



# Guide to Taxes on Real Estate in Central and Eastern Europe

**Edition 2016**

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KPMG in Central and Eastern Europe

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# Introduction

According to data provided by one of the global property advisors for 2015, the total investment volume in Central and Eastern Europe (CEE), excluding Russia, amounted to EUR 9 billion. Analysts contend that the real estate market in the region is expected to grow steadily over the next 10 years. Moreover, companies also appear to be deciding to undertake investments in second- and third-ranked cities, not just in the region's capital cities.

Poland continues to be regarded as the key investment destination in the CEE region, followed by the Czech Republic. According to real estate advisors, investors are still

concentrating on opportunities in leading locations, but they are also trying to target good assets in secondary locations in other CEE countries such as Romania, Slovakia and Hungary.

The most preferred real estate sectors in 2015 were retail and office, followed by the fast growing industrial and logistic sectors, where huge investments in the warehouse market are being made year-on-year. Market forecasts also show that the industrial and logistic sectors should also prosper beyond 2015. This will mainly be due to the healthy growth of e-commerce and retail logistics.

Moreover, it is believed that investors are going to develop shopping infrastructure beyond niche areas by investing more in convenience shopping centers in line with the American "strip mall" model and in high streets with exclusive shops.

The Guide to Taxes on Real Estate in CEE provides an overview of the key tax aspects related to the real estate sector in the following countries:

- Albania
- Bosnia and Herzegovina
- Bulgaria
- Croatia
- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Macedonia
- Montenegro
- Poland
- Romania
- Serbia
- Slovakia
- Slovenia

This, our 5th edition, presents the most important tax benefits and burdens connected with operations in the real estate sector. Each summary was prepared based on the situation as at 1 January 2016 and focuses on the following areas:

- Value added tax
- Corporate income tax and capital gains
- Tax depreciation
- Tax implications of financing investments (thin capitalization, dividends, withholding tax, interest and losses carried forward)
- Real estate tax
- Real estate transfer tax

We trust that this comprehensive survey of real estate taxation within our region will prove valuable to your business objectives and encourage you to contact us should you have any further questions on the issues covered herein.

Sincerely,

**Honorata Green**

Partner  
KPMG's Tax practice  
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# Albania



## GENERAL

There have been no major changes to tax legislation introduced in 2016.

The most relevant amendments remain the ones introduced in 2015 which include i) the new value added tax (VAT) law which is effective as of 1 January 2015, ii) an exhaustive “instruction” document supporting the respective VAT law, and iii) changes to the law on tax procedures, income tax, social and health contributions.

Personal income tax on all types of income is subject to a 15% tax rate, with the exception of personal income tax on

which the earlier progressive taxation scheme still applies.

In order to stimulate the exchange of ownership of agricultural real estate, the transfer of ownership of agricultural land from a registered farmer to another farmer or natural person, or official taxpayer who performs agricultural activities, is exempt from personal income tax.

## CORPORATE INCOME TAX AND CAPITAL GAINS

The corporate income tax (CIT) rate in Albania is 15%. A reduced rate of 7.5% applies for taxpayers who have an annual turnover between ALL 2 million and

8 million. Small businesses having an annual turnover of less than ALL 2 million are subject to a fixed tax obligation amounting to ALL 25,000 per year.

Corporate income tax is applied to the accounting profit after adjustments for tax purposes.

Capital gains from the sale of real estate are included in the taxable income of the entity and are taxed at the applicable CIT rate. The sale of real estate by individuals is subject to personal income tax at 15% on the capital gain generated. The ownership transfer of agricultural land from a registered farmer to another farmer or legally active person who performs agricultural activities is exempt from personal income tax.

Since 1992, Albania has entered into agreements with several countries for the avoidance of double taxation. As of 1 January 2015, 37 double tax treaties (DTT) with different countries are in force. In addition, a DTT with Iceland is expected to enter into force on 1 January 2017. A general rule imposed by the tax treaties is that the right to tax capital gains is conferred to the state of residence of the seller.

However, a number of double tax treaties provide a special regime for capital gains if the shares' object of transaction derive more than 50% of their value directly or indirectly from real estate. In addition, capital gains are taxed in Albania in cases where a foreign entity or a foreign individual transfers the direct ownership of real estate situated in Albania.

### **Tax depreciation**

Entities may set depreciation rates for assets in accordance with their accounting policies, while under the

provisions of the Law on Income Tax, the maximum annual rates allowed for tax purposes are specified according to a separate tax depreciation schedule. Land is not depreciated for tax purposes. Solid buildings, including investment properties, facilities, transmitting devices (e.g. antenna stations), machinery and production equipment which are fixed at a building's location are depreciated according to the declining balance method at a depreciation rate of 5%.

Certain assets associated with a building can be treated as separate movable assets for tax purposes and therefore can be depreciated over a shorter period.

As set out in the recent amendments to the Law on Income Tax, starting from 1 January 2015, if the net book value of a fixed asset, at the beginning of the year, is lower than 3% of the historic cost (for assets depreciated at 5% on net book value) or 10% of the historic cost (for assets depreciated at 20% or 25% of the net book value), the net book value shall be entirely recognized as a deductible expense for corporate income tax purposes.

### **Tax losses**

Tax losses can be carried forward over three tax periods. They can be offset against positive financial results after tax adjustment for the respective tax period according to the "first loss before the last" principle. A tax loss cannot be carried forward if the ownership of stock capital or voting rights of a person or taxable entity changes more than 50% in number or value.

### **Thin capitalization**

Thin capitalization rules apply in Albania if a company's liabilities exceed four times the amount of its equity (excluding



short-term loans). In such a case, the interest paid on the exceeded amount is not tax deductible. The thin capitalization restrictions do not apply to banks, to insurance or to leasing companies.

In addition, any interest paid exceeding the average annual interest rate on loans published by the Bank of Albania is not tax deductible.

## **WITHHOLDING TAX**

As of 1 January 2015, the standard Albanian withholding tax (WHT) is 15% (from the previous 10%). The WHT rate can be reduced or the WHT obligation may be eliminated based on the provisions of each specific DTT in force between Albania and the country of residence of the beneficiary of the income. Withholding tax should be declared and paid within deadlines set out in the Law on Income Tax and declared via a specific tax return published by the Ministry of Finance.

Based on new tax legislation amendments, starting from 1 January 2015 WHT returns should only be submitted electronically.

## **Dividends**

Withholding tax of 15% on dividends applies on all dividends paid by Albanian companies unless a DTT in force states otherwise.

No WHT applies if dividends are paid to a tax resident company or partnership which is subject to CIT in Albania. In addition, the income generated from dividends is not included in the taxable income of the tax resident company or partnership.

The Instruction on Income Tax provides that the deadline for destination of the profit and eventual payment of WHT on dividends will be 20 August of each year, notwithstanding the time when the actual payment to the beneficiary is/was performed.

## **Interest and royalties**

Withholding tax of 15% is also applied to interest and royalties paid by Albanian companies unless a respective DTT states otherwise.

## **REAL ESTATE TAX**

Individuals and legal entities that own real estate property in Albania are subject to real estate tax. Local taxes on real estate consist of the real estate tax on buildings and on agricultural land. Regarding real estate tax on buildings, the tax base is calculated as the floor area of the buildings measured in square meters for each floor of the building owned (for real estate tax on agricultural land, the tax base is the area of agricultural land measured in hectares). The tax depends on the district where the real estate is located and is calculated on an annual basis. The local tax on buildings varies from ALL 5 to ALL 400 per square meter. The tax on residential buildings used for business purposes varies from ALL 40 to ALL 400 per square meter, while the tax on buildings owned by individuals varies from ALL 5 to ALL 30 per square meter. In addition, the tax on buildings is at double the rate for any second or subsequent real estate property (apartment or house) owned by individuals. The tax on agricultural land varies from ALL 700 to ALL 5,600 per hectare. Buildings owned by the state and local governmental authorities as well as by religious institutions are exempt from this tax.



## REAL ESTATE TRANSFER TAX

This tax is applicable in the case of the transfer of ownership rights of buildings and other real estate properties. It is payable by the entity that transfers the ownership of the real estate. The tax on the ownership transfer of buildings is levied on each square meter and varies from ALL 100 to 2,000, depending on the district where the real estate is located. The tax on ownership transfers of real estate other than for buildings is 2% of the sale price. The tax is not applicable to individuals subject to personal income tax in Albania.

