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Key Tax Issues at Year End for Real Estate Investors 2016/2017

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

Introduction

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

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

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

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

This publication is intended to help detect the need for a specific action or to demonstrate the various options. It has been prepared by PwC for general guidance, and does not constitute professional advice. You should not act upon information contained in this publication without obtaining specific professional advice.

No representation or warranty (express or implied) is given to the accuracy or completeness of the information contained in this publication.

We hope that you will find Key Tax Issues at Year End for Real Estate Investors 2016/2017 a useful reference and source of information. We would be pleased to assist you with any further requests.

Berlin, December 2016

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List of Contents

List of abbreviations

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

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

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

Europe

1 Austria

Tax Group

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

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

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

Losses carried forward

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

Minimum corporate income tax

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

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

Real estate transfer tax

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

Also, the transfer of shares in a company owning Austrian real estate may trigger RETT in case 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.

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 market value of the real estate including gratuitous acquisitions. The tax rate 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 a r e a after December 31st, 1987 and
- 4.2% of the sales price without rededication.

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

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

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

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

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

Depreciation of buildings

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

In addition, as of 2016, the proportion of land is legally fixed with 40%. The depreciation is calculated from the remaining building value of 60%. A lower proportion of land can be proved through a corresponding expert opinion.

An expert opinion is necessary to make use of a higher annual depreciation rate for buildings or to prove a lower proportion of land.

VAT and lease contracts

Generally, transactions related to real estate (rental or sale) are VAT-exempt in Austria. No input VAT may be deducted. However, rental for residential purposes and rental for accommodations, such as hotel rooms, are taxable for VAT purposes at the rate of 10% with input VAT tax deduction. As of May 1st, 2016, the rental of hotel rooms is taxable for VAT purposes at the rate of 13% with input VAT tax deduction.

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

In order to avoid negative tax consequences (such as input VAT corrections), it should be analysed, whether the prospective tenants will render services which will enable input VAT deductions. It should also be considered whether the current tenants have changed from VAT-able turnovers to not VAT-able turnovers in 2016. The period for input VAT corrections covers the past 20 years.

Alternative Investment Fund Managers Act (AIFMA)

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

Generally, investment fund structures need to be analysed in detail due to their complex tax implications.

Austrian private foundations

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

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

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

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

Transfer of hidden reserves realised by Austrian private foundations

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

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

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

Potential transfers of hidden reserves should be reviewed to avoid 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 11th, July 11th, October 10th and December 20th 2016 [dates applicable for assessment year 2017 if accounting year equals calendar year]), a surcharge on the final corporate tax amount will be due (1.125% for assessment year 2016 and 2017).

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 2016 (accounting years ending between 31 December 2015 and 30 December 2016, both dates inclusive) is 1.63% (2.13% for SMEs). For tax year 2017, the NID rate is 1.131% (1.631% 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 current budget discussions of the Belgian government, there are political proposals/suggestions to abolish the NID (in compensation for the decrease of the general corporate income tax rate).

Thin cap rule: 5:1 ratio

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

European Anti-Tax Avoidance Directive

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 €3mio 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. At this point, no official deadline or further information has been communicated regarding the implementation of this Directive 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

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.

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

Please note that in the framework of the current budget discussions of the Belgian government, there are political proposals/suggestions to introduce a limitation of the use of the carried forward tax losses (in compensation for the decrease of the corporate income tax rate) in particular a limitation of 40% (above a threshold of €750,000).

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

Deferred taxation

The deferred taxation regime allows (provided certain conditions are met) 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.

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 VAT advance payment

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

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

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

Withholding tax

Since January 1st,2016, a uniform withholding tax (WHT) rate of 27% on interest, dividends and royalties is applicable. Please note that in the framework of the current budget discussions of the Belgian government, there is a political agreement to increase the standard withholding tax rate to 30%.

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.

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

Capital gains on shares

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

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

Fairness tax

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

The tax is only applicable if during the taxable period at hand, 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 is still pending.

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

Please note that in the framework of the current budget discussions of the Belgian government, there are political proposals/suggestions to abolish the fairness tax.

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

Anti-abuse regulation

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

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

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

Payments to tax havens

Since recently, Belgian tax-residents have to declare their direct or indirect payments made to tax havens when these payments amount to at least €100,000. This declaration is made through a specific form 275F 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 VAT

As per June 1st,2016 company-directors' fees are subject to VAT at 21%.

As per July 1st,2016, the VAT exemption rules for cost sharing arrangements (CSA) have changed. CSA's can be a more VAT efficient alternative for the VAT leakages that have arisen further to the implementation of the 'Skandia' doctrine in Belgium. 'Skandia' affects cross-border branch – head office structures whereby the branch and/or the head office are part of a VAT group in their resp. jurisdiction. Transactions within such structures now are within the scope of VAT. This of particular relevance to mixed and exempt tax payers with limited input VAT deduction such as many real estate companies.

As per August 26th, 2016, the act covering the scope of the VAT exemption for fund management has been amended.

In 2016, interesting administrative guidance was published in the field of a.o.
- the VAT taxation conditions for warehousing;
- the VAT taxation conditions for business and service centers;
- the reduced VAT rates for student, residential and social housing, seniories as well as schools;
- offshore windfarms;
- datacenters;
- PPP projects.

As per January 1st, 2017, Council Implementing Regulation 1042/2013 regarding the place of supply rules applicable to real estate transactions will enter into force. The EU Commissions' explanatory notes provide further guidance. The rules are of particular relevance in cross-border situations where the real estate, the supplier and/or the client are not in the same jurisdiction.

The Belgian government plans to abolish the requirement for quarterly VAT payers to make monthly VAT pre-payments.

Belgian Real Estate Investment Fund

The Program Act of August 3rd, 2016 introduces the new Belgian Real Estate Investment Fund (FIIS) to Belgian tax law. The Royal Decree implementing the FIIS regime is expected to be published by mid November.

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 will normally 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 2017

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 20–25% and compensate this budgetary gap with compensatory corporate tax measures.

Based on press statements of Belgian politicians, it is expected that the potential change could take the form of the following measures:
- A limitation of the use of the carried forward tax losses (limitation of 40% above a threshold of €750,000);
- The abolishment of the notional interest deduction;
- The introduction of the interest limitation rule (interest deductibility up to 30% of the EBITDA) following the European Anti-Tax Avoidance Directive;
- Increase of certain disallowed expenses;
- Review of the generally accepted depreciation methods.

3 Bulgaria

Transfer pricing

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

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

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

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

Country-by-country reporting

According to the proposed changes to the tax legislation Bulgaria will introduce country-by-country reporting requirements, implementing the Council Directive 2016/881 of May 25th, 2016. Multinational enterprise groups (MNE groups) shall file CbC reports in Bulgaria if their consolidated group revenue exceeds €750 million under the conditions of the respective Directive. A reduced reporting threshold of BGN 100 million (approximately €51 million) is proposed for MNE groups, whose ultimate parent company is a Bulgarian tax resident.

The first reporting year will be FY 2016. In case the secondary reporting mechanism applies, the first year for which CbC reports should be filed is FY 2017.

The reports should be submitted to the director of the Bulgarian Revenue Agency within 12 months of the end of the reporting fiscal year of the MNE group.

Analysis of the potential impact of the CbC reporting rules should be performed.

Thin capitalisation rules

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

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

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

Withholding tax

The income from interest and royalties paid by a local company to a foreign related EU company is not subject to Bulgarian withholding tax.

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

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

Beneficial ownership

A foreign entity is considered the beneficial owner of income if it has the right to freely dispose of the income and bears the full or a significant part of the risk related to the activity, and is not a conduit company.

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

Before setting the holding and financing structure, the requirements for beneficial ownership should be carefully considered in order to avoid adverse withholding tax implications.

Jurisdictions with preferential tax regimes

As of January 1st, 2016 a new definition of jurisdictions with preferential tax regimes was introduced in the Bulgarian tax legislation. The local tax legislation envisages 10% Bulgarian withholding tax on income from compensation and penalties (except for compensations under insurance contracts), which is accrued to persons established in such jurisdictions regime. Under the new rules a state would be qualified as a jurisdiction with a preferential tax regime if:
- It is not a member state of the EU; and
- It does not exchange information with Bulgaria on the basis of Directive 2011/16/EU
- It meets two of the following conditions;
  - It is not part to a bilateral or multilateral double tax treaty or information exchange treaty, which is in force for Bulgaria;
  - It has a double tax treaty or information exchange treaty with Bulgaria but it does not apply the treaty or it is not possible for it to apply it;
  - The CIT and its alternatives or the WHT on penalties and compensations is more than 60% lower than the tax due in Bulgaria.

The list of jurisdictions with preferential tax regimes is adopted by the Finance Minister on the recommendation of the executive director of the National Revenue Agency.

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

Real estate tax

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

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

Garbage collection fee

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

After January 1st, 2018, new rules for the calculation of the garbage collection fee will come into force. Under these rules the amount of the fee due should be determined in accordance with the actual volume of the garbage. When it is not possible to ascertain the amount of waste, the fee should be determined based on a value different than the taxable or the book value of the real estate.

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

Value added tax

The transfer of ownership over land and the rent of land is generally VAT-exempt. However, the transfer of regulated land plots (i.e. land that is eligible to be built upon) is a VAT-able supply.

The disposal of buildings for which the stage of 'rough construction' has not been completed, or for which more than five years have passed from the date of issuance of the permit for their use, is VAT-exempt. The sale of 'new' buildings or units in them is always subject to VAT.

The rent of buildings is a VAT-able supply, except for when the buildings or units in them are rented out to individuals for residential purposes.

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

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

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

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

4 Cyprus

Provisional income tax return for 2016

When a taxpayer anticipates that taxable income (e.g. rental income) will be generated, the taxpayer is obliged to prepare and submit a provisional income tax declaration form by July 31st in the relevant tax year (i.e. calendar year 2016). The respective tax (at the tax rate of 12.5% for corporate income tax; progressively up to a rate of 35% for personal income tax) needs to be paid in two equal instalments on July 31st and December 31st of the relevant year.

The taxpayer may submit a revised declaration at any time up to December 31st of the relevant tax year, i.e. up to December 31st, 2016 for tax year 2016.

Final tax payment for 2016

A corporate taxpayer has to pay by August 1st, 2017 by a self-assessment process any excess tax shown as due per its 2016 annual tax return after the deduction of any provisional tax already paid (tax return due by March 31st, 2018).

Final tax return for 2015

A company has the obligation to submit its 2015 tax return by March 31st, 2017. Any liability per its 2015 annual tax return after the deduction of the provisional tax paid (as above) should have been paid via self-assessment by August 1st, 2016.

Deemed dividend distribution for 2014

A Cyprus tax resident company, controlled partly or wholly by Cyprus tax resident persons, must declare 70% of the relevant profits of 2014 within the next two years as dividends to its shareholders (i.e. by December 31st, 2016). 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, 2017.

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

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 monthly intervals on June 30th and December 31st.

SDC for the six-month period July 1st, 2016 to December 31st, 2016 is due on December 31st, 2016 and for the period January 1st, 2017 to June 30th, 2017 is due on June 30th, 2017.

Amendment to the Immovable property tax Law

Until tax year 2016, the registered owner of immovable property situated in Cyprus is liable to pay an annual immovable property tax, which is calculated on the market value of the property as at January 1st, 1980, at the varying rates as noted in the table below. The first €12,500 of the property value as above is tax-free.

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

For 2016, a discount is granted to taxpayers on the above value of the immovable property tax:
- 75% if the tax is paid until October 31st, 2016 i.e. 25% of the immovable property tax is paid,
- 72.5% if the tax is paid between November 1st, 2016 and December 31st, 2016 i.e. 27.5% of the immovable property tax is paid.

