land is acquired to the extent that this option is applied for a minimum period of five years for all the land being part of its inventory.

Review all requirements for the exercise of this option.

4 United States of America

Tax Reform

President Trump and the Republican-controlled Congress have indicated that comprehensive tax reform is currently one of the federal government's top legislative priorities. During his first address to a joint session of Congress, President Trump called for action on U.S. tax reform to 'restart the engine of the American economy' and said that his economic team is 'developing historic tax reform'. It is widely anticipated that such U.S. tax reform may occur later this year and could result in significant changes to existing U.S. tax law in several areas including corporate tax rates, business deductions, and international tax provisions.

Relaxation of the Volcker Rule

In the Summer of 2017, the US Treasury Department issued a report detailing proposed changes to the financial regulations as a result of the Dodd-Frank Act or Volcker Rule that would loosen the rules and allow banks to invest more freely with their money. President Trump and his administration provided the blueprint to revamp the Volcker Rule.

The Volcker Rule prohibits banks from engaging in trading and limits banks investment in certain private equity and hedge funds (including certain real estate funds).

Real Estate Investment Trust (REIT) built-in gains period back to five years

The IRS has issued final regulations under Section 337 (the 'Final 337 Regulations') that reduce the built-in gains recognition period for REITs from ten years to five years on a permanent basis. The Final 337 Regulations follow the temporary Section 337 regulations issued in June 2016 which impact certain REIT conversion and other transactions between REITs and taxable C corporations. The Final 337 Regulations will apply for transactions occurring on or after February 17th 2017 but taxpayers can choose to apply the five-year recognition period for transactions occurring on or after August 6th 2016.

Debt vs. Equity Regulations Stymied in Regulatory Freeze

President Trump issued a presidential memorandum in January 2017 that put a hold on all new federal rulemaking until the new administration can review all regulations in process with includes the debt vs. equity regulations which would have an effect on the real estate industry.

It is unclear whether the debt vs. equity regulations will be reversed or changed.

Carried Interest

President Trump campaigned before the election to eliminate carried interest. Carried interest is a method of compensating hedge fund, private equity and real estate managers that aligns with their investor's interest in the funds. Carried interest is generally a percentage of a fund's profits that are taxed as capital gains in addition to the management fees they receive.

The Carried Interest Fairness Act of 2017 was recently introduced to the Senate which proposes to eliminate carried interest.

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