Donors of real estate property to governmental authorities, religious institutions or not-for-profit organizations are exempt from this tax. The tax should be paid by the seller of such property before the transfer of the real estate is registered in the Real Estate Register.

## VALUE ADDED TAX

Supply of land and the lease of land are considered VAT exempt supplies. The supply of buildings (with the exception of construction works) is an exempt supply. The lease of a building is an exempt supply except in the following cases:

- when renting for not longer than 2 months;
- for those staying in hotels or vacation resorts.

In addition, based on the by-laws issued by the Minister of Finance, entities or individuals may opt (upon the fulfillment of certain conditions) to categorize their lease supply of buildings as a taxable supply subject to 20% VAT.

## Place of supply of services

Based on Albanian VAT legislation, the place of supply of services relating to real estate is the place where the real estate is situated. Therefore, services related to Albanian real estate such as architectural or engineering services are considered subject to Albanian VAT regardless of whether the recipient of the services is subject or not to VAT in Albania (i.e. the general business to business and business to customer rules does not apply).

## VAT refund

A legal entity carrying out taxable activities has the right to claim for reimbursement of VAT if the excess tax credit is carried forward for 3 successive months and the claimed reimbursement amount exceeds ALL 400,000. A VAT refund cannot be requested by entities or individuals not registered for VAT purposes in Albania.

## Further notes

According to *oanda.com*, the exchange rate as at 20 September 2016 was EUR 1/ ALL 135.199.

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# Bosnia & Herzegovina



## GENERAL

Bosnia and Herzegovina (BiH) consists of two main territorial and administrative entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS), jointly referred to as “the entities”, including the very small district of Brcko. Legislation related to physical and legal persons and taxes (exclusive of indirect taxes) is predominantly enacted at the level of the entities.

The observations which follow are based on the relevant laws of these entities, effective as at 1 January 2016.

All BiH taxpayers, both physical and legal persons, have a personal identification number (PIN) issued by the tax administration of the relevant entity, and all business documentation and correspondence (including tax returns) must include the PIN.

Foreign physical or legal persons (including EU citizens) can buy land (except for agricultural land) and real estate in BiH on the condition of international reciprocity for BiH physical or legal persons.

## CORPORATE PROFIT TAX

Direct taxes are levied in line with the entity's legislation.

Resident legal persons (legal persons incorporated in the relevant entity, or legal persons whose place of effective management and control is in the FBiH (applies in the FBiH only) are subject to corporate profit tax (CPT) on their worldwide income. Non-resident legal persons are subject to CPT on their income sourced in the relevant entity.

Taxable profit is subject to CPT at 10% in both entities. In the FBiH, taxable profit is the accounting profit adjusted for tax non-deductible and non-taxable items in accordance with provisions of the FBiH CPT legislation. In the RS, taxable profit is the difference between taxable revenues and tax-deductible expenditures in accordance with provisions of the RS CPT legislation.

The tax period is the calendar year in both entities. Corporate profit taxpayers pay monthly advance payments (by the end of the current month for the previous month in the FBiH; by the 10th of the current month for the previous month in the RS), based on the previous year's CPT return. Any CPT shortfalls at the year-end must be self-assessed in the CPT return and paid by 30 March of the current year for the previous year in the FBiH and by 31 March of the current year for the previous year in the RS, by which date the annual CPT returns must be submitted.

Capital gains are generally included in taxable profit in both entities and subject to tax at the same rate, i.e. 10%.

Generally, domestic dividend income is not subject to CPT provided profit was subject to CPT at source, in both entities.

In both entities, tax losses may be carried forward for a period of 5 years, if certain conditions are met. No tax loss carry back provisions exist in either entity.

Tax grouping is available in the FBiH only, provided that all members of the group are incorporated in the FBiH and agree to the tax grouping.

## Anti-avoidance

Anti-avoidance provisions, including transfer pricing provisions, exist.

Transfer pricing provisions require that all transactions with related parties be listed separately and compared with the prices that would be charged in regular market conditions (according to the arm's length principle).

Thin-capitalization rules exist in the FBiH only. Thin-cap ratio of 4:1 applies to interest expenses per financial agreements and instruments from related parties. Interest expense in relation to liabilities per financial agreements which exceed the registered share capital in the 4:1 ratio are not tax deductible and cannot be carried forward to another tax period. However, this does not apply to banks and insurance companies.

## Tax Depreciation Rates

Accelerated depreciation is possible in the FBiH only under specific circumstances. Tax depreciation expenses can only be calculated on a straight-line basis in both entities.

The annual depreciation rates in the FBiH include 5% for buildings, 15% for equipment and machinery and motor vehicles, 20% for intangible assets and 33.33% for computers and equipment for environmental protection.

Tax depreciation rates in the RS are prescribed by the newly enacted "Rulebook" on application of annual depreciation rates. Due to the volume of data, i.e. specific tax depreciation rates prescribed by the Rulebook, these will not be detailed here.

## **WITHHOLDING TAX**

Withholding tax (WHT) at a rate of 10% generally applies to payments made to non-resident legal persons for provision of services (e.g. management consulting, tax and regulatory advisory, market research, audit services), royalties, qualifying interest, renting of movable property. Renting of immovable property is subject to WHT in the FBiH only.

In both entities, WHT at a rate of 5% applies to dividends paid to non-resident legal persons.

In the FBiH only, non-resident's income subject to 10% WHT includes income which a non-resident realized from a resident or other non-resident, on the territory of FBiH, from sale of or transfer for a fee of an immovable asset, shares or stakes in the equity of a company, unless provided otherwise in an applicable double tax treaty.

The WHT rate may be reduced or eliminated pursuant to an effective double tax treaty.

## **REAL ESTATE TRANSFER TAX / REAL ESTATE TAX**

### *FBiH*

Real estate transfer tax (RETT) is regulated at the cantonal level in the FBiH (i.e. there are currently 10 different laws applicable in the FBiH).

Real estate transfer tax applies to transfers of land and all transfers of real estate which are value added tax (VAT) exempt, i.e. all transfers of real estate except the first transfer of newly constructed objects. Real estate transfer tax is irrecoverable.

The RETT rate applicable in all 10 cantons in the FBiH is 5%.

### *RS*

In the RS, the Law on Real Estate Tax (RET) became applicable as of 1 January 2016. The RET rate is prescribed up to 0.20% and applies on an annual basis to all real estate situated in the RS, except for real estate which is used for production where the RET rate is prescribed up to 0.10%. The RET base is the market value of real estate, whose market value is determined in accordance with municipal decisions.

If the RET payer, i.e. the real estate owner, transfers the real estate during the year, they are obliged to settle the RET liability that became due in relation to the period from the beginning of the year until the transfer of the real estate in question.

## VALUE ADDED TAX

### *BiH*

Value added tax is levied at the national level. The standard VAT rate is 17% and applies to the supply of products and services.

A VAT rate of 0% (input VAT recovery possible) applies to exports.

Services are taxable in BiH if they are deemed to have been supplied in BiH.

The reverse-charge mechanism applies to certain services supplied from abroad.

The rules regarding the place of supply are similar to the EU 6th VAT Directive prior to the implementation of the "VAT package" applicable in the EU as of 1 January 2011.

The registration threshold is set for taxable supplies of BAM 50,000 (approximately EUR 25,000). Foreign legal persons providing taxable supplies in BiH are required to register for VAT purposes, provided relevant conditions are met.

The transfer of newly constructed buildings is subject to VAT at a rate of 17%. Physical persons generally cannot recover VAT; however, VAT is generally recoverable for legal persons registered for VAT in BiH, provided general conditions for VAT recovery are met.

Foreign legal persons are eligible to recover VAT, provided certain conditions are met.

Options available to foreign legal entities in respect of VAT registration and compliance are to either register for VAT purposes in BiH through a VAT representative, or to establish a limited liability company in BiH which would then register for BiH VAT.

In accordance with the VAT Law, a foreign legal entity and its VAT representative are jointly and severally liable for VAT calculated in accordance with the BiH VAT Law.

Foreign legal persons are permitted to register a branch office in the FBiH and the RS. Such a branch office is not considered a legal entity and it is therefore deemed as an extension of the foreign company.