As from tax year 2017, the immovable property tax is abolished.

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

Double tax treaties may provide protection from the above for sales of shares by non-residents of Cyprus.

Individuals may claim certain lifetime exemptions (up to a maximum of €85,430). In addition, certain disposals are exempt.

Subject to certain conditions, land as well as land with buildings, acquired in the period of 16 July 2015 up to 31 December 2016 will be exempt from CGT upon future disposal.

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 claimed 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 in 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, a Cyprus company may claim an EU group company loss.

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:

Property value €	Rate %	Fee €	Accumulated Fee €
Up to €85,000	3%	€2,550	€2,550
€85,001–€170,000	5%	€4,250	€6,800
Over €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 two 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.

The letting of immovable property is also exempt from VAT except where it relates to the following:
- The provision of accommodation in the hotel sector or a sector of similar character;
- The letting of premises and sites for parking vehicles;
- The letting of permanently installed equipment and machinery;
- The hire of safes.

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.

The reduced rate of 5% applies for the first 200 square metres of residences of total covered area of up to 275 square metres. In the case of families with more than 3 children the allowable total covered area increases by 15 square metres per additional child beyond the three children.

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.

As from June 8th, 2012 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 attributable to the remaining period of 10 years for which the property will not be used as the main and primary place of residence.

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.

5 Czech Republic

Real estate acquisition tax

As of November 1st, 2016, a new amendment to the Real Estate Acquisition Tax Act ('REATA') will be in force.

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

Other main changes are:
- Changes to conditions under which the first paid transfer of a real estate may be exempt from REAT.
- While according to the current REATA 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 squeeze-out mergers.
- Clarification of the definition of the utility networks, including the types and components, which are subject to REAT. Only the acquisition of an ownership rights to a building (or the part of building) which is part of utility network will be subject to REAT.

Companies should be aware that any transfer made after November 1st, 2016 shall be subject to the new rules.

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 2016 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 to the period 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 CZK 40,000. 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 January 1st, 2017, a pending amendment should come 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 sublease 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 any case. The newly amended regime of the depreciation of the technical improvement made on leased or subleased asset may not be applied for any technical improvement made on leased or subleased premises before January 1st, 2017.

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

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

Per the pending 2017 amendment to the ITA, it should be the tax residual value of a building demolished in the course of construction of a new real estate in its place that enters the tax basis of the new real estate. 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 may be 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 from January 1st, 2016

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

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

As of January 1st, 2016, 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 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

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

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

Reverse-charge regime on transfer of immovable property

As of January 1st, 2016 the reverse-charge regime 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 shall be 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

During 2017, the reverse-charge regime on provision of construction works shall be 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' as of January 1st, 2013. As unreliable VAT payers are considered those payers that, according to the tax authorities, do not comply with their tax related obligations.

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

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

Mandatory e-filing

As of January 1st, 2016, 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.

6 Estonia

Reduction of corporate tax rate

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

The corporate income tax rate should not change during 2016.

Sale of shares in a real estate company

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

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

Transfer pricing

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

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

Land tax

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

Budget for land tax payments.

Anticipated amendments

There are no fundamental changes currently expected to the Estonian tax system. Estonian Tax Procedure Act includes a general anti-avoidance rule, which entitles the Estonian tax authorities to ignore the legal form of a transaction and re-classify any transaction for tax purposes according to its economic substance if they believe that a transaction was undertaken with the purpose of tax avoidance.

In addition to the general anti-avoidance rule Estonia implements the specific anti-avoidance rules from EU Parent-Subsidiary Directive to the national law by imposing the 'anti-hybrid rule' and the 'anti-abuse rule' from November 1st, 2016.

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

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

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

7 Finland

Changes in real estate tax rates

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

In a government proposal given in October 2016, the Finnish government has proposed increases to the minimum and maximum real estate tax rates. The government proposal is pending approval, but it is intended that the new rates would be applied as of fiscal year 2017.

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

Limitations on the tax deductibility of intra-group loans

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

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

The interest deduction limitations do not apply in the following cases:
1) 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.
2) The entity does not carry out active business for Finnish tax purposes but is taxed in accordance with the provisions of the Finnish Income Tax Act (such as MRECs and typically also other real estate companies).
3) 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.

As a result of the EU Anti-Tax Avoidance Directive adopted by the EU Council on July 12th, 2016, resident companies carrying on real estate activities (including MRECs) will be subject to the interest deduction limitation rules by 2019 at the latest. It is further expected that the current content of the rules will be changed due to the previously mentioned Directive.

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

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.

Finnish real estate investment structures

According to a recent decision by the Supreme Administrative Court, Finnish source rental income received by a German investment fund was not subject to corporate income tax in Finland, as the German investment fund was comparable to a domestic tax exempt investment fund. The decision may result in re-evaluation of existing and envisaged real estate investment structures in Finland. It may also enable certain non-resident investment funds to request reassessment of the tax treatment of Finnish source rental income (the possibility to request reassessment with respect to fiscal year 2010 closes at the end of 2016 for non-resident investment funds whose financial period corresponds to a calendar year).

Existing and envisaged real estate investment structures by non-resident investment funds should be re-evaluated. Possibilities for requesting reassessment with respect to previous fiscal years should also be analysed.

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 2013

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

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

Own use of real estate management Services

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

The threshold is €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

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.

8 France

List of states or territories defined as NCST

For FY 2016, the list of NCST includes, Botswana, Brunei, Guatemala, Marshall Islands, Nauru, Niue, Panama.

French interest, dividends, capital gains (non real estate companies) realized by tax residents of 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 a rate of 50%.

France-Luxembourg double tax treaty

An amendment agreement was signed 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.

Additional tax on the sales of offices in the Paris area (Ile-de-France region)

Financial Bill for 2016 added an additional tax on the sales of offices in the Paris area. Under this new rule, the sale of office premises, commercial premises and warehouse which are considered as old building for VAT purposes are subject to a 0.6% tax rate. This tax is assessed, recovered and controlled under the same procedures and under the same penalties than the registration fees.

3% tax on dividends distribution

The French Constitutional Court (FCC) has rendered a decision as regards the compatibility to the Constitution of the 3% tax exemption for distribution made within a French tax group (September 30th, 2016, 2016-571, Layher).

For a reminder, French and foreign companies that are liable to CIT in France, excluding collective investment vehicles and small and medium-sized business, are in principle subject to a 3% tax on their dividend and deemed dividend distributions. However, distribution made within a tax group are exempt from the 3% tax.

On September 30th, 2016, the French Constitutional Court ruled that the application of the 3% tax to distributions made by French entities to shareholders that are not tax consolidated although the qualifying criteria for tax consolidation were fulfilled results in an unjustified tax treatment between taxpayers. Accordingly, the tax exemption for distributions made within a French tax group breaches the French Constitution.

The FCC decided to postpone the effects of its decision to January 1st, 2017. Therefore, the 3% tax exemption is maintained until December 31st, 2016 and thus, dividends distributed between French tax consolidated entities may still benefit from a 3% tax exemption until the end of the year 2016. As from January 1st, 2017, the 3% tax should apply to all distributions, irrespective of the belonging of the paying entity and the shareholder to a French tax group, unless the Financial Bill for 2017 introduce other rule.

Case law 'Lupa'

The French administrative Supreme Court ('Conseil d'Etat') has rendered a decision as regards the mechanism of revaluation and merger resulting the Quemener case law which in principle allow a step-up in basis free of tax when a French company acquires interest in French pass-through entities (July 6th, 2016, n°377904, Lupa).

For a reminder, the purchaser of a French pass-through entity should be in position to realize a tax free step-up of the property by implementing shortly after the acquisition the two following steps:
- Reevaluation of the property in the book of the pass-through entity;
- Winding-up without liquidation of the pass-through entity into the acquisition vehicle of the purchaser.

As a result of these steps, the Purchaser should recognize a gain on the reevaluation of the property and, in application of the Quemener case law, a loss for the same amount as a result of the cancellation of the shares it holds in the French pass-through entity.

On July 6th, 2016, the French administrative Supreme Court ruled that the Quemener rectification of the tax basis of the shares which are cancelled upon the merger applies only to avoid a double taxation of the entity implementing the merger. In practice, this condition could not be met whenever shares in the SCI have just been acquired.

This decision has been ruled in contradiction with a ruling published in 2007 by the French tax authorities confirming the Quemener restructuring case. The 'Lupa' case law raises a lot of uncertainty for new transactions, as the French tax authorities may review their guidelines to take into account the new case law.

Changes in Tax Law

The above mentioned development was made at October 17th, 2016 and thus does not take into account possible modifications of French tax rules that would be introduced by the annual Amended Financial Bill for 2016 and the Financial Bill for 2017 which first drafts should be provided over the next coming weeks.

9 Germany

Dividend and capital gains tax exemption

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

Capital gains received by corporations upon selling the shares in other corporations are 95% tax exempt. Currently, there is no minimum holding requirement. However, 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).

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 2015 before December 31st, 2016.

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 or six 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 2015 before December 31st, 2016.

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 2017 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, 2016.

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 2017.

NOL planning

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

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

NOL planning for partnerships

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

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

Losses carried forward

Any direct or indirect transfer of shares/interests (or similar measures, e.g. in the course of restructurings) may lead to a partial/total forfeiture of losses and interest carried forward at the German entity's level. Exemptions may apply for tax privileged restructurings (restrictive requirements). Also, there is a legislative proposal to soften for all share transfers after December 31st,2015 the loss forfeiture rules where the entity continues to perform the same business as prior to the share transfer.

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

Trade tax status

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

It should be verified whether the requirements are met from January 1st, 2017 onwards (if the fiscal year equals the calendar year) in order to mitigate trade ta x on income derived in 2017.

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 ta x prepayment reductions and/or refunds.

Substance requirements

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

It should be ensured that German substance requirements are met.

Transfer pricing

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

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

PE Cross-border transactions

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

Review cross-border transactions between head office and PEs.

Fiscal unity

The acceptance of an income tax fiscal unity is subject to strict observation of certain legal requirements. The profit transfer agreement needs to be registered with the commercial register before December 31st, 2016 in order to become effective for the fiscal year 2016. If companies do not obey the requirements during the minimum term of five years, the fiscal unity will not be accepted from the beginning.

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

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

Land tax

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

Apply for land tax 2016 refund before April 1st, 2017.

Real estate transfer tax

Federal states have the right to set the real estate transfer tax (RETT) rate themselves instead of applying the uniform federal RETT rate of 3.5%. In Bavaria and Saxony the rate of 3.5% applies. The other federal states have increased their RETT rate: Baden-Wuerttemberg (5%), Berlin (6%), Brandenburg (6,5%), Bremen (5%), Hamburg (4.5%), Hesse (6%), Lower Saxony (5%), Mecklenburg-Hither Pomerania (5%), North-Rhine Westphalia (6,5%), Rhineland-Palatinate (5%), Saarland (6,5%), Saxony-Anhalt (5%), Schleswig-Holstein (6,5%) and Thuringia (5% until December 31st, 2016; 6.5% thereafter). 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 expand German capital gains taxation of share deals also on foreign resident corporations holding directly or indirectly German real estate.

There are also discussions to levy German real estate transfer tax on share deals where less than 95% of the shares are transferred.

Furthermore, there are plans to limit the deduction of special business expenses borne by a foreign partner in a German partnership.

Constantly monitor German tax law changes.

10 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 75% of the interest accrued during the period of assessment. The Finance Bill has 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 75% to 80% which will take effect from January 2017. 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 8 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 9 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 from January 1st to 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 certain 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.

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 2016 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.

11 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 latter's 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. It is worth noting that the Tax Office (by way of restrictive interpretation of the law) have tended to limit the scope of this exclusion to companies performing only 'passive' management of real estate.

In this respect, pursuant to law, (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, verify whether they can be deducted based on the procedure explained above.

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

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

Tax losses carried forward

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

- tax losses incurred in the first three years of activity (provided that they derive from the launching of a new activity) can be used to entirely offset future taxable income;
- tax losses incurred in subsequent years can be used to offset only 80% of the taxable income of any following year. The remaining 20% must be taxed according to the ordinary rules (current IRES rate: 27.5%, expected to be reduced to 24% from FY 2017), 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 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'. The consequence is 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, the taxpayer which considers as not due to its will or discretionary the facts and circumstances which did not consent the minimum level of revenues (or lead to a systematic tax loss position) and does not want to submit the ruling, 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, for FY 2016, from 27.5% to 38%).

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 be submitted to the Tax Office upon request.

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

Losses on receivables

In general, losses on receivables are deductible if they can be proved with 'certain' and 'precise' elements and, in any case, when the debtor is subject to bankruptcy and stated similar proceedings. '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 €100,000,000) or €2,500 (all the others) and ii) the credit has expired for at least six months.

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

Check if the losses on receivables refer to debitors, which entered into special eligible proceedings.

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

Allowance for Corporate Equity

The Allowance for Corporate Equity (ACE, 'Aiuto alla Crescita Economica') is a tax relief (applicable from tax period 2011) to boost business 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 4.75% for FY 2016 and not yet determined for the following years, (the rate was 3% in FYs 2011–2013, 4% in FY 2014 and 4,5% in FY 2015). According to a first draft Financial Bill 2017, the ACE rate may be set up at 2.3% for FY 2017 and at 2.7% from FY 2018 onwards. 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.

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 are taken into consideration in the computation. Conversely, equity decreases reduce the ACE base since the beginning of the financial year in which they take place.

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

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).

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.

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

With regard to Financial Bill 2016, the higher value attributed to buildings for tax depreciation purposes is recognised from the fiscal year in course at December 1st, 2017.

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 not to have a contingent income to be taxed for IRES purposes.

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 to followed.

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 the current 27.5% to 24%. The new rate will be applicable with effect from FY 2017 for all companies subject to IRES, with the exception of the financial entities (unless changes by the forthcoming Financial Bill 2017, at present however not announced).

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.

New countries included in the Italian White List

Pursuant to Decree no. 9 August 2016 (published on August 22nd, 2016), the list of Countries or territories which allow the exchange of tax information with Italy (so called ‘White List’) has been increased from 73 to 123 members, now including also the Countries or territories which have executed with Italy agreements for the tax information exchange complying with the OECD standards, even in absence of treaties against the double taxation.

12 Latvia

Taxation of dividends

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

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

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

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

Management fees

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

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

Sale of shares and securities

Generally 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.

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% withholding tax (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% WHT from the sales proceeds or 15% tax from the profit. 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% WHT payment calculated on total income or 15% tax on profit.

Losses carried forward

Companies are able to carry forward tax losses accrued since 2008 for an unlimited period of time. However, starting from 2017 the utilisation of tax losses brought forward by Latvian-registered companies will likely to be capped at 75% of their taxable income for the tax period. Despite this cap, all losses arising after 2007 can be utilised indefinitely. Change of control may lead to a forfeiture of losses at the Latvian company's level.

Draft amendments to the CIT Act provide that tax losses brought forward will be capped at 75% starting from January 1st, 2017.

Deductibility of interest payments

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

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

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

Declining method depreciation for fixed assets

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

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

Exchange of shares

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

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

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

Provision for bad debts

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

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

Write-offs for bad debts

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

Consider whether the particular debt complies with these criteria.

Transfer pricing

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

Latvian Taxes and Duties Act lays down requirements for Transfer pricing ('TP') documentation that Latvian taxpayers must prepare to prove that their related party transactions are arm's length. According to these requirements, 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.

New amendments including new TP reporting standards are planned to be drafted due to the recent BEPS report published by the OECD.

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

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

Real estate tax

Companies have to pay annual real estate tax (RET). Generally, the RET is 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.

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

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

According to the 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.

13 Lithuania

Investment in real estate and land

There are no restrictions for foreigners to acquire the immovable property in Lithuania (except for land). Land (except for agricultural and forestry) can be acquired only by companies or individuals who are established or residing in the EU, in countries that have signed the European Treaty with the EU member states or in countries that are the members of OECD, NATO or EEA. 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

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.

Changes of filing advance real estate tax return

As of January 1st, 2016, legal entities that own private and (or) obtainable property on January 1st of the calendar year, have to submit the tax return of the advance RET for the first nine months of the current tax period as well as RET for the previous tax period. Submission of advance RET return was not required before January 1st, 2016.

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 and buildings rental services with VAT if such buildings are sold/rented to VAT payers.

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

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.

VAT treatment of services related to accommodation services

In cases when together with accommodation services secondary services, which make the accommodation services more appealing are provided (without additional fees), 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 1st of the next taxable period. Subject to permission from the State Tax Authorities, a taxable period other than the calendar year may also be used by companies. In that case, the payment and declaring terms should be changed accordingly.

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

Amendments to the Law on Corporate Income Tax regarding dividend exemption

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.

Changes in the procedures of calculating, declaring and paying the advance corporate income tax

As of January 1st, 2017, advance CIT, derived from the result of the historic tax periods, will have to be calculated differently:
- advanced CIT for the first six months of the tax period (I and II quarters) will be 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 will be 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 will be 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 the sale of real estate

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

Withholding tax on interest

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

Transfer pricing

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.

Thin capitalisation rule

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

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

Losses carried forward

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

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

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.

Tax payment and tax return filing deadlines aligned

It should be noted that as of October 1st, 2016 tax payers will be able to submit tax returns only electronically.

14 Luxembourg

Corporate tax rate

The aggregate income tax rate for 2016 is 29.22% for the entity registered in the Luxembourg City:

- Standard corporate income tax rate is 21% for the taxable income exceeding €15,000; otherwise it is 20%. The Luxembourg Government proposes to reduce this rate for companies with a net tax base of more than €30,000 to 19% for FY 2017 and to 18% for FY 2018;
- Municipal business tax is also levied at rate generally varying from 6% to 12% depending on where the company is located (the municipal business tax rate is 6.75% if the company has its registered office in the Luxembourg city);

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

Losses carried forward

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

Luxembourg Government proposes to limit the carry forward of losses incurred in 2017 and after 2017 to a maximum period of 17 years.

Tax losses cannot be carried back in Luxembourg.

Net wealth tax

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

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

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

Minimum net wealth tax

Since January 1st, 2016, a minimum NWT charge applies for all corporate entities having their statutory seat or central administration in Luxembourg. Such entities for which the sum of their fixed financial assets, transferable securities and cash at bank (as reported in their commercial accounts presented in the standard Luxembourg form) exceeds 90% of their total gross assets and €350,000, are subject to a minimum NWT charge of €3,210.

Luxembourg Government proposes to increase the minimum NWT from €3,210 to €4,815 as from FY 2017.

All other corporations are subject to a minimum NWT charge ranging from €535 to €32,100, depending on the amount of their total gross 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 (deriving from a complete or partial liquidation) paid by a Luxembourg company are not subject to withholding taxes in Luxembourg.

Transfer Pricing

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

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

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

A law, which is still under discussion, is proposing to introduce new transfer pricing policy, which would explicitly bring 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.

After the implementation of the law, including within transfer pricing documentation, good support evidencing the commercial rationale behind all controlled transactions, notably those that provide significant financing to Luxembourg companies, should be seen as an important priority.

If the new provision is enacted, it should be expected to take effect from January 1st, 2017.

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).

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

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.

The law is applicable since January 1st, 2016.

15 Malta

The Individual Investor Programme

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

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

Property transfers tax

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

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

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

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

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

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

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

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

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

United Nations pensions programme

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

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

16 Netherlands

Functional currency

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

If the company's fiscal year concurs with the calendar year, the request for application of this provision from 2017 onwards needs to be filed on December 31st, 2016 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, 2017, the request for separation needs to be filed on December 31st, 2016 ultimately.

Reinvestment reserve

In case a fiscal reinvestment reserve has been formed using profits made in the disposition of a business asset, the imposed three-year period for reinvestment needs to be taken into account. For example, the three-year period may end per December 31st, 2016 if you have formed a reinvestment reserve with respect to the disposition of a business asset in 2013 (and the fiscal year is equal to the calendar year).

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

Interest deduction related to acquisition

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

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

Possibility of loss compensation

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

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

Financing participations

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

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

Negative declaration after purchase or sale of immovable property

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

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

VAT taxable lease or let of immovable property

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

In case of VAT taxable lease or let and abovementioned is the case, then this 'negative' declaration must be provided in January 2017.

Dutch Tax Package 2017

The Dutch government published the 2017 Tax Package on September 20th, 2016. This publication summarizes the most important tax measures for the real estate market. The relevant measures concern Dutch personal income tax, corporate income tax and value added tax. As the legislative process still runs, the plans may still change. Most proposals are set to take effect on January 1st, 2017. If not, the effective date is mentioned separately.

Personal income tax

Private home

A building plot qualifies as a private home, when concrete steps are made to the start the construction activities. Or, if it is earlier, six months before the start of the construction activities. People with private homes can benefit from decreasing mortgage interest by opening up existing mortgage loans. Banks charge penalty interest which can be spread out over several years (interest averaging). The entire amount of new interest (including fine and storage) at interest averaging is deductible.

Listed monument buildings

Expenditure on listed monument buildings will no longer be tax-deductible as a personal deductible item. In 2019 the budget (€32 million per year) will be used within the framework of a recalibrated financing system for the care of listed monument buildings with a transitional arrangement being in place in 2017 and 2018.

Box 2 and exempt investment institutions

In Box 2 taxation is due on the positive substantial interest claim if a body in which the taxpayer holds a substantial interest acquires the status of a Dutch exempt investment institution (vrijgestelde beleggingsinstelling or 'vbi') or (foreign) low-taxed investment institution. All new applications enter into force on September 20th, 2016 at 3.15pm.

Box 3 and exempt investment institutions

Assets in Box 3 that are temporarily accommodated in an exempt investment institution (vbi) or (foreign) low-taxed investment institution in which the taxpayer holds a substantial interest, remain taxable in Box 3 if these assets return to Box 3 within eighteen months. Evidence to the contrary is possible. There will also be an active reporting requirement for the taxpayer. The fixed return from an exempt investment institution (vbi) or (foreign) low-taxed investment institution is linked to the applicable percentage of the highest bracket in Box 3 for that year.

Separated private assets (APV)

The scope of the APV allocation stop (for the purpose of preventing double taxation) will be limited and will only apply if an APV conducts a real, active business. Additional measures are implemented in connection with the double taxation that may arise as a result.

Levies on directors' and commissioners' remuneration

Foreign directors and commissioners of companies based in the Netherlands are regarded as having realised their profits from enterprise entirely using a permanent establishment in the Netherlands. The salary and result from other activities received by foreign directors and commissioners are regarded as being realised entirely in the Netherlands.

Box 3 foreign taxpayers

The income tax-free amount in Box 3 is also to be granted to foreign taxpayers.

Corporate income tax

Rate

The first tax bracket in which 20% corporate income tax is levied on the taxable amount will be extended from €200,000 to €250,000 in 2018, to €300,000 in 2020 and to €350,000 in 2021.