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# Bulgaria



## GENERAL

No major changes have been made to the Bulgarian Corporate Income Tax Act (CITA) or the Local Taxes and Fees Act (LTFA) as of January 2016. Furthermore, there have been no significant amendments to the Value Added Tax (VAT) Act which would concern the real estate sector.

## CORPORATE INCOME TAX AND CAPITAL GAINS

The Bulgarian CITA specifies that Bulgarian entities are subject to 10% corporate income tax (CIT) on their worldwide income. Foreign entities are subject to tax only on the profits

derived from Bulgarian permanent establishments (including branches) and/or profits related to the disposal of property owned by such a permanent establishment.

Corporate income tax is calculated on the basis of the annual financial result (as per the Income Statement of the entity) adjusted with certain permanent or temporary tax differences.

The income from real estate derived by Bulgarian entities is included in their annual financial result. The annual financial/accounting result is subject to further adjustments for tax purposes.

Under the general CITA rules, any expenses incurred in relation to company-owned or rented assets (incl. real estate), which are used for the personal purposes of employees, management, clients, etc., should be treated as non-business related expenses which are tax non-deductible. Certain amendments to the law are expected to be introduced from 2017, including direct one-off taxation of such expenses.

Annual CIT liability is determined by the taxpayer through the preparation of an annual CIT return. Any outstanding liability (off-set with any advance installments made) should be remitted to the state budget by 31 March 2017. The same timeframe applies for the submission of the annual CIT return.

There is no provision for tax grouping in Bulgaria.

### **Tax depreciation**

Bulgarian tax-liable persons should maintain a tax depreciation schedule (TDS) where they report all tax depreciable assets. Tax depreciation as per the TDS is to be reported as a downward adjustment to the financial result for tax purposes, while the accounting depreciation expenses accrued during the year are disallowed for tax purposes and are reported as an upward adjustment to the financial result.

The Bulgarian CITA provides for maximum tax depreciation rates depending on the type of the depreciable asset. The maximum tax depreciation rate for buildings including those held as investment properties is 4%. Land is not depreciated for tax purposes.

### **Tax losses**

A tax loss can be carried forward for 5 years. It can be offset against a positive tax result for a subsequent tax year.

### **Thin capitalization**

Thin capitalization rules apply in Bulgaria if a company's liabilities exceed three times the amount of its equity.

Interest expenses are deductible up to an amount equal to the entity's interest income plus 75% of the profits before interest and tax. The disallowed interest expenses under the thin capitalization rules are reclaimable in the following 5 tax years up to the above-mentioned threshold calculated in those subsequent years.

Interest expenses on bank loans are not subject to thin capitalization, except in some specific cases.

### **TRANSFER PRICING**

Transfer pricing rules allow the revenue authorities to adjust tax bases where transactions are not carried out at an arm's length basis.

Under the transfer pricing provisions the tax base may be adjusted by the revenue authorities in order to determine the CIT, withholding tax (WHT) and VAT liabilities of the taxpayer.

### **WITHHOLDING TAX**

Specific types of income originating in Bulgaria accrued by local tax resident entities in favor of non-resident taxpayers is subject to WHT provided that the income is not derived through a permanent establishment of a non-resident entity in Bulgaria.



Such income includes capital gains, rental payments, the accrual of interest, royalties, technical services (including consultancy services), management fees, etc.

The standard WHT rate is 10%. Withholding tax rates can be reduced under an effective double taxation treaty signed between Bulgaria and the country of residence of the foreign income recipient, following a specific pre-approval procedure.

Withholding tax is generally calculated on a gross basis. CITA includes provisions stating that foreign recipients of income subject to WHT and who are tax residents of an EU/EEA member state are entitled to an annual recalculation of the WHT which has been levied and paid on a gross basis following a specific procedure. The recalculation is aimed at equaling out the tax treatment between local entities and foreign entities which are tax residents of an EU/EEA member state.

## Dividends

Dividends and liquidation quotas are subject to WHT at a general rate of 5%.

Please note that dividends and liquidation quotas distributed by local tax residents to shareholders' local entities, as well as foreign entities that are tax resident in an EU/EEA member state, are exempt from WHT taxation.

## Interest and royalty payments

WHT on interest income and royalties accrued by local companies to foreign tax residents of EU countries is exempt in the following cases:

- (i) the beneficiary of the income is a foreign legal entity from an EU member state or a permanent establishment in the EU;
- (ii) the local legal entity (payer of the income) is a related party to the foreign beneficial owner of the income; and
- (iii) at the time of the income accrual, the ownership of the required minimum capital is uninterrupted.

The aim of this provision is to harmonize the Bulgarian tax legislation with Directive 2003/49/EC (i.e. the EU Interest and Royalties Directive).

Further, interest derived from bonds and other securities issued by local tax residents and traded on a regulated EU or EEA stock exchange is exempt from WHT. Neither is WHT due on interest accrued in relation to loans extended by EU/EEA residents, which have issued bonds and other securities traded on a regulated EU/EEA stock exchange, in order to lend the proceeds to the Bulgarian entity.

In addition, the interest on bonds or other debt instruments issued by the state and the municipalities and traded on a regulated market in the EU or in the EEA, as well as interest arising under loan facilities granted to the state or the municipalities and not backed-up with bonds, are not subject to WHT.

## Payments for rent/the right of use of immovable properties

Rental income realized by foreign entities from rent or the right of use of immovable properties located in the country is

subject to 10% WHT, which should be deducted and paid by the local payer of the income, provided that the latter is a tax liable person under the terms of CITA. As mentioned above, the WHT rate may be reduced under a double taxation treaty.

## LOCAL TAXES AND FEES

The main local taxes and fees in relation to the ownership or acquisition of real estate in Bulgaria include real estate tax, garbage collection fees and transfer tax.

### Real estate tax

Owners of buildings and plots of land situated in Bulgaria as well as acquirers of limited ownership rights of real estate property are subject to annual real estate taxation. The rate of real estate tax varies in a range of 0.01% – 0.45%. It is determined at a municipal level and may vary from year to year.

The taxable base for real estate tax of non-residential property owned by companies is the higher amount of the tax valuation and the book value of the property. The taxable base for real estate tax of property owned by individuals or residential property owned by companies is the tax valuation of the property.

An exemption from tax on real estate properties still counts for buildings constructed before 1 January 2005 depending on the type of certificate for energy consumption that the building has received and whether any measures are applied for utilization of the building's renewable energy sources. The real estate tax exemption for the respective building may be used for a maximum of 10 years depending on the specific conditions satisfied.

### Garbage collection fee

Generally, a garbage collection fee is levied on the book value/cost of the immovable property at a rate determined annually by the respective municipality where the property is located. The rates for the garbage collection fee may vary significantly between municipalities.

The garbage collection fee comprises several service fees: (i) waste collection/transportation fee, (ii) fee for safe disposal of household waste at sanitary landfills or other facilities, and (iii) fee for sanitation of spatial-development areas for public use. An exemption from waste collection/transportation fee is introduced upon submission of a declaration by the owners of the properties by the end of the calendar year declaring that the property shall not be used the whole year that follows.

### Transfer tax

Transfer tax is levied when transferring real estate property or limited property rights over real estate. The tax rate is in a range of 0.1% – 3% levied on the tax base of the property in cases of acquisition against consideration. When immovable property is transferred as a gift, the tax rate ranges from 3.3% to 6.6%. The applicable transfer tax rate is determined by the respective municipality.

No transfer tax is due upon non-cash capital contributions in companies, cooperatives or non-profit organizations.

The tax base upon transfer of real estate property or limited property rights over it is the higher of the following values:

- (i) the purchase price/a price defined by state or municipal authorities, and
- (ii) the tax valuation of the property.

The transfer tax is generally paid by the recipient of the property, unless the parties have agreed differently.

If the recipient has no clear presence in the country, the tax is payable by the transferor.

All tax returns specified in the Local Taxes and Fees Act may be filed electronically, including by using the personal identification code issued by the National Revenue Agency.

## VALUE ADDED TAX

As of 1 January 2016, there are no significant amendments of the Bulgarian VAT Act which would affect VAT in the real estate sector.

### VAT exempt and VAT taxable supplies

According to the provisions of the Bulgarian VAT Act, the lease of buildings for residential purposes, the sale and lease of unregulated plots of land, the sale of old buildings (i.e. buildings for which more than 60 months from the issuance of the exploitation permit has expired) as well as the transfer of construction rights, are considered a VAT exempt supply. However, the seller/lessor has the option to choose to treat these supplies as VAT taxable transactions and charge VAT at the rate of 20%.