Interest deduction related to acquisition

For the application of the interest deduction restriction aimed at profit drainage and in the case of certain acquisition debts, the term related entity is to be extended to include, among other things, entities which form a collaborating group. The assessment of whether a collaborating group exists will take place on the basis of the facts and circumstances of the individual case. The focus is mainly on coordinated investments. *The change is applicable to financial years, which start on or after 1 January 2017.*

It is no longer possible to extend the scaling down period for the determination of the excessive part of an acquisition debt by transferring the acquired company within the group. The change is applicable to financial years which start on or after January 1st, 2017.

It is no longer possible to extend the deduction of interest on acquisition debts of a fiscal unit to include an acquisition debt of the acquired company. *The change is applicable to financial years which start on or after January 1st, 2017.*

It is no longer possible to extend the deduction of interest on acquisition debts after a legal (de)merger by transferring or shifting the acquisition debt. *The change is applicable to financial years which start on or after January 1st, 2017.*

Dividend withholding tax

Foreign shareholders' refund

On request and under conditions, certain non-resident shareholders who qualify as beneficial owner of revenues on which they do not pay personal income tax or corporate income tax in the Netherlands can receive a refund of withheld dividend tax insofar as this levy is higher than the personal income tax or corporate income tax they would owe if they would have resided or been based in the Netherlands. The condition that the revenue beneficiary is also the beneficial owner will also apply to requests for dividend tax refunds by foreign shareholders.

Beneficial owner

The term beneficial owner will also apply to the new withholding exemption from dividend withholding tax. This exemption does not apply if the income beneficiary body is not the beneficial owner. The change will enter into force on a date to be determined.

Withholding exemption

A new optional withholding exemption from dividend withholding tax will apply to certain income beneficiary bodies (including comparable foreign entities), which are (in part) not subject to corporate income tax. The relevant conditions must be satisfied at the time of distribution. The change will enter into force on a date to be determined.

Reduced remittance

The maximum amount of dividend withholding tax remitted by certain investment institutions on account of the withholding tax levied at source is limited if the beneficial owner is covered by the new withholding exemption for the redistribution of the dividend. The change will enter into force on a date to be determined.

Request and lower limit of refund

The request for refund of withheld dividend tax is no longer made with a return; further rules will be set for the content of the request and the submission deadline. The refund lower limit of €23 is also eliminated.

Value added tax

Building land

The meaning of the term building land is expanded. Land is considered to be building land if undeveloped land and developed land on which the seller demolishes the buildings transferred with a view to development. All circumstances on the date of transfer are relevant for the assessment.

17 Poland

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

New regulations on SAF-T, introducing additional obligatory monthly VAT reporting (in the SAF-T data format), are in force. Under the new regulations, entities using computer software to keep tax records are obliged, without summons from the tax authorities, to transfer electronically 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). The obligation to report in the SAF-T format applies to the largest entities (so called 'Large Entrepreneurs') for monthly periods since July 1st, 2016. So-called 'Small Entrepreneurs' and 'Medium Entrepreneurs' – covering presumably most real estate entities in Poland – will be obliged both to generate VAT reports in a SAF-T data format and report them on a monthly basis as of January 1st, 2017. Since January 1st, 2018, this obligation will concern also so called 'Micro Entrepreneurs'.

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 until January 30th, 2016. It should be noted that there is practice, according to which the change of the company's tax year is legally effective, provided that the change of the article of association was registered in the commercial register prior to the end of its last year prior to the change.

If you are planning to change the tax year, you should ensure that changes to the 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 corporate income tax ('CIT') payments. As such, the taxpayer pays monthly advances equivalent to 1/12 of the tax liability resulting from the annual CIT reconciliation filed in the previous year rather than advances based on actual income for the given tax year. This simplifies the monthly CIT reconciliation process, and may 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.

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.

Method of recognizing interest subject to thin capitalization restrictions

Polish tax 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').

Taxpayers should assess which method of recognizing interest subject to thin capitalization restrictions is more suitable. If the 'interest ceiling method' is to be chosen, the tax authorities must be notified by the end of the first month of the tax year.

Losses carried forward

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

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

Certificates of tax residence

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

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

Transfer pricing

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

Based on the amendments to CIT Law, the currently binding transfer pricing rules will be subject to a number of significant changes and new requirements will be imposed on taxpayers conducting related-party transactions. In general, more information on related-party transactions will need to be disclosed to the tax authorities. In particular, taxpayers (depending on their reported revenues and costs) will be obliged to prepare much more extensive transfer pricing documentation, conduct benchmarking studies and submit additional returns summarizing their related-party transactions. For instance, the taxpayers will, generally, be obliged to submit with the tax authorities – within a deadline for filing the annual CIT return – a written statement confirming that the required transfer pricing documentation was prepared. Thus, 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 happens under current regulations) but it will have to be prepared upfront. On the other hand, materiality thresholds for transfer pricing purposes will be increased. These amendments will, generally, enter into force as of January 1st, 2017.

Now is the highest time to review your related party transactions, examine their arm's length character, as well as prepare for the new documentation requirements.

Additional requirements regarding the withholding tax exemption for interest and royalties

Under the amendments to the Polish CIT Law entering into force as of January 1st, 2017, it is explicitly provided that the condition for application of exemption from withholding tax on interest and royalties – paid to associated companies from the European Union – would be that the recipient is beneficial owner thereof (i.e. that it receives the payment to its own benefit and is not an intermediary obliged to transmit the interest/royalties in total or in part to another entity). Moreover, the Polish payer will have to obtain from the interest/royalty recipient a written statement confirming his status of the beneficial owner.

In all cases of application of withholding tax exemption for interest/royalties under the Polish CIT Law, it should be analysed whether the recipient is indeed beneficial owner of the payment.

Reduced CIT rate

Net income received by CIT taxpayers is taxable in Poland at the general CIT rate of 19%. However – based on amendments to the Polish CIT Law applicable as of January 1st, 2017 – a new 15% CIT rate will be available for (i) so called 'small taxpayers' (reporting gross sales for the preceding tax year of no more than €1.2 million) and (ii) taxpayers commencing business activities in the first year of such activities.

It is recommended to verify whether you might benefit from the reduced CIT rate of 15%.

Taxation of in-kind contributions

The amendment to the Polish CIT Law applicable as of January 1st, 2017 changes the rules on recognition of taxable revenues related to in-kind contribution of assets other than a going concern. Taxable revenue will no longer be equivalent to the face value of the shares issued in exchange for the contribution. Instead, taxable revenue will correspond to the market value of the contributed assets.

This change eliminates existing controversies regarding taxation of in-kind contributions. At the same time, it could negatively affect execution of intra-group restructurings.

General Anti Abuse Regulations (GAAR)

GAAR entered into force as of July 15th, 2016 and it should be applicable to tax benefits derived thereafter (even if the transaction giving rise to tax benefit was executed before entry of GAAR into force). In line with GAAR, legal transactions with the main purpose of obtaining a tax advantage contrary to the object and purpose of tax regulations shall not result in tax benefit, if the activities of the taxpayer were artificial. Tax consequences of such transactions should be assessed as if alternative 'appropriate' transaction had taken place.

At the same time, the amended Polish Tax Ordinance Act provides for a new tax clearance instrument from the Minister of Finance (so called 'protective opinion'), intended to secure the taxpayer's position in case the background presented in the application may fall under the anti-avoidance regulations.

It is recommended to review the operations of your investment structures at the Polish end and check whether – as of July 15th, 2016 – you have derived any tax benefit, which may potentially fall within the scope of application of GAAR. Moreover, if you consider to enter into any real estate transaction or restructuring, it should be verified whether it may fall within the scope of application of GAAR and – in certain cases – application to the Minister of Finance for protective opinion might be considered.

VAT changes

There is a draft amendment to the Polish VAT Law, introducing a set of solutions aimed at improvement of tax collection. These cover inter alia: VAT taxation of selected construction services under reverse charge mechanism, changes in VAT refunds, limitation of quarterly VAT settlements, obligation of e-filing of VAT returns, restrictions concerning registration and deregistration for VAT purposes, as well as reintroduction of so called 'VAT sanction'.

Although the said amendment is still at the early stage of legislative process, it is intended to enter into force as of January 1st, 2017. Thus, it should be monitored, in order to assess whether and how these changes may impact your operations in Poland, as well as the trends on the Polish real estate market. Reintroduction of the VAT sanction, as well as recent attempts of the Polish tax authorities to classify the transactions of sale of a real estate as enterprise deals (subject to CLAT) rather than asset deals (generally, subject to VAT), may potentially increase the tax risk related to real property transactions and, thus, change the focus of the investors from asset deals into share deals.

18 Romania

Interest capping rules

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

Limitation of interest – interest deductibility is limited to the interest rate level of currently 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 party the obligation to pay interest and refund the borrowed capital. On this note, borrowed capital includes credit/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.

Companies should review their debt positions to determine whether adjustments are necessary to maximise interest and next FX losses deductions for 2016 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 1 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 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.

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 Double Tax Treaties (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.

Generally, 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

The anti-abuse rules have been supplemented with the definition of 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).

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 FY 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

As of 2014, companies can opt for a fiscal year different from the calendar year. The first amended fiscal year also includes the previous period of the calendar (i.e. January 1^{st} – 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

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

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

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

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

Depreciation methods for movable fixed assets

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

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

Revaluation of real estate property

Companies are required to treat part of the revaluation reserve 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.

Property taxes

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%.

For non-residential buildings, 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%.

Building tax rates may be increased by up to 50% based on local tax authority decision.

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.

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 transaction.

Special construction tax

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

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

Transfer of business

As of January 1st, 2016 the amendments applicable to domestic mergers, total or partial spin-offs, transfer of assets and exchange of shares 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.

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 €25,000 or companies that meet certain indicators (e.g. main conditions: total income is less than €100,000, 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. The tax applied varies depending on the number of employees, namely:
- 1% for companies that have 2 or more employees,
- 2% for companies that have only 1 employee and
- 3% for companies with no employees.

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

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

Social security contributions

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

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

Net rental income

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

VAT rates

Starting with January 1st, 2016 the standard VAT rate in Romania is of 20%. As of January 1st, 2017 the standard VAT rate will be reduced to 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 old people's homes, retirement homes, orphanages and rehabilitation centres for children with disabilities. The category also includes dwellings and parts thereof supplied as housing with a maximum useful surface of 120 square meters, excluding outbuildings. The reduced rate applies if the value of the dwelling acquired by any single person or family is less than RON 450,000 exclusive of VAT (as of January 1st, 2016). The reduced VAT rate will also apply to the supply of the land beneath the dwelling on the condition that it does not exceed 250 square meters, including the footprint of the dwelling.

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

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

VAT-exemption

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

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

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

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

VAT deduction 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.

As of January 2016, 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.

VAT registration

In order to perform a VAT registration in Romania, the Romanian tax authorities analyse if all conditions are met before approving the registration and moreover they can 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 RON 2.250.000. If such threshold is exceed during the year, the VAT cash accounting scheme will be applied until the end of the fiscal period (month/quarter) following that in which the limit was exceed.

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

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

VAT transfer of business

As of January 1st, 2016, 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

Starting with January 1st, 2016, 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.

19 Russian Federation

Interest capping rules

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

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

Nonetheless, lawmakers did not come up with a concise test of beneficial ownership, which means that Russian tax agents will not be entirely comfortable applying reduced tax rates on income paid abroad. When making any payments, they will have to consider the risk of additional tax and penalties to be paid at their own expense.