The supply of construction rights could be exempt from VAT only up until the start of the construction process, i.e. up to the date of issuing the building permit.

The sale of new buildings, plant, machinery, equipment and structures immovably fixed to the land is a VAT-taxable supply, subject to 20% VAT.

## Taxable amount

The taxable amount of real estate is determined under the general rules of the VAT Act and is not regulated separately.

The following special rules may also be applicable for real estate transactions:

- Transactions between related parties

The taxable amount for supplies made between related parties should be equal to the open market value only in specific cases where neither the supplier nor the recipient enjoy the right to full input VAT deduction. The aim of this rule is to prevent related parties from optimizing their pro-rata VAT deduction by applying non-arm's length prices.

- Barter transactions (e.g. construction rights for construction services)

The taxable amount for a barter transaction for which the parties have not agreed a monetary value should be equal to the acquisition cost/direct cost of the goods/services provided. When the tax base cannot be determined in this way, it should be equal to the open market value. The open market value would also be used as a taxable base when the barter transaction is performed between related parties with restricted input VAT deduction rights, as explained above.

- Improvement of rented assets

The taxable amount of the deemed supply of service by the tenant to the landlord in cases of free-of-charge improvements of hired assets should

be equal to the direct expenses incurred, taking into account normal wear and tear. If the direct cost cannot be estimated, the taxable amount should be the open market value.

There is no VAT grouping in Bulgaria.

In 2016 certain clarifications were made with regards to the VAT implications arising for the taxpayer if a corporate asset (including real estate) is used for personal needs. In most general terms, the direct costs incurred for the acquisition/rent and the exploitation of the asset is to be allocated between personal use and business use, and VAT is to be self-charged on the personal element of the costs, if input VAT was deducted for them.

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# Croatia



## GENERAL

Croatia joined the EU on 1 July 2013, a step which resulted in significant taxation and legal changes.

The comments below are based on Croatian laws effective as at 15 July 2016.

In general, legal entities and legitimate persons from EU member states are free to buy real estate in Croatia. Exceptions do exist and depend on the type of real estate. Other foreign (non-EU) legal entities and legitimate persons need to apply for a permit from the Croatian Ministry of Justice before they can be registered as owners in the land registry.

The standard value added tax (VAT) rate is 25% and it applies to most products and services. There are also reduced VAT rates of 5% and 13% for some other products and services.

Generally, as of 1 January 2015, land and buildings are considered to be one supply, i.e. the same tax treatment applies to both land and buildings.

Whether VAT or real estate transfer tax (RETT) applies depends on the status of the seller, the status of the buyer and the status of the real estate. For details, please refer to the section "Real Estate Transfer Tax and Value Added Tax" below.

## CORPORATE INCOME TAX AND CAPITAL GAINS

Resident legal entities (legal entities incorporated in Croatia or legal entities whose place of effective management and control is in Croatia) are subject to corporate income tax (CIT) on their worldwide income. Non-resident legal entities are subject to CIT on their Croatian-sourced income.

Accounting profits, adjusted in accordance with the provisions of the CIT Law, are subject to CIT at a rate of 20%.

Amongst other items, accounting profit needs to be increased for:

- interest on loans provided or guaranteed by a foreign direct shareholder (holding 25% or more of the shares), or by any foreign related party on the amount of the loan that exceeds four times the capital of that foreign shareholder ("thin capitalization" rule, see below);
- interest over 5.14% per annum on loans provided by a foreign related party ("excessive interest rate" rule);
- interest over 5.14% per annum on loans provided by a domestic related party, if one of the parties is in a tax favorable position or has tax losses carried forward from previous periods which can be utilized in the current tax period; and
- penalty interest between related parties (both domestic and foreign).

The tax period is the calendar year. Corporate income taxpayers pay monthly advance payments based on the previous year's annual CIT return.

Any CIT shortfalls at year end must be self assessed in the annual CIT return and paid by the taxpayer by 30 April of the current year for the previous year, by which date the annual CIT return must be submitted.

There is no separate capital gains tax – any capital gains realized by a company on the disposal of fixed assets and intangibles are added to the company's tax base and are subject to the standard CIT rate of 20%. On disposal, the seller can deduct the net tax value of the fixed assets and associated disposal expenditures. Taxable income can be reduced by tax losses where they are available for utilization.

Domestic and foreign dividend income is, generally, not subject to CIT.

There is no tax grouping provision.

There are anti-avoidance provisions, including detailed transfer pricing provisions (which require a transfer pricing study including benchmarking analyses, for all cross border transactions with related parties and for certain domestic transactions between related parties).

### Tax depreciation

Depreciation of tangible and intangible assets is usually calculated on a straight-line basis using the rates laid down in the Croatian CIT Law. Depreciation of tangible and intangible assets is a tax deductible expense starting from the month following the month in which a particular asset was brought into use. After being completely depreciated, the tangible and intangible assets are kept on record until they are sold, disposed of or found missing. The annual depreciation rates include: 5%



for buildings; 25% for equipment and machinery, motor vehicles (other than personal cars) and intangible assets; 20% for personal cars; 50% for IT equipment and mobile phones; and 10% for other long-term assets. These rates can be doubled in some cases.

Land is not depreciated for tax purposes.

### **Tax losses**

Tax losses may be carried forward for a maximum of 5 years starting with the year in which they occurred, if certain conditions are met. No tax loss carry-back provisions exist.

In the case of mergers and de-mergers, tax losses can be transferred to the legal successor, but only if the legal predecessor is fully in operation and if the legal successor does not have a significantly different business activity compared to the predecessor, the timeframe being for 2 years both prior to and after the statutory change. The same applies if there is a change in ownership of the company of more than 50% compared to the ownership structure at the beginning of the tax period.

### **Thin capitalization**

Interest on a loan provided or guaranteed by a foreign direct shareholder holding at least 25% of the shares or voting rights in a company or a loan provided, or guaranteed by a foreign related party, is not deductible for CIT purposes on the amount of the loan which exceeds four times the capital of that foreign shareholder.

The amount of the shareholder's holding in the loan recipient's equity capital is determined for the tax period as an average on the basis of paid-in capital, retained earnings and reserves as at the last day of each month in the tax period.

For loans provided or guaranteed by entities without a direct shareholding in the loan recipient but which are considered to be related to the loan recipient, the equity capital of the foreign direct shareholder is taken into account for thin capitalization purposes.

The thin capitalization rule does not apply to loans provided by foreign shareholders and foreign related parties that are financial institutions.

### **Tax incentives**

The CIT rate can be reduced by 50% if the company operates in a Class II Support Area or the company can be exempt from CIT if it operates in a Class I Support Area or in the City of Vukovar. Specific conditions must be met in all cases. In addition, other incentives may exist under the Investment Promotion Law.

### **Incentive for reinvested profits under the CPT Law**

As of 1 January 2015, profits from the current year used to increase the registered share capital of a company are exempt from corporate profit tax (CPT):

- if the reinvested profits are used to invest in fixed assets in the tax period for which the incentive will be used;
- if the increase of share capital in the amount of the reinvested profits is registered in the Court Register;
- whereby the existing number of employees needs to be preserved for at least 2 years following the year when the reinvestment of the profit was performed; and
- this incentive does not apply to banks or financial institutions.



Companies applying for the incentive are required to submit to the Croatian Tax Authority (CTA), together with the tax return, but not later than 6 months from the deadline for filing the tax return, evidence of the increase of the share capital which consists of:

- a list of acquired fixed assets and credible documentation on performed investments in fixed assets;
- evidence that the increase of the share capital in the amount of reinvested profits was registered in the Court Register; and
- a statement that pursuant to the same completed investment in fixed assets the company does not use incentives based on the special regulation governing the encouragement of investments (see below).

The incentive for reinvested profits will be denied if:

- the company's share capital which was increased by reinvested profits is subsequently decreased;
- the share capital of the company is decreased due to statutory changes (e.g. mergers or demergers); or
- the number of employees with valid temporary and permanent contracts is decreased before the 2-year period has lapsed.

### Investment incentives

A taxpayer making a qualifying investment may be exempt from CPT or taxable at a reduced rate of CPT, depending on the level of investment and the number of new employees employed, for a maximum

period of 5 years for micro entrepreneurs and 10 years for small, medium-sized and large entrepreneurs (or until the investment level is reached) commencing from the year in which the investment started (provided certain conditions are met). The following incentives are available:

- a 10% reduced rate, if the minimum investment is EUR 50,000 and the taxpayer employs at least three new employees related to the investment within the initial period of 1 year (this incentive applies only for micro entrepreneurs);
- a 10% reduced rate if the investment does not exceed EUR 1 million and the taxpayer employs at least five new employees related to the investment;
- a 5% reduced rate if the investment amount is between EUR 1 million and 3 million and the taxpayer employs at least 10 new employees related to the investment; and
- a total exemption if a taxpayer invests at least EUR 3 million and employs at least 15 new employees related to the investment.

### WITHHOLDING TAX Dividends

Withholding tax (WHT) at a rate of 12% applies to payments of dividends and profit shares paid to foreign legal entities made on or after 1 March 2012, but not for payments of dividends and profit shares earned before that date.

The WHT rate may be decreased/eliminated where an effective double taxation treaty exists to which Croatia is a party. In order for the dividend payment not to be subject to Croatian withholding

tax in line with provisions of a double taxation treaty, the Croatian company – i.e. the payer of such a dividend – would need to obtain the following documents prior to the payment of the dividends:

- a Statement of Residence issued by the tax office in the country in which the recipient of the dividend is tax resident – a procedure which applies if withholding tax is eliminated (reduced to 0%); or
- a completed form for dividend payments prescribed by the Croatian CIT legislation, stamped/approved by the tax office in the country in which the recipient of the dividend is tax resident – a procedure which applies if withholding tax is reduced from the statutory rate of 12% to a lower rate provided for under a double taxation treaty (e.g. 5% or 10%).

Also, dividends paid to shareholder companies that are residents in EU member states or paid to qualifying Swiss companies are exempt from Croatian withholding tax if the shareholder owns at least 10% (for Swiss shareholders at least 25%) of the payer's shares and the shares have been uninterrupted held for at least 2 years, and if certain other conditions are met.

### **Interest, royalties and intangible services**

Withholding tax at a rate of 15% applies to certain payments made to non-resident legal persons (for specified interest payments, payments for intellectual property rights, market research, tax advisory, business advisory and audit services).

The WHT rate may be decreased or eliminated in line with an effective double taxation treaty to which Croatia is a party. In order for the interest payment or royalty payment not to be subject to Croatian withholding tax in line with provisions of a double tax treaty, the Croatian company, i.e. the payer of such interest or royalty, would need to obtain the following prior to the payment of interest or royalties:

- a Statement of Residence issued by the tax office in the country in which the recipient of the interest or royalty is tax resident – a procedure which applies if withholding tax is eliminated (reduced to 0%); or
- a completed form covering interest or royalty payments prescribed by the Croatian CIT legislation, stamped/approved by the tax office in the country in which the recipient of the interest or royalty is tax resident – a procedure which applies if WHT is reduced from the statutory rate of 15% to a lower rate provided for under a double tax treaty (e.g. 5% or 10%).

In addition, interest paid to EU resident companies or to qualifying Swiss companies is exempt from Croatian WHT where a minimum of 25% direct shareholding exists between both companies or where a third company directly owns at least 25% of both companies, provided that the participation is held for an uninterrupted period of at least 2 years and if certain other conditions are met.

### **Other services**

Withholding tax at a rate of 20% applies to payments for services, other than the above-mentioned services, made to



legal persons outside the EU if the legal person has their registered seat or place of effective management and supervision in a country with a CPT rate lower than 12.5%, if Croatia does not have a double tax treaty with that country, and if the country is included in the appropriate list published by the Croatian Ministry of Finance.

## **REAL ESTATE TRANSFER TAX AND VALUE ADDED TAX**

### **General provisions regarding real estate**

The following transfers of real estate are subject to VAT (if transferred by a Croatian VAT registered entrepreneur):

- transfers of construction land;
- transfers of buildings (or parts of buildings) before first occupation or if less than 2 years have elapsed

between the period of first occupation and the date of transfer; and

- transfers of reconstructed buildings (or parts of buildings) if the costs of reconstruction in the previous 2 years exceed 50% of the sale price.

In all other instances, real estate transfer tax (RETT) applies.

However, in certain circumstances, the transferring party (of both land and buildings) is able to opt for the transfer to be subject to VAT, provided that the transferee is entitled to full input VAT deduction. In this case, the reverse-charge mechanism applies.

RETT at a rate of 5% applies to the transfer of real estate unless the transfer

of real estate is subject to VAT. RETT is payable by the purchaser.

### Place of supply of services

Croatian VAT rules regarding the place of supply of services are fully aligned with the EU VAT Directive.

Specifically, Croatia has the general business to business rule for taxation of services according to which services provided by a taxpayer from one EU member state to a taxpayer in another EU member state are taxable in the country of the service recipient.

However, in the case of services related to real estate (including renting or leasing), the place of supply is the place where the real estate is located.

### VAT refunds and domestic law

Input VAT can generally be recovered if a taxpayer is VAT registered and if the following conditions are met:

- the taxpayer receives a proper VAT invoice from a supplier;
- the delivery of goods (services) took place; and
- the goods (services) are used by the taxpayer for business purposes and for the performance of VAT-able supplies/provisions.

A taxpayer whose input VAT exceeds its VAT liability is entitled to claim a refund of that difference. The refund period is 30 days from the date of submission of the VAT return. If a tax inspection is initiated prior to the receipt of the VAT refund, a refund must be made within 90 days of the day of the start of the tax inspection.

### VAT refunds

#### *VAT Refunds for non-resident entrepreneurs from non-EU countries (13th Directive)*

In order for non-resident entrepreneurs from non-EU countries to obtain a refund of Croatian VAT, the reciprocity condition needs to be fulfilled.

If the reciprocity condition with the country has not been officially confirmed, then resident entrepreneurs of that country will generally not be able to recover Croatian VAT.

In order to obtain a refund of Croatian VAT the non-resident entrepreneur must submit a request to the Croatian Tax Authorities no later than 6 months following the end of the calendar year to which it relates, e.g. it has to be submitted by 30 June 2017 for transactions in 2016. A request for a VAT refund must be submitted on the prescribed form together with a certificate issued by the tax authorities of the country of the non-resident entrepreneur stating the VAT status of the claimant and include original invoices.

#### *VAT Refunds for non-resident entrepreneurs from other EU member states*

According to the VAT legislation applicable as of Croatia's EU accession, non-resident entrepreneurs from EU member states are entitled to a refund of the VAT charged by Croatian entrepreneurs.

In order to obtain a refund of Croatian VAT, non-resident entrepreneurs from other EU member states must submit an electronic request for a VAT refund by using the electronic portal of the tax

office of the EU member state where they are established.

Electronic requests for VAT refunds should be submitted at the latest by 30 September in relation to charges from the previous year, e.g. for the year ending 31 December 2016 the request needs to be submitted at latest by 30 September 2017.

Non-resident entrepreneurs from other EU member states which submit requests for a refund of Croatian VAT are also required to provide an explanation of the business activities and a description of the transactions for which the VAT refund is sought, bank account number, etc.

### **European sales/purchases list/ Intrastat**

Apart from regular VAT returns, all transactions with taxpayers from EU member states need to be reported on an European Sales List and an European Purchase List. Additionally, all transactions involving goods with taxpayers from EU member states must be reported on Intrastat returns, provided the relevant threshold is reached.

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# Czech Republic



## GENERAL

The Czech legal environment has changed significantly following a reform of the civil and commercial law on 1 January 2014. Taxpayers should pay close attention to particular tax rules (since they are still subject to subsequent revisions), to ensure that they are in line with the new civil and commercial laws.

Overall, the year 2016 brought greater emphasis on the effectiveness of tax administration, including broader use of digital technologies. This will primarily help the tax authorities in monitoring and identifying tax fraud. In this respect,

the administrative burden laid upon the taxpayers has increased.

In addition, instruments against carousel fraud in the VAT area and certain instruments against base erosion and profit were implemented in 2016.

The most significant changes enacted in 2016 are summarized below.

## Income tax

Tax implications of new rules for the treatment of interest free loans which were introduced in 2015 were further clarified in the first half of 2016.