The current legislation does not require the tax agent to request the abovementioned confirmations/documents, starting from January 1st, 2017 obtaining such a confirmation becomes an obligation of the tax agent rather than just a right. The existing clarifications of the Russian Finance Ministry (e.g. Letter of the Russian Finance Ministry March 27th, 2015 N° 03-08-05/16994) describe the information that is necessary to confirm the beneficial ownership of income in a general manner, yet they do not set precise form for the above confirmation.

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.

These developments are aimed at preventing treaty shopping practices.

Indirect sale of immovable property

Starting from January 1st, 2015 capital gains on sale of shares of Russian and foreign companies whose assets are represented directly or indirectly by immovable property by more than 50% is subject to Russian tax. However, the law does not provide a specific mechanism for paying this tax in Russia. For example, in a situation when one foreign company sells shares of a second foreign company, which indirectly owns immovable property in Russia (a threshold of 50% of assets applies), to a third foreign company, the Russian tax on income received from sale must be paid, but the procedure of payment and enforcement is not quite clear. The Russian tax legislation does not contain an explicit obligation of self-assessing in such situation, however in a recent discussion with the tax authorities a view was expressed that the foreign legal entity that is a seller could tax register under a procedure established for opening bank accounts and pay the tax. The tax authorities become aware of indirect owners of Russian immovable property.

Application of thin capitalisation rules to loans from foreign sister companies

Under the current tax law (Russian Tax Code art. 269 cl. 2–4), loans from foreign sister companies are formally out of scope of the Russian thin capitalization rules. However, according to the recent changes in the tax legislation, starting from January 1st, 2017 the scope of thin capitalisation rules will expand to include (i) debt to a foreign related party if such a party has a direct or indirect equity interest in the borrower, (ii) debt to a party related to the foreign related party referred above, (iii) debt to another party if parties referred above guaranteed the debt.

There would be exemptions from application of these rules. For example, already in 2016, 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.

The new position corresponds to the current court practice: the Russian tax authorities increasingly try to look at the substance of the arrangements and there is court practice supporting such approach. This, in turn, hinders companies' abilities to structure their intra-group debt financing through foreign finance companies.

Property tax

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

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

Notification obligations

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

20 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 (2^{nd} 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.

New 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 2016 onwards: In 2016 the taxable profits for the period may be reduced by brought forward tax losses up to the higher of 60% of the taxable base of the period or EUR 1M, except for the period in which the company is wound up. This threshold will be 70% in 2017 onwards.

Transfer pricing

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

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

Residence certificates

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

Request and collect the corresponding residence certificates.

Real estate investment trust

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

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

21 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 parts of the group (i.e. exceeding 90% ownership requirement) for the entire fiscal year. Notwithstanding this, newly started businesses and off-the-shelf companies can exchange group contribution with other Swedish group companies from the day they commence conducting business.

Ensure that any acquisition is completed before the end of the current fiscal year to benefit from the group contribution rules the following fiscal year. 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 parts 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 it is considered to utilize tax losses carried forward 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 is normally between 2% and 5%, but has been below 1% during 2015.

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.

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;
- 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, 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.

Major and significant upcoming changes

Interest deductions

In 2013 the so called Corporate Tax Committee was commissioned to, among others, make the tax provisions more equal when financing with equity and loaned capital. A draft proposal which consists of one main and one alternative proposal for new interest deduction limitation rules was presented in June 2014. Both proposals were however heavily criticized and are, together with the comments received, to date in the hands of the Ministry of Finance for evaluation.

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.

Based on the directive, interest deduction is allowed to the extent that taxable interest is received. The net excess interest is only deductible up to the higher of 30% of the tax payer's EBITDA or an amount of €3m. The limitation does not apply if the tax payer can demonstrate that the debt to equity ratio is in line with, or higher than, the ratio of the consolidated group. Standalone entities and loans concluded before June 17th, 2016 may be excluded from the scope.

Member States have the option of introducing a threshold lower than or equal to €3 million, excluding the interest deduction limitation in some cases but in many others it will further restrict the interest deduction for tax purposes.

Since each Member State is entitled to introduce rules that are stricter than the 'de minimis' interest limitation rule, it is difficult to foresee the impact of these rules. However it can be noted that the prior rules suggested by the Corporate Tax Committee in 2014 was in several cases stricter than the 'de minimis' rules presented in the Directive.

Tax payers may monitor the implementation of the rules in order to assess the need to refinance or restructure to stay within the threshold. Member States may exclude certain financial undertakings, including AIFs, from the rule. However, it is unclear whether entities controlled by such financial undertakings may also be excluded from the rule.

The directive should be implemented by December 31st, 2018 at the latest (exceptions are provided), with the provisions applying from January 1st, 2019.

Review of the tax rules for the real estate sector

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

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

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

The commissioned group should issue the report in March 2017.

Right of deduction of input VAT for 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.

22 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.

Corporate Tax Reform III

On June 22nd, 2016, the Swiss Parliament approved the Swiss Corporate Tax Reform III. Approved laws can be subject to a public vote provided a referendum is initiated. Mid of September 2016 a referendum was filed with the Swiss authorities. It is expected that the Swiss public vote will take place early 2017 with the aim to introduce the Corporate Tax Reform III as per January 1st, 2018. The cantons will have a transition period of 2 years (i.e. expected until December 31st, 2019) to implement the measures. The key measures include amongst others the abolition of current preferential tax regimes (e.g. holding company status), comprehensive rules on the step up of hidden reserves upon changes of the tax status and relocation to Switzerland, the introduction of a cantonal patent box and subject to cantonal discretion, the reduction of corporate tax rates.

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

23 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

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

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

Depreciation

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

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

Foreign currency revaluation

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

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

Prepaid income

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

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

Doubtful receivables

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

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

VAT rate for the residential units

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

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

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

In accordance with the Cabinet Decree dated September 7th, 2016 and numbered 2016/9153, which has been published in the Official Gazette dated September 8th, 2016, a change had been made in the VAT rate to be applied on the delivery of houses. Currently applied VAT regarding the houses which subject to a VAT rate of 18% has been declined to 8% for the dates from September 8th, 2016 to March 31st, 2017.

A secondary legislation is expected to be published as guidance in relation the clarification of the implementation of the above mentioned amendment. 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.

RUSF rates

According to the amendments dated December 24th, 2012 which will be effective as of January 1st, 2013; the RUSF rate to be applied on foreign loans obtained by Turkish resident individuals or legal entities (except for banks or financial institutions) in terms of foreign currency or gold (except for fiduciary transactions) was restructured based on the average maturities as follows;

- 3% on the principal if the average maturity period of the foreign currency credit does not exceed one year.
- 1% on the principal if the average maturity period of the foreign currency credit which is between one and two years.
- 0.5% on the principal if the average maturity period of the foreign currency credit which is between two and three years.
- 0% on the principal if the average maturity period of the foreign currency credit over three years.
- 3% on the interest amount if the foreign loan denominated in Turkish Liras regardless of average maturity period.

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

Deductibility of finance expenses

Law No. 6322, which has entered into force on June 15th, 2012, amends the general principles of the deductibility of the finance expenses for Turkish taxpayers. The arrangement shall be effective as of January 1st, 2013. According to the related Law, a portion – yet to be determined by the Council of Ministers – of interest and similar expenses incurred on foreign resources will not qualify deduction for corporate tax purposes. According to the arrangement;

- Credit institutions, financial institutions, financial leasing, factoring and financing companies shall not be subject to finance cost restrictions,
- Cost restrictions shall apply exclusively to the portion of liabilities that exceed a company's shareholder's equity,
- Restrictions shall not exceed 10% and the rate may be amended per industry by the Council of Ministers,
- Restrictions shall not apply to interest rates and similar payments added to investment costs.

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

Deemed interest deduction on cash injection as capital

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

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

The Council of Ministers has been authorized to decrease the rate to 0% or increase to 100%.By the new Council of Minister Decree N° 2015/7910 dated June 30th, 2015, cash capital increase rate has been re-determined between 0%–100% for various situations.

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

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

- The companies that are publicly traded in BIST at the last day of the year in which the 50% interest deduction is benefited, the rate would be increased by,
  - 25 points, if the publicly traded rate of nominal/value or the amount of the registered shares of the company is 50% or less (totally 75%),
  - 50 points, if more than 50% of the nominal/registered shares of the company are traded in BIST (totally 100%).
- In the case the capital increase made in cash has been used for investments with Investment Incentive Certificate on manufacturing or industrial plants, purchase of machines or equipment required for such plants or lands or states for building of such plants, the 50% rate has been increased by 25 points.
- The Decree reduces the rate to 0% for the capital increases made for the following cases:
  - Companies with 25% or more of their income composed of passive income; such as interest, dividend, rental income, royalties, capital gains on sale of shares,
  - Companies with 50% or more of its assets are composed of long-term securities, subsidiary companies and participations,
  - Invest capital or provide a loan to other companies which are limited only with the corresponding capital increase made in cash amount,
  - For the capital companies investing in lands and plots which are limited only with the corresponding investment amount,
  - Limited only to the amount corresponding to the decreased capital amount, if capital has been decreased in the period between March 9th, 2015 and July 1st, 2015.

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

Significant coming changes

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

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

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

24 United Kingdom

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

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

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

Arm's length nature of financing

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

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

Capital allowances

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

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

Accounting changes

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

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

Residential property

The taxation of residential property in the UK has recently changed significantly.

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

Individual non-resident owners of residential property in the UK will from April 2017 be 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 will be 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.It is likely that restrictions to be introduced for companies from April 2017 in respect of interest relief and carried forward losses will be extended to non-resident landlords in the near future.

Other potential changes

The interest relief restrictions are being introduced in accordance with the OECD's BEPS project and, at a high level, will mean a cap on relief for interest of 30% of EBITDA where interest exceeds £2 million.

The loss restrictions will limit to 50% the amount of profit against which brought forward losses in excess of £5 million can be offset.

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).
- 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 A$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 (CbC) reporting

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.

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 increase the administrative penalties that can apply for failing to meet a filing obligation. The proposal would increase the maximum penalty from A$ 4,500 to A$ 450,000.

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 47% (to the extent non-resident investors hold units in the trust).

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

Current tax concessions

Managed investment trust

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

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

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

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

Attributable Managed Investment Trust

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 (introduced from July 1st, 2017) 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.

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 if it is classified as a 'public trading trust' for a year of income. A public trading trust is a trust that is a public unit trust (i.e. a listed or widely held trust) and a trading trust. A trading trust is a trust that carries on a trading business at any time during an income year. In the context of land, a trading business is any activity other than investing in land primarily for the purpose of deriving rent.

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

Taxation of Financial Arrangements (TOFA)

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

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

Non-resident capital gains tax (CGT)

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

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, 2016, a 10% non-final withholding tax will apply to the disposal of taxable Australian property by non-residents (including real property assets and interests in 'land rich' entities in certain cases), unless one of the following exclusions apply:

- Transactions involving real property valued under A$2 million
- 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 10% withholding tax to be withheld from the purchase price by acquirer of real property interests from July 1st, 2016 (where a carve out does not apply).

Stamp duty

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

Certain Australian states have also introduced a foreign purchaser surcharge, which can impose additional duty of up to 1.5% 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 introduced legislation in 2014 implementing FATCA in Australia. Broadly, the rules require Australian financial institutions to report details of certain US persons 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 will apply to Australian financial institutions from July 1st, 2017, 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 2016 Australian Federal Budget also announced a new 'diverted profits tax' (DPT), which 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.

The DPT will commence on July 1st, 2017 and at this stage, looks like it will apply to financing arrangements. However, it will be interesting to see whether through the consultation process financing arrangements are ultimately carved out.

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 A$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 directly own immovable property in India. However, this restriction does not apply to a Non-resident Indian, Person of Indian Origin 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 Parks, Townships, Hotels, etc. (subject to certain conditions provided under the Foreign Direct Investment policy of the Government of India).

Amongst many measures taken recently to liberalise foreign investment in the sector, creating a vibrant Real Estate Investment Trusts (REIT) market has been on the agenda of the Indian Government in recent times. The Union Cabinet approved inclusion of REIT as an eligible financial instrument under the exchange control regulations. The Reserve Bank of India (RBI) notified the much awaited regulatory policy enabling foreign investment under the automatic route in REITs regulated by the Securities and Exchange Board of India (SEBI). The taxation regime for REITs has also been rationalized and there is an effective pass through provided.

With a view to smoothen the process of registration of REITs , SEBI in its Board Meeting held on September 23rd, 2016, amongst others, has approved certain key changes in the SEBI (REIT) Regulations including the following:
- Permit two level SPV structure through Holding Company, subject to conditions.
- To remove the limit on the number of sponsors and introducing the concept of 'sponsor group'.
- Allowing REITs to invest up to 20% in under- construction assets.

The formal notification amending the SEBI (REIT) Regulation, 2014, to reflect the changes approved is awaited.

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 'Build to sell' model.

Income from sale of property is characterised as business income and taxable at applicable rates, on a net income basis. Development and borrowing cost incurred to develop the property are considered as part of inventory and allowed as deduction in a phased manner in line with accounting policy followed by the company. Generally, Indian companies are required to follow percentage completion method for recognising income and accruing expenses.

Build to lease model

Indian companies engaged in development of office space e.g. SEZ development follow 'Build to lease' model. Certain Indian companies also follow hybrid models e.g. retail assets, where it could be combination of fixed lease and revenue share of the tenants.

The taxability under 'Build to lease' model would largely depend on the facts of each case. In a case where the primary objective of the Indian company is to lease property together with provision of other related facilities/amenities, it should be characterised as business income and would be taxed in a manner similar to 'Build to Sell' model. However, in this case, the borrowing cost incurred to develop the property are capitalised and the Indian company can claim depreciation allowance on the same.

In case, the Indian company earns rental income just from leasing, such rental income is characterised as 'Income from House Property'. There is a specific tax computation mechanism prescribed to determine the taxable income of such companies. The tax law provides for standard deduction of 30% of gross rental income in addition to interest expense and property taxes on actuals.

Characterisation of income earned by an Indian company engaged in earning rental income from leasing activity has been a matter of debate and subject to litigation, and a recent decision of the Indian Supreme Court has brought some certainty to this issue.

Sale of properties

Sale of properties held as capital assets (i.e. not developed or held with purpose of selling), is taxable as capital gains. Where the property is held for more than 36 months the same is characterised as long-term. In other cases, it is considered as short-term in nature. Long-term capital gains are generally taxable at 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 nominal consideration may be subject to taxation at a deemed value (usually determined based on the values imputed for stamp duty purposes).

Corporate restructuring

Transfer of properties, which may occur by way of corporate restructuring (e.g amalgamations, demergers), 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 to , 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, recently, the profit-linked incentive for SEZ developers has been withdrawn for cases where the development is not commenced by April 1st, 2017. 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 the adjusted book profits of the company, tax at 18.5% (plus applicable surcharge and education cess) is payable by the Indian company.

MAT credit is available to be carried forward for 10 years.

Real Estate Investment Trusts

The REIT is a listed platform, which is required to hold rent-generating properties in India or invest in Special Purpose Vehicles (SPVs) that hold rent-generating properties in India.

Indian REITs is an investment vehicle launched by Sponsor(s) in the form of a Trust duly registered with the SEBI.

Typically, income producing real estate assets owned by a REIT include office buildings, shopping malls, apartments, warehouses, etc.

Conditions associated with REIT, amongst others, 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
- At least 80% of the REIT should be represented by completed and rent generating assets

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 tax exemption on gains from disposal of property.

Dividend income received by the REIT from the SPV should be exempt from tax in the hands of the REIT. In order to further rationalize the taxation regime for REITs, an exemption has been provided from the levy of dividend distribution tax (DDT) in respect of dividend declared, distributed or paid by the SPV to the REIT, subject to prescribed conditions.

Sale of units of the REIT is subject to a preferential tax regime i.e. long-term capital gains are exempt [subject to payment of securities transaction tax (STT)] and short-term capital gains is taxable at 15% (plus applicable surcharge and education cess), subject to payment of STT.

Tax on repatriation to investor

Repatriation of income on investments by Non-resident investors in an Indian company is typically in the form of capital gains, interest and dividend.

Ordinarily, long-term capital gains are taxable at 10% to 20% (plus applicable surcharge and education cess) whereas short-term capital gains are taxable at 40% (plus applicable surcharge and education cess).

Dividend is exempt from tax in the hands of the recipient.

Interest income is usually taxable at 20% to 40% (plus applicable surcharge and education cess). 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 is available, if any.

Transfer pricing

The Indian transfer pricing code provides that the price of any international and specified domestic transaction between associated enterprises is to be computed with regard to the arm's length principle. However, the transfer pricing legislation is not applicable when the computation of the arm's length price has the effect of reducing income chargeable to tax or increasing losses in India. This is aligned with the legislative intent to protect the Indian tax base.

Losses carried forward

Losses in India are typically carried forward for 8 years subject to conditions. There are no time limits for carrying forward the unabsorbed depreciation. Where there is a change in ownership or control of closely held companies beyond 49%, the carry forward losses (except unabsorbed depreciation) could lapse.

However, to be eligible to carry forward losses, it is important to file annual Income-tax returns on or before the prescribed due dates.

General Anti-Avoidance Rule (GAAR)

The Indian Income-tax authorities may invoke GAAR provisions in case arrangements are found to be impermissible avoidance arrangements.

The guidelines for application of the provisions of GAAR is also prescribed in this regard.

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 impermissible avoidance arrangement. The GAAR provisions will come into force from April 1st, 2017.

However, GAAR shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of tax benefits obtained from the arrangements on or after April 1st, 2017.

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 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

Value Added Tax (VAT) and Service Tax may be applicable to Indian companies engaged in real estate business. Generally, Service Tax is levied at 15% (including applicable cesses) on the gross value. However, given that construction is a composite activity of supply of goods and service, Service Tax is payable on abated value such that the effective rate is 4.5%.

Further, Service Tax is applicable on leasing of commercial properties whereas leasing of residential properties currently are exempt from the levy of Service Tax.

The state VAT laws in India govern the levy of VAT on sale of goods and hence the rate of VAT differs from state to state. The revenue neutral VAT rate ranges from 12.5% to 16%. VAT is applicable on sale of movable goods including certain deemed sales e.g. sale of under-construction property. The VAT laws generally provide for a deduction towards value of labour and like charges so that only the value of goods under a construction contract is subject to VAT. Most state VAT laws also provide for payment of VAT on construction contracts at composition rate of 3% to 5% subject to non-availability of input VAT credit.

India is on the verge of introducing Goods and Service Tax (GST) from April 2017. GST is a comprehensive VAT, which will be levied on both goods and services as against the current regime wherein different states in India have different tax laws and local levies in addition to the central laws and levies. GST would subsume many indirect taxes presently applicable at both central and state level including excise duty, VAT and Service Tax. Presently not all indirect taxes are creditable against each other for set-off, leading to cascading of taxes, whereas the GST law is designed with a sound input credit mechanism to ensure no cascading effect and minimal blockage of funds. The real estate sector is expected to benefit from introduction of GST by way of reducing the ambiguity of levy of multiple taxes, free flow of credits and simplification in the manner in which taxes would be paid.

Real Estate (Regulation and Development) Act, 2016

The 'Real Estate (Regulation and Development) Act, 2016' (the Real Estate Act), that seeks to protect the interests of the large number of aspiring buyers and to promote transparency, accountability and efficiency in the sector received the assent of the President on March 25th, 2016. The Real Estate Act 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/buildings is withheld by third parties (i.e. tenants) and constitutes the final settlement of the income tax for that particular income. 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 the interest penalty of 2% per month.

Transfer of Land and Building

In the event of transfer of land and building, the income is subject to a 2.5% final income tax based on the transaction value. This rate is applicable from September 7th, 2016. Additional to the new regulation, income from Transfers of Right on Land and Building involving Sale and Purchase Binding Agreements on Land & Building ('PPJB') also include 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% final income tax.

The transfer of right on land and building ('L&B') to the government (including State-Owned Enterprises and Regional-Owned Enterprises), in relation to procurement of land for development of public interest, continues to be exempt, although it is now referred to as a 0% rate instead of an exemption as under the previous regulation.

The final tax on the transfer of land and building must be paid prior to signing of the transfer deed by the notary. For taxpayers earning income from 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 of 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 the copy of the validated final tax payment slips is made available. The seller has obligation to report the amendment of PPJB to the Director General of Tax.

On the transferee side, an acquisition of land and building rights will give rise to 5% duty (Bea Perolehan Hak atas Tanah dan Bangunan/"BPHTB"). The 5% duty is imposed on the higher amount of the transaction value or NJOP (Government Taxable Value).

Companies shall be aware of this regulation. Without completing such obligation, the notary will not proceed the transfer.

The deductibility of expenses which is related to final taxed income

Some income derived from business activities involving land and building is subject to a final withholding tax (e.g. building rental, and sale of land and/or building). 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 FY 2010, ITA requires the taxpayer to maintain separate bookkeeping in the event of having a business that is 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 FY 2009, the Indonesian Tax Authority grants a corporate tax reduction facility for certain taxpayer 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 IDR 50 billion, are entitled to a 50% discount off the standard tax rate, which is imposed proportionally on taxable income of the part of gross turn over up to IDR 4.8 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, building 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 method 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 Rules

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 as follows:

- Transfer pricing documentation is not required for domestic related party transactions, unless if they are carried out with a 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 PSC companies).
- The threshold to prepare transfer pricing documentation is IDR 10 billion (i.e. circa U$ 760,000) for each counter transacting party per year.
- When selecting the transfer pricing methods, the ITA has adopted the most appropriate method instead of the method based on the hierarchy approach.

For annual corporate income tax return purposes, ITA requires taxpayers to complete disclosures regarding related party transactions.

Companies who have related party transactions must be aware that they have to prepare transfer pricing documents or at least set of supporting documents to substantiate that the transactions are conducted on arm's-length basis. 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. Further, there is also an administrative sanction of 2% from VAT base (transaction value) for corporate taxpayer if they did not issue VAT invoice.

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

Corporation tax

Reduction of corporate tax rates and local corporate tax

A The national corporation tax rate was reduced from 23.9% to 23.4% for tax years beginning on or after April 1st, 2016, to be followed by a further rate reduction from April 1st, 2018 to 23.2%. As the inhabitants corporate tax is calculated as a percentage of a corporation's national tax liability, the reduction in the tax rate also results in lower local taxes.

Furthermore, the tax rate relating to the income portion of enterprise tax has been reduced from 4.8% to 3.6% for the fiscal years beginning on or after April 1st, 2016.

However, local corporate tax, which is a national tax, will increase from 4.4% of the corporation's national tax liability to 10.3% for tax years beginning on or after April 1st, 2017.

Once local taxes are taken into account, the effective corporate tax rate for small and medium corporations is approximately 34.81% from April 1st, 2016 and will decrease to 34.59% from April 1st, 2018 (depending on location, paid-in capital and other factors). Different rates apply to large corporations. For foreign investors without permanent establishment in Japan, effective tax rate is approximately 24.4% (under the 2016 Tax Reform Act, increasing to 25.8% from April 1st, 2017, and decreasing to 25.6% from April 1st, 2018).