According to the current interpretations, the tax base of the borrower will not be affected as a result of an interest-free loan provided by a direct shareholder.

Another change implemented in the Income Tax Act in 2016 is the limitation of the dividend exemption for hybrid instruments (i.e. financial instruments which are treated as a loan in one country and as equity in another country) according to an EU directive. As of 1 May 2016, dividends received by a Czech parent company (or a permanent establishment of an EU company) from a subsidiary located outside the EU may be exempt from Czech taxation under the participation exemption only if the dividends were not an item decreasing the tax base at the level of the subsidiary. It appears that the intention of the legislators was that this rule should also apply to dividends received from other EU member states. However, due to improper EU directive implementation, this does not seem to be the case in 2016. As of 1 January 2017, this should be changed and the limitation rule should also apply to dividends received from subsidiaries located within the EU.

Additionally, a new double tax treaty with Liechtenstein was duly ratified by both contracting states and became effective as of 1 January 2016. Its ratification enables the application of several income exemptions which were conditional on the existence of this treaty.

Other minor changes to the Income Tax Act as of 2016 are as follows:

- For tax purposes, company incorporation costs are no longer capitalized as intangible assets and are directly expensed;

- The Income Tax Act includes new rules for adjusting profit/loss by reserves for handling electrical waste from solar panels.

Recently, structures aiming at the deductibility of interest on acquisition loans (debt push-down structures) attracted the attention of the tax authorities, and in 2015 in a landmark, but very specific case, the Czech Supreme Administrative Court rejected tax deductions for acquisition-related borrowing.

### Value added tax

As of 1 January 2015, all Czech VAT payers are required to file the new control VAT statement report. The control VAT statement must be submitted electronically by the 25th day of the following month at the latest.

A control VAT statement reports on individual local sales and purchases as well as intra-community acquisitions of goods or services including information such as tax bases, VAT applicability, dates of taxable supply, VAT numbers of suppliers/customers, and evidence numbers of the relevant tax documents, etc.

Effective from 1 February 2016, the reverse-charge mechanism obligation is extended to the supply of gas and electricity through networks to a dealer and certain supplies of real estate to Czech VAT payers.

Further changes in the VAT area related to the real estate market implemented in 2016 include:

- The definition of building plots (the sale of which is subject to VAT) has been expanded. It includes plots of



land (or plots of land relating to the land) on which construction work has been carried out, or in respect of which an administrative act has been made to build a building. This also applies to plots of land relating to the plot of land on which a building is to be constructed if they relate to the building.

- A substantial change to a building prolongs the term in which the sale of such real estate may not be exempt from VAT.
- A possibility exists to opt for application of VAT on generally VAT-exempt supplies of land.

### **Tax on the acquisition of immovable property**

An amendment of taxation on the acquisition of immovable property was expected to be effective as at 1 April 2016. However, it was approved by the Czech senate only in July 2016 and is expected to be effective from November 2016.

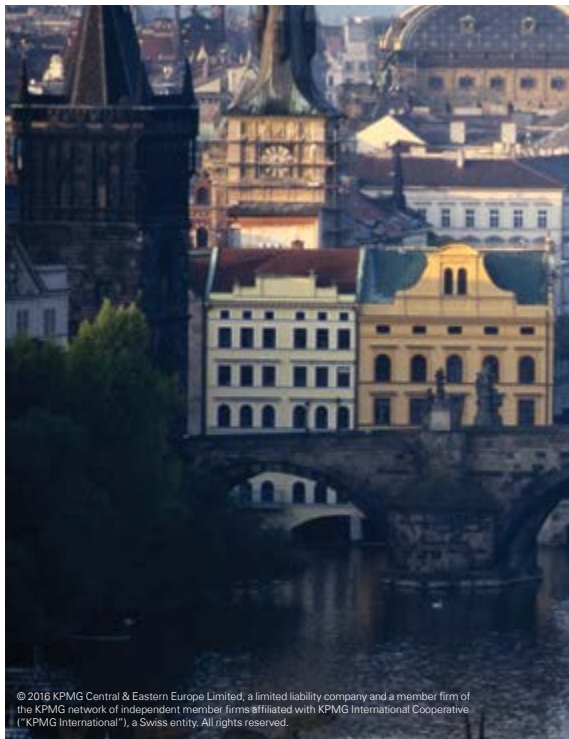
The amendment will bring three key changes:

- The payer of the tax, who is always the buyer, may not be determined by an agreement;
- Abolishment of the concept of a guarantor for the payment of the tax as a result of the buyer being liable for the tax payment;
- Limitation of the exemption of the first acquisition of new buildings and units. It should now apply only to the buildings and units already completed or used, not under construction.

### **TAX SUMMARY CORPORATE INCOME TAX AND CAPITAL GAINS**

Corporate income tax (CIT) is levied on profit from all activities (including rental income) and from the management of all types of property, although there are some exceptions to this rule defined in the tax law. The corporate income tax rate is 19% (with the exception of pension funds where it is 0% and certain investment funds where it is 5%).

Capital gains are generally included in income and taxed at the same rate, including income from the transfer of shares in Czech companies or cooperatives. However, if at least 10% of the shares of a company have been held by a parent company for 12 months, income from the sale of the shares is



tax exempt if the parent company is an EU resident company or a resident of Norway, Iceland or Liechtenstein (since 1 January 2016) and the subsidiary is a tax resident of an EU Member State or a non-EU Member State with which the Czech Republic has concluded a double taxation treaty (subject to certain conditions).

As of 1 January 2016, the Czech Republic has 89 double taxation treaties. As a rule, the right to tax capital gains is conferred on the state where the seller is resident. However, a number of double taxation treaties provide a special regime for capital gains if the shares being sold derive more than 50% of their value directly or indirectly from real estate (e.g. as in agreements with Australia, Cyprus, Egypt, Finland, France, Ireland, Canada, Sweden, and the USA). In such cases, the

taxation right belongs to the state where the real estate is located. In other cases the taxation right belongs to the state of residence of the company whose shares are being sold (e.g. under agreements with Germany, Israel and Saudi Arabia).

There are no corporate tax grouping provisions in the Czech Republic.

### **Tax depreciation**

For tax purposes, either straight-line or reducing balance depreciation can be used. The tax depreciation period for buildings is generally 30 years except for administrative buildings, shopping centers and hotels where the depreciation period is 50 years. Special rates apply in the year of acquisition. Land is not depreciated for tax purposes. Certain assets attached to a building can



be treated as separate movable assets for tax purposes and therefore can be depreciated over a shorter period.

Special provisions apply for the assets of solar power plants. These fixed assets must be depreciated over 240 months and the depreciation must be claimed (unlike depreciation on most other assets). Special adjustments are made for similar assets acquired under finance lease agreements.

### Tax losses

Tax losses can be carried forward for 5 years.

Losses may not be carried forward where there has been a substantial change in the ownership of a company unless it can be shown that at least 80% of the company's revenues is derived from the same activities as those performed in the period when the loss arose. A change of at least 25% in the ownership of the registered capital or the voting rights or a change resulting in a person obtaining a controlling influence in the company is always seen as a substantial change.

Tax losses are available after a merger or de-merger, although they can only be offset against profit if the entity performs the same activity as was carried out in the year when the tax loss arose.

It is also possible to utilize tax losses taken over during chain mergers or de-mergers.

### Thin capitalization

The thin capitalization provisions act to restrict the deductibility of interest where the borrower has insufficient equity.

The following financial costs are non-deductible:

- financial expenses on loans and credit received from related parties which are more than four times the equity (six times in the case of banks and insurance companies);
- financial expenses incurred on loans and credit with interest rates or other returns dependent on the debtor's profit levels.

Interest on loans and credits received from unrelated parties including those secured by a related party is fully deductible on general principles, except for interest on "back-to-back" loans (i.e. where a related party provides a loan, credit or deposit to an unrelated party which then provides the funds to the borrower) which is treated as interest on related party debt.

Any interest or other expenses relating to a non-EU or non-EEA resident lender which is disallowed under the thin capitalization rules may be treated as a dividend, i.e. it is subject to dividend withholding tax (WHT).

### WITHHOLDING TAX

Under Czech tax legislation, a 15% WHT applies to dividends, as well as to interest and royalties paid to foreign entities. However, a 5% WHT applies on finance lease payments. The rate may be reduced or eliminated under double tax treaties or under EU directives. On the other hand, an increased 35% WHT rate applies to income paid to residents of countries which have not signed a double tax treaty with the Czech Republic and where no arrangement is in place for the exchange of information on tax matters.

## Dividends

Withholding tax applies on all dividends paid by Czech companies.

Under the EU Parent-Subsidiary Directive, a dividend paid by a Czech subsidiary to a parent company that is tax resident in an EU member state may be exempt from WHT. These provisions also apply to dividends paid between Czech companies and those paid to Switzerland, Norway, Iceland or Liechtenstein (since 1 January 2016). A parent and subsidiary qualify for this exemption if a minimum shareholding of 10% is maintained for an uninterrupted period of 12 months unless one of the shareholders in question:

- is exempt from corporate income (or a similar) tax; or
- may claim a corporate income tax exemption or corporate income tax relief; or
- is subject to corporate income tax at a rate of 0%.

The EU Parent-Subsidiary Directive has recently been updated to include a general anti-avoidance rule. It is assumed that the effect of this rule will be to bring into question application of the EU Parent-Subsidiary Directive on dividends in cases where the parent company lacks sufficient substance and business rationale for its position in a structure (other than for the purposes of tax).

## Interest and royalties

Under the EU Interest and Royalties Directive, qualifying interest and royalty payments between associated enterprises which are tax resident in EU member states may be exempt from WHT.

This also applies to recipients in Switzerland, Norway, Iceland and Liechtenstein (since 1 January 2016).

Residents of other EU and EEA countries have the option to file a tax return for income subject to WHT (e.g. interest payments, royalties, income from freelance work), and to claim a deduction of related expenses. This may result in a reduction in the tax burden as WHT is calculated on a gross basis.

## TAX ON IMMOVABLE PROPERTY

The tax on immovable property (formerly real estate tax) comprises land tax and building tax. The property in question must be located in the Czech Republic and recorded in the Land Register. This tax is calculated by multiplying the area in square meters by the tax rate factor.

The rate varies according to the type and location of the property. The basic rates of tax applicable to buildings may be increased depending on the number of floors, the prevailing activity for which the building is used and the location. Municipalities can also issue a decree increasing the basic tax rate or coefficient.

Improved land surfaces are regarded as a separate class of real estate on which a special rate of tax applies.

## TAX ON THE ACQUISITION OF IMMOVABLE PROPERTY

With effect from 1 January 2014, a new tax replaced the former real estate transfer tax (although the tax rate of 4% remains the same). The tax is payable on transfers of the ownership of real estate for consideration. In cases of purchases and exchanges, the tax is paid by the transferring party (seller) unless the

parties agree that the acquirer will pay. As mentioned above, in the next few months this may be subject to a change (the tax will be paid by the real estate acquirer from the law).

The tax base is the higher of the agreed price and the reference value, which is calculated by the tax authorities based on prices for similar transactions. If the tax authorities cannot calculate a reference value, the tax base is the higher of the agreed price and 75% of the value assessed by an expert. If real estate is transferred as part of an enterprise, the tax base is set according to an expert valuation.

The contribution of real estate to share capital is no longer tax exempt.

## VALUE ADDED TAX

The standard rate is 21%, the first reduced VAT rate is 15% and the second reduced rate is 10%.

The sale of residential property that qualifies as social housing is subject to the reduced VAT rate. To qualify as social housing, an apartment should have a floor area of 120 square meters or less and the floor area of houses should not exceed 350 square meters. Such areas also include the area physically beneath the walls.

According to the new Civil Code, a building is an integral part of the land on which it stands. Therefore, it is no longer possible to treat the sale of land with a building on it as two separate transactions for VAT purposes and the whole transaction is considered as a sale of land even if the price is split into two parts.

In principle, the sale of land with a building on it is considered as a transaction subject to the standard VAT rate of 21% unless 5 years have passed from the date when the first consent to use the building was granted, or from the date when the building was brought into use. As already mentioned, starting 1 January 2016, the 5-year period will also count from the date of any substantial change made to the building in question. A 3-year period applies for buildings for which consent was granted or for buildings which were first used before 1 January 2013. However, the taxpayer can opt to tax the sale of the land and/or the building after expiry of the period. If the sale is to a Czech VAT payer, the VAT may be applied after the buyer's consent and the supply is subject to the "reverse charge" regime (as from 1 January 2016).

A change in the level of exempt sales within 10 years of acquisition of the building (or improvement of a building) may lead to a claw back of previously recovered input VAT. A claw back period of 5 years is applicable to buildings acquired before 1 March 2011.

The lease of buildings and land is generally VAT exempt, but the lessor can opt to charge 21% VAT on a lease with a tenant who is registered for VAT.

Groups of related companies may form a VAT group.

Construction work and building assembly services between two Czech entities that pay VAT are subject to the reverse charge regime. As a result, the duty to report and pay VAT rests with the recipient of the service.



Sale of land (other than building plot) without a structure on it is generally exempt from VAT. Again, as of 1 January 2016, a taxpayer can opt to tax the sale of the land. If the sale is to a Czech VAT payer, the VAT may be applied after the buyer's consent and the supply is subject to the reverse charge regime.

The sale of a building plot (as newly defined) is subject to a standard 21 % VAT rate.

### **ADMINISTRATION OF TAXES**

Tax administration is governed mainly by the Tax Code with specific procedures covered by other legislation.

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# Estonia



## GENERAL

The sale of immovable property and the leasing or letting of immovable property or parts of them are generally tax exempt when arranged as supply without credit according to the Estonian Value Added Tax (VAT) Act. Tax exemption applies neither for the supply of buildings before their first occupation, nor for their parts, nor for significantly renovated buildings (nor their parts), nor for plots within the meaning of the Planning Act, as long as there is no construction work in operation on such plots.

However, the taxpayer is entitled to use optional taxation, except for the case

of residential housing, as long as the tax authorities have been notified in writing beforehand. The notice regarding optional taxation of the leasing or letting of immovable property or parts thereof is binding for 2 years.

## CORPORATE INCOME TAX AND CAPITAL GAINS

The corporate tax system in Estonia differs from that used by many countries, in that corporate income is taxable only upon distribution. The profits earned and retained by a company are not subject to taxation. The income tax rate for 2016 on gross dividends is 20%, although the tax is calculated on the net amount



of dividends by applying a proportional tax rate of 20/80. Thus a company not distributing profit is not obliged to pay income tax. Taxable expenses and payments are taxed at the rate of 20/80 as well.

There is no separate tax on capital gains, but proceeds from the disposal of fixed assets and intangibles are added to the taxpayer's regular business income, so that corporate income is taxable only upon distribution in the form of a dividend.

A non-resident is obliged to pay income tax on income derived from the transfer of property if the immovable property is located in Estonia. In addition, income from the transfer of a shareholding in a real estate company or of the right of claim or real right related to real estate located in Estonia is subject to taxation. Generally, the tax treaties concluded between Estonia and other countries grant the right of taxation of real estate or rights related to real estate to the country where the real estate is located.

### **Tax depreciation**

As Estonian companies pay income tax upon distribution of profit, corporate income tax depreciation is not relevant in Estonia.

### **Tax losses**

Tax losses are not recognized nor do they have any effect on corporate taxation.

### **Thin capitalization**

There are currently no thin capitalization regulations in Estonia.

## **WITHHOLDING TAX**

### **Dividends**

There is no withholding tax (WHT) on dividends.

## **Interest, royalties and intangible services**

### **Interest**

From 2014, income tax is charged on interest received from the holding (in a contractual investment fund or other pool) of assets, where no less than 50% of the property part of those assets, at the time of the transfer or for up to 2 years prior to the transfer, was or is directly or indirectly made up of immovable real estate or movable structures located in Estonia and in which the non-resident had a holding of at least 10% at the time of transfer.

Previously income tax of 21% had to be withheld on interest paid to a resident individual, interest that corresponded to the market interest paid to a non-resident, or a resident company was generally exempt from taxation. Furthermore, tax was levied at 21% for above-market-value income tax interest paid to a non-resident, but from 2014, such liabilities will be taxed according to transfer pricing rules.

### **Royalties**

Patent royalties, including payments for the use of commercial, scientific or industrial equipment, paid by resident companies to non-resident ones, are subject to income tax withholding. The rate is 10%, unless a treaty provides for a lower rate. However, in order to apply the treaty rates, the payer should hold a certificate of tax residence in the name of the recipient party.

Under the domestic law implementing the provisions of the EU Interest and Royalties Directive and the EU-Switzerland Savings Agreement, outbound royalty payments are exempt from WHT, provided that the recipient

company is an associated company of the paying company and is resident in another EU Member State or in Switzerland, or if such a company's permanent establishment is situated in another member state, or in Switzerland. Two companies are "associated companies" if one of the following conditions is met:

- one of them directly holds at least 25% of the capital of the other; or
- a third EU or Swiss company directly holds at least 25% of the capital of the two companies.

In both cases, a minimum holding period of 2 years is required. The exemption is not granted if the payment in question exceeds a similar payment between non-associated entities.

### **Intangible services**

A 10% WHT rate applies to fees paid to a non-resident for services rendered in Estonia. The tax rate is reduced to 0% under any double taxation treaty to which Estonia is a party. However, in order to apply the treaty rates, the payer should hold a certificate of tax residence in the name of the recipient.

Fees paid to companies resident in low-tax territories for services rendered to an Estonian resident are subject to a 20% WHT, irrespective of where the services were provided or used.

A 20% WHT rate applies to rental payments made to non-residents and resident individuals.

## **REAL ESTATE TAX**

The only property tax imposed in Estonia is land tax. Taxable persons are the owners or, in specific circumstances, the users of land. Tax is levied on the market value of all land unless specific exemptions apply. The tax rate is established by the municipal council and may vary between 0.1% and 2.5% of the taxable value of the land. Land beneath or directly around a domestic residence is tax exempt.

## **TAX ON CIVIL LAW TRANSACTIONS (PCC, TRANSFER TAX)**

Transactions involving immovable property are subject to a state fee the amount of which depends on the value of the transaction. For transactions of more than EUR 639,116.48, the fee is fixed at 0.16% of the value, up to a maximum value of EUR 2,556.46.

## **VALUE ADDED TAX**

### **General provisions regarding real estate**

The sale of immovable property and the leasing or letting of immovable property or parts thereof are generally tax exempt if they are supplies without credit. Tax exemption does not apply for the supply before the first occupation of buildings or their parts, or for significantly renovated buildings or their parts, or for plots if there are no construction works on such plots.

However, the taxpayer can opt to charge/pay VAT, except in the case of residential housing, as long as the tax authorities have been notified in writing beforehand. The notice regarding optional taxation of the leasing or letting of immovable property or parts thereof is binding for 2 years.

The standard VAT rate in Estonia is 20% (for land and building sales) and 9% (for accommodation services).

### **Place of supply**

Generally, the place of supply of services to a taxpayer registered for VAT purposes in another EU country is the place where the purchaser is registered. Services provided to a third country taxable person are subject to taxation in the country where the purchaser has established its business. In cases where the services are provided to a non-business entity, the place of supply of services is usually where the service provider was originally registered.

However, in the case of services that are regarded as services related to real estate, the place of supply of such services is where the real estate is situated. Also, the supply of immovable property is taxable in the country where the real estate is situated.

### **Registration of a foreign person for VAT purposes in Estonia**

If a foreign person who is not registered for VAT purposes in Estonia performs a VAT taxable supply in Estonia, that person is required to register in Estonia for VAT purposes if:

- the foreign person has no fixed establishment in Estonia and no tax is payable upon the acquisition of goods by an Estonian customer; or
- the foreign person has a fixed establishment which intervenes/participates in the supply in Estonia and where supplies during a calendar year exceed the threshold of EUR 16,000, excluding the transfer of fixed assets.

The foreign person is required to submit an application for registration for VAT purposes to the tax authority within 3 working days as of the date on which the registration obligation arises.

### **Value added tax returns and EC Sales Lists**

Estonian VAT payers submit VAT returns and EC Sales Lists monthly. The EC Sales List includes data on supplies of goods and services to VAT registered persons in other EU countries, i.e. supplies which are subject to taxation in the buyer's country under the so-called reverse charge mechanism. Services related to real estate in Estonia are subject to Estonian VAT and therefore are not to be reported in the EC Sales List.

VAT returns and the EC Sales List should be filed by the 20th day of the following month.

### **VAT refunding under domestic law**

If VAT calculated by the Estonian taxpayer during a taxable period is less than the amount of deductible input VAT in the same period, the overpaid amount of VAT is refundable to the taxpayer. The standard refund period is 30 days.

The tax authority may, in connection with checking a claim for refund, extend the term for fulfillment of the claim by a reasoned decision for up to 90 calendar days, if there is reason to believe that it may be impossible to reclaim the sum paid upon satisfaction of the claim for refund. The term for fulfilling a claim for refund may be extended for up to 30 calendar days at a time.

There is no right of deduction if the taxable person paid the input VAT when paying for goods or services relating

to the reception of guests, or the provision of meals or accommodation for employees of the taxable person.

This provision does not apply to the deduction of input VAT which is paid for accommodation services received during a business trip. In addition, there is no right to deduct input VAT on purchases directly related to exempt supplying or purchasing of items for non-business use.

### **Foreign VAT refund under Directive 2008/9/EC**

Since 1 January 2010, foreign persons may claim input VAT incurred in Estonia by filling in reclaim forms obtainable electronically from the local VAT authority (where a company is registered). Value added tax refund applications have to be filed electronically. The Estonian Tax Authority notifies relevant parties of the acceptance or rejection of the application within 4 months or, upon the request of additional information – e.g. an invoice or import documentation – within 6 months of the receipt of the application. Upon request of further additional information, the Tax Authority notifies applicants of the decision concerning the refund of VAT within 8 months of the receipt of the application.

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# Hungary



## GENERAL

In Hungary, as of 2012, the value added tax (VAT) rate was increased to 27% (up from the previous 25%). As a main rule, real estate rental and the sale of real estate older than 2 years are exempt from VAT, but VAT-able treatment may be opted for upon the taxpayer's request. In the case of opting for VAT-able treatment, the real estate rental is VAT-able according to the general rules, while the sale of real estate (older than 2 years) can be VAT-able under the rules of the established domestic reverse charge mechanism.

The share purchase is VAT exempt; however, under certain circumstances,

the purchase of shares (in companies owning real estate) may be subject to transfer tax and the capital gain achieved by foreign entities via selling the shares in real estate companies may be subject to Hungarian corporate income tax (CIT).

Since 2011, a new Real Estate Investment Trust (REIT) regime has been introduced, under which CIT and local business tax exemption is available for entities fulfilling the relevant conditions.

## CORPORATE INCOME TAX

### Rental income

Effective since summer 2010, rental income is subject to 10% corporate

income tax up to a tax base of HUF 500 million, and at 19% above this threshold.

With respect to tax deductible items, only costs and expenditures which are not related to the core business activity of a company are not deductible in Hungary for corporate income tax purposes. With respect to "normal" business costs, there is no specific limitation. Availability of robust and complete documentation is important to support the tax deductibility of business costs.

Certain consulting and financing expenses (e.g. interest) which relate directly to units of property prior to capitalizing the asset should be taken into account and capitalized as part of the investment value. Amounts spent on future reconstruction/enlargement costs may also be capitalized as part of the real estate.

### **Tax depreciation**

In the case of buildings, generally 2% per annum depreciation is acceptable according to the corporate income tax regulations. In the case of real estate subject to rental, the accepted depreciation rate is 5% per annum. The value of land cannot be depreciated.

### **Thin capitalization**

Interest payments are tax deductible in Hungary. However, thin capitalization rules should be taken into account. The Hungarian thin capitalization regulations provide for a debt-to-equity ratio of 3:1. Loans from financial institutions, even if related, are excluded from the calculation. Effective from 2012, interest-free related party loans should also be calculated as part of the average daily loan amount. However, since 2012, it has been possible to reduce the amount of liabilities by the

amount transferred as a loan and shown in the balance sheet as a money claim among long-term financial investments, receivables or securities. Since 2013 it has also been clarified that accounts payable and receivable related to goods and services (even if subject to transfer pricing correction) should not be included in the thin capitalization calculation.

### **Minimum income (or minimum tax base)**

Resident taxpayers and foreign entrepreneurs (PEs) can be subject to corporate income tax even if their taxable base for corporate income tax purposes is negative. The minimum tax base is 2% of total revenues modified by certain items, e.g. relating