Limitation on the net operating loss deduction and extension of the applicable period

The timing of the limitations on net operating loss (NOL) carry-forwards announced in the 2015 tax reforms has also changed. The percentage of current year income that large corporates can offset by tax losses was scheduled to be reduced from 65% to 50%. This change will now occur in three steps, with the rate reducing 5% annually from April 1st, 2016, reaching 50% from April 1st, 2018. The tax loss carry forward period was originally scheduled to increase from 9 to 10 years from April 1st, 2017. The increase will now occur from April 1st, 2018.

Depreciation methodology

For certain building facilities and structures made on or after April 1st, 2016, the declining balance method can no longer be used (only the straight line method is permitted as is already the case for buildings and intangible fixed assets).

Consumption tax

New invoice system rules

The scheduled increase in the consumption tax rate (from 8 to 10%) has been delayed until 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.

Restrictions on use of the 'simplified method'

Certain small taxpayers may elect to use the 'simplified method' to compute consumption tax, instead of computing input tax based on actual purchases.

Under the simplified method, there is a schedule of statutory ratios for different types of businesses. For a company engaged in the leasing of properties, the statutory ratio is currently 40% (that is, 40% of output tax received is creditable).

The 2016 Tax Reform introduced some restrictions on the use of the simplified method. Where a consumption taxpayer acquires a high value asset (JPY 10 million or more) and uses the general method in that year, it will not be able to use the simplified method for three years from the beginning of the year in which the acquisition takes place.

5 Singapore

Share deal vs. asset deal

The acquisition tax costs associated with an asset deal and share deal are substantially different. In addition, an asset deal or share deal may give rise to a different income tax outcome during the holding period and upon exit and should be carefully evaluated upfront.

Goods and service tax

A goods and services tax of 7% is levied on the purchase of all properties (other than residential property) but there may be exemptions when certain conditions are met. Hence, it is important to evaluate whether an exemption applies as this could help ease cash flow and, in some cases, even help in saving interest costs.

Stamp duty

A buyer's stamp duty of 3% is levied on the purchase of property whereas only 0.2% applies on share purchase. In addition, foreign investor and non-individual investor who acquire residential property on or after January 12th, 2013 will have to pay additional buyer stamp duties of 15%.

In this regard, a share deal may be preferred, but the buyer should nonetheless take into consideration the investment intentions (i.e. short-term vs long-term) and anticipated exit strategies when deciding whether to enter into an asset deal or share deal.

For industrial properties bought or acquired on or after January 12th, 2013 and sold or disposed of within three years, seller's stamp duty of up to 15% on the price or market value, whichever is higher, will be imposed on the disposal of the property.

For residential properties bought or acquired after January 14th, 2011 and sold or disposed of within four years, seller's stamp duty of up to 16% of price or market value, whichever is higher, will be imposed on the disposal of the property.

Interest deduction rules

Singapore does not have any thin capitalisation rules. However, interest expenses incurred on loans that are specifically used to purchase shares are not tax-deductible. Withholding tax at 15% applies to interest payments to non-residents, but this may be reduced with proper planning.

Care is needed when refinancing of an existing property investment is contemplated as there may be tax deduction implications for interest on the replacement borrowings. Essentially the commercial need for the refinancing will have to be demonstrated. Replacing equity with debt will generally be problematic, although not impossible.

Exit

Currently, exit is most tax-efficient through a share sale but this is not always possible. Although Singapore does not impose capital gains tax, gains on the sale of real estate may be taxed as trading gains at the prevailing corporate tax rate (currently 17%). With proper planning at the point of acquiring the property (which would involve proper review of the relevant documentation), it should be possible to reduce the tax exposure on the gain on sale. On a case-by-case basis, and with detailed analysis, a share deal may also enhance the chance of arguing a capital gain.

With effect from January 1st, 2012, any gain derived by a company from the disposal of ordinary shares in an investee company is not subject to Singapore tax (i.e. safe harbour rules), provided it had held at least 20% of the ordinary shares for a continuous period of at least 24 months immediately prior to the date of the share disposal. However, this rule does not apply to the disposal of shares in an unlisted investee company that is in the business of trading or holding Singapore immovable properties (other than the business of property development). The safe harbour rules will expire on May 31st, 2017 but is generally expected to be extended.

Capital allowances

Capital allowances are a much disputed area with the Singapore tax authorities. Therefore, a proper capital allowance study should be undertaken to maximize and substantiate capital allowance claims during holding period. This may also be helpful in facilitating a share sale upon exit.

Withholding tax

Intercompany loans are subject to Singapore's transfer pricing rules. Hence, it is important that a proper benchmarking study is performed on any intercompany loans to substantiate that interest rates charged are at arm's length. In addition, the law has recently been amended such that it is now mandatory to maintain contemporaneous transfer pricing documentation. As mentioned above, withholding tax applies on interest payments to non-residents (e.g. shareholder loans) but this can be reduced with proper planning. Where a reduced rate under a treaty is adopted, it is important to make sure that certain administrative procedures are adhered to. Otherwise, the reduced rate may not apply and penalties may be imposed. An assessment of whether these procedures have been adhered to should be conducted at year end.

Tax incentives

A suite of generous tax incentives is on offer in Singapore for funds managed by Singapore-based fund managers as well as the funds themselves. Under three schemes, known commonly as the Offshore Fund Scheme, the Singapore Resident Fund (SRF) Scheme and the Enhanced Tier Fund (ETF) Scheme, funds can enjoy a variety of safe harbour rules tailored for their needs. This includes the ability to use a Singapore-based fund that has access to Singapore's wide network of tax treaties. Managers who manage or advise funds that are approved under these schemes can enjoy a concessionary rate of tax of 10% on their fee income. It should be noted however that these schemes do not apply in relation to income or gains derived from property situated in Singapore.

Tax losses

Typically, a company that holds property for rental will not be allowed to carry forward tax losses or surrender them for group relief. Accordingly, it is important to examine any flexibility there may be in the timing of tax deductions or income so as to minimize the wastage. In this context consideration should be given to deferring capital allowance claims until they can be used effectively.

Year-end reporting

For fund managers who look after funds that enjoy any of the above schemes, there are certain annual reporting requirements that need to be observed and, in the case of the ETF and SRF, tax returns that may need to be filed for the fund entity.

America

1 Argentina

Sale of Stock by non-residents and dividend distributions

On September 23rd, 2013 published Law 26893 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 impact that these new 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 amortization 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 18 double tax treaties signed by Argentina.

It is strongly recommended to verify substance requirements to apply double tax treaty benefits.

Tax losses carried forward

Losses may be used to offset Argentinean profits arising in the same company. Any amount of tax losses that could not be used in the year in which they were incurred can be carried forward for five years. 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 (BCRA) and other institutes such as the Ministry of Economy and Public Finance and the Federal Administration of Public Revenue (AFIP) among others, have been introducing important amendments to the Exchange Currency Market (MULC). In this sense, regarding incoming flows of currency (as financial loans or capital contributions) a reduction of the minimum term for keeping inflows of funds in Argentina was established. This minimum permanence term was reduced from 365 to 120 calendar days. 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 (with certain specific exceptions) and local governments may access the MULC to purchase foreign currency without the prior approval of the BCRA.

As to payments of imports of goods, the Advance Import Sworn Statements (DJAIs) were replaced by the Integral Monitory System for Imports (SIMI). In this sense, for all final import for consumption destinations, importers must submit to AFIP the information related to the goods to be imported in the SIMI. Additionally, an Import Licensing system has been established.

For most imports of goods past transactions, a payment schedule for accessing the MULC has been set. According to this schedule, from June 2016, there will be no limitations for those payments.

There are also new procedures in force for the payment of services rendered by non-residents. In this sense, payment of services imports performed as from December 17th, 2015 may be made with no limits to their amounts. Moreover, the formal prior approval of the BCRA was eliminated for payments exceeding the equivalent of U$ 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 Advance Services Sworn Statement (DJAS) is still required when accessing the MULC for the payment of services.

As to services imports provided and/or accrued until December 16th, 2015 a payment schedule for accessing the MULC has been set. According to this schedule, from June 2016, there will be no limitations for those payments.

Although certain amendments to rules applicable to exports of goods and services are in force, it should be noted that regulations regarding the entrance of funds into the country and the obligation of exchange of foreign currency in the Exchange Market corresponding to payments of exports of goods in force.

Besides this, there are no formal restrictions on the payment abroad of interest, dividends or profits, royalties and other commercial payments duly supported.

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 of 70 years.

The surface right holder is entitled to build, and be the owner of the proceeds. In turn, the landowner has the right of ownership provided that he does not intervene on the right of the surface right holder.

The surface right terminates upon completion of the established term (or by operation of law), or by express resignation, occurrence of a condition, consolidation, or upon 10 years from the last use in cases of construction. The landowner owns what is built by the surface right holder and thus, the landowner must compensate the surface right holder unless otherwise provided by agreement.

It is worth noting that this new legal mechanism is available for Real Estate projects in Argentina.

Limits to the Property Right in the new Civil 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 a current legal concern when exercising property rights.

2 Brazil

Acquisition of urban/rural real property

Non-residents may invest in urban property through direct ownership from abroad, or through resident companies or partnerships. Rural property acquisition, however, may be limited. There are restrictions regarding the size of the area to be acquired and the interest to be held by the investors (i.e. there might be limitation to control in the rural real property by foreign investors). There a few alternatives to invest via Investment Funds in regard to this restriction of holding control.

Corporate Taxation

Profits arising from a real estate company will be subject to Corporate Income Taxes, namely Corporate Income Tax (Imposto sobre a Renda da Pessoa Jurídica – IRPJ), a federal tax levied at 25% rate, and the Social Contribution on Net Income, or Contribuição Social sobre o Lucro Líquido (CSLL), a social contribution levied at 9% rate.

Additionally, revenues of legal entities are subject to PIS (Employees' Profit Participation Program or Programa de Integração Social) and COFINS (Contribuition for Social Security Financing or Contribuição para o Financiamento da Seguridade Social) at a 1.65% and 7.6% rate, respectively, being allowed offsetting credits from certain inputs.

Depending on certain conditions, such as the total company revenues and the corporate tax regime elected, the PIS and COFINS rates can be reduced to 0.65% and 3% over gross proceeds (this will bring impacts on corporate income taxes, which will vary from 2.88% to 10.88% over gross proceeds). In this case, no deductions are allowed.

Special Taxation Regime

Real estate developers may apply for a special taxation regime ('Regime Especial Tributário – RET'). Under this regime, the taxes IRPJ, CSLL, PIS and COFINS are paid at a unified tax rate of 4% of the received revenues. The tax rate may be reduced to 1% if the real estate development has social purposes.

Non-Residents Taxation

Non-resident taxpayers (both individuals and corporations) are subject to tax on their Brazilian-source income (including disposal of a real estate or shares or a Brazilian foreign direct investment – FDI) at a rate of 15% (25%,rate applies for tax haven residents). Distributions from a Brazilian company to foreign investors are subject to special rules, indicated below.

Inflows and outflows between BrazilCo and FDI for the purpose of setting up the investment or divestment will be subject to Tax on Cashflows (IOF) at a rate of 0.38%.

Brazilian-source income is considered to be all income paid by Brazilian-sourced payers, regardless of the nature, or which period it relates to.

Capital gains derived from the disposal of real estate assets or from FDI by non resident investors will be increased to a progressive 15% to 22.5% rate as from January 2017.

Remittances of Profits by a Brazilian Entity

The profits from a Brazilian company carrying real estate activity (selling or rental) can be remitted as dividends or interest on net equity (INE).

The dividend will not be subject to withholding tax (WHT) nor IOF.

The payment of INE will be subject to the WHT at 15% rate and 0% IOF. If the Brazilian entity adopts the real profit basis, it will be allowed to deduct the expense relating to INE from its IRPJ and CSLL, if paid up to the limits established by law.

Debt Funding

Interest paid to related or unrelated parties abroad may be subject to Tax on Financial Transactions (IOF) at 6% rate if loan average term is under 180 days (0% if average term is over such period). In addition to IOF, thin capitalization and transfer pricing rules should be observed in loans entered between related parties or with parties located in tax haven/privileged tax jurisdiction[1] (as indicated below).

Thin Capitalization and Transfer Pricing Rules

Thin Cap rules establishes that interest paid or credited by a Brazilian entity to a related party (an individual or legal entity), resident or domiciled abroad, not constituted in a tax haven or in a jurisdiction with a privileged tax regime, may be deducted only for income tax purposes if the interest expense is regarded as necessary and does not exceed determined limits (currently a 2:1 ration applies for non tax haven residents).

Transfer pricing rules may also bring impacts to transactions between related parties as well as on transactions carried with blacklisted countries. Brazil's transfer pricing rules define maximum price ceilings for deductible expenses on inter-company import transactions and minimum gross-income floors for inter-company export transactions.

Real estate transfer tax (ITBI)

Transference of real estate property and/or related rights are usually subject to the Real Estate Transfer Tax (Imposto sobre Transmissão Intervivos de Bens Imóveis-ITBI), based on the value of the sale or transfer.

Each municipality imposes its own ITBI rates, usually ranging from 2% to 4%.

Certain transferences (e.g. capital contribution with real estate assets) may be tax-exempt, provided certain conditions are met.

Goodwill Amortization Rules

Goodwill amortization, while may potentially bring tax benefits on acquisition of investments, is also frequently subject to scrutiny by Brazilian Tax Authorities. Law 12,973/2014 brought a number of new rules and requirements, which must be overserved in order to allow goodwill amortization.

Goodwill amortization based on future profitability of the Acquiring company is deductible for Corporate Income Tax Purposes – CIT (i.e., Income Tax plus Social Contribution on Net Profits), over a minimum 5 years period.

An independent appraisal report will be required to support the purchase price for tax purposes as well, which must be timely filed with the Tax Authorities or the Register of Deeds and Documents.

We recommend that a detailed analysis is carried in order to determine accounting and tax consequences of goodwill amortization, as well as to mitigate tax risks.

[1] As a general rule, Brazilian legislation classifies as tax haven countries that does not tax income or taxing income at a maximum rate under 20%. Normative Instruction 1,037/2010 brings a list of 65 countries regarded as blacklist jurisdictions, including recently included Ireland. Normative Instruction also brings a few jurisdictions regarded as Privileged Tax Jurisdictions, including Austrian Holding Companies.

Other relevant taxes – IPTU, ITR and ITCMD

A municipal tax called Real Estate Tax, ('Imposto sobre a Propriedade Predial e Territorial Urbana' – IPTU) is imposed on the holding of the real estate. The tax is calculated on an appraised value of the property (not necessarily the fair market value), and rates vary from one municipality to another (on average of 0.3% to 2.8% per year), limited to 15% per year.

The same rules pertinent to the taxable basis, taxable event and the taxpayer also apply to the ITR, or Imposto sobre a Propriedade Territorial Rural, which is a federal tax levied on the ownership or possession of rural property. The tax rate is determined considering the area size and how much the area is used (ranging from 0.03% to 20%).

The State Tax ITCMD, or Imposto sobre a Transmissão 'Causa Mortis' e Doação de Bens e Direitos, is levied on inheritances and donations of real estate properties and their rights, and rates vary from state to state, usually 2% to 4% (maximum rate is 8%).

Other real estate investment structures for Non-resident Investors

Depending on the purposes of the investment, foreign investor may find a more tax efficient scenario if investing via: (i) real estate investment Fund – FII (whose portfolios encompass real estate); and (ii) private equity investment fund or FIP (whose portfolios encompass interest in entities that can own properties).

Foreigner investors, whenever investing through Resolution CMN 4,373, for variable and fixed income assets traded in financial and capital markets (e.g. Real Estate Investment Funds), will be taxed by IOF at 0% on the inflows and outflow of resources in the country.

Non-residents holding investment funds, may be subject to a more beneficial taxation is comparison with resident investors, provided the investment is carried in accordance with Resolution 4373, and if it is not resident or domiciled in a tax haven jurisdiction. Tax haven investors are subject to the same rules applicable to Brazilian residents.

As per example, remuneration of FIP is tax-exempt certain rules regarding concentration are accomplished and provided the investment is in accordance with Resolution 4373 and the investor is not located in a tax haven jurisdiction. FII distributions are typically subject to 15% WHT on distributions to foreign investors none domiciled in tax haven jurisdictions.

Capital gains of non-tax haven investors on the sale of equities in the stock exchange is not subject to WHT.

3 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 2016 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 New Brunswick's, which increased from 12% to 14% on April 1, 2016, and Newfoundland and Labrador's, which increased from 14% to 15% on January 1st, 2016.

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 capitalisation rules

The Canadian thin capitalisation rules may apply when the lender to a Canadian corporation is a non-resident person who alone or with other related persons owns more than 25% of the Canadian corporation's shares, and interest expense on the loan would otherwise be deductible to the Canadian corporation. If the ratio of these debts to equity exceeds 1.5:1, the interest on the excess is not deductible.

The thin 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 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 3% depending on the city in Canada. The tax is generally payable at the time the legal title of the property is registered or on the transfer of a beneficial interest.

Foreign entities and certain taxable trustees that purchase property in the Greater Vancouver Regional District of the Province of British Columbia after August 1st, 2016 are liable for a new 15% property 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.

4 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, land does not depreciate). There is not an alternative minimum tax (e.g., flat tax) in Mexico since January 1st, 2014.

For years before 2014 flat tax deduction for the full amount was claimed when fixed assets were already paid.

Asset impairment

Impairments are allowed under Mexican GAAP. However, impairments are not deductible for income tax purposes.

Check that no tax deduction from impairment of the assets is being taken by the company.

Confirm that impairment adjustments are not from obsolescence of fixed assets, because a tax deduction may be included.

Goodwill

Any amount paid in excess of the fair market value of the real estate is considered as goodwill, which is non-deductible for Mexican tax purposes. In addition to the amount being not deductible, the depreciation as well as any interest related to the goodwill will also become non-deductible.

Check if there is an amount related to goodwill, if such amount is being deducted, and whether the related amounts to depreciation and interest are being deducted.

Classification of real estate acquisition

Real estate must be classified for both book and tax purposes as inventory or fixed assets, depending on whether it is acquired for subsequent sale or for development. This will impact the way in which the real estate is deducted: as cost of goods sold (inventory) or via depreciation (fixed assets).

Review how the real estate is classified and determine how it must be deducted and whether this classification makes sense with respect to the business.

Thin capitalisation rules

Interest derived from debts granted by foreign related parties of the taxpayer that exceed three times its shareholders equity will not be deductible (several special rules apply).

Review the thin capitalisation position of the company and 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 (1) determine the price or value of such transactions at arm's length conditions and, (2) secure the corresponding contemporaneous documentation. Otherwise, the tax authorities may determine the price or value that would have been used by independent parties in comparable transactions. ***Prepare a transfer pricing study covering each transaction carried out with related parties.*** ***Analyse if the mark up currently used can be adjusted based on the transfer pricing study.***
Pension fund exemption	Mexican tax law establishes a tax-exempt regime for foreign pension and retirement funds investing in Mexican real estate. Such tax-exempt regime on interest, leasing income and capital gains, if certain rules are complied with. Please note that income tax exemptions for foreign pension funds in connection with the sale of real estate or shares (which value is comprised in more than 50% of immovable property located in Mexico), should be available to the extent the real estate property was leased for at least a minimum period of 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. ***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.***

5 United States of America

New law makes significant changes to partnership audit and adjustment procedures

The Internal Revenue Code was amended in 2015 to make significant changes to partnership audit and adjustment procedures. In general, the law repeals current-law audit and adjustment procedures for partnerships (commonly referred to as TEFRA) and rules for electing large partnership and replaces them with new audit and adjustment procedures that apply by default to all partnerships. Under the new provisions, adjustments to partnership items are determined at the partnership level, and any additions to tax – plus penalties and interest – are assessed and collected at the partnership level, unless the partnership elects to pass the adjustment through to its partners. A provision in a prior version of the legislation that would have made partners jointly and severally liable for the tax liability assessed at the partnership level was not included in the enacted legislation. Recognizing the significance of these changes, Congress delayed the effective date for two years, so that the new procedures apply to tax returns filed for partnership tax years beginning after December 31st, 2017. However, partnerships may elect to apply the new rules to any returns filed for tax years beginning after the November 2nd, 2015.

New Modifications to FIRPTA

On December 18th, 2015, new legislation (herein 'the PATH Act') modified the application of the Foreign Investment in Real Property Tax Act (commonly referred to as FIRPTA). The PATH Act: (i) exempts certain foreign retirement funds from the application of FIRPTA, (ii) increases the general rate of withholding on dispositions of US Real Property Interests from 10% to 15%, (iii) increases the amount of stock a foreign person may own in a publicly traded real estate investment trust (REIT) from 5% to 10%.

New FIRPTA exception for foreign pension funds and retirement plans

In general, FIRPTA will not apply to any US real property interest (USRPI) held directly or indirectly through one or more partnerships, or to any distribution received from a REIT, by a qualified foreign pension fund or any entity all of the interests of which are held by a qualified foreign pension fund. A qualified foreign pension fund is defined as any trust, corporation, or other organization or arrangement:
- which is created or organized under the law of a country other than the United States,
- which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered,
- which does not have a single participant or beneficiary with a right to more than five percent of its assets or income,
- which is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and
- with respect to which, under the laws of the country in which it is established or operates, contributions to such organization or arrangement that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such entity or taxed at a reduced rate, or ii. taxation of any investment income of such organization or arrangement is deferred or such income is taxed at a reduced rate.

Increased FIRPTA withholding tax

Generally, any disposition of a USRPI is subject to a withholding tax equal to 10% of the amount realized. The PATH Act increases the withholding tax to 15%. The increase would not apply to the sale of personal residences with respect to which the purchase price does not exceed $1 million.

Publically Traded REITs

The PATH Act increases the amount of stock a foreign person may own under the publicly traded US real property holding company (USRPHC) exception from 5% to 10% solely for publicly traded REITs (i.e., the proposal does not increase the percentage for publicly traded non-REITs that are USRPHCs). As noted above, the Publicly Traded USRPHC Exception applies to the sale of stock. In addition, any distribution from a publicly traded REIT to a less than 10% foreign shareholder would be treated as a dividend rather than effectively connected income (ECI) and would be subject to US federal income tax under Sections 871 or 881, which can be reduced under a US income tax treaty to the extent the foreign shareholder is eligible for the benefits of such treaty. Importantly, most US income tax treaties have additional requirements in order to receive a reduced rate of tax with respect to dividends from REITs.

New Regulations address whether certain instruments between related parties are debt or equity.

On October 13th, 2016, the US Treasury and the IRS released final and temporary regulations under section 385 of the Internal Revenue Code (the '385 Regulations') that (i) establish threshold documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for US federal income tax purposes; and (ii) treat as stock certain related-party interests that otherwise would be treated as indebtedness for US federal income tax purposes.

The 385 Regulations are significantly narrower in scope than the proposed regulations issued on April 4th, 2016.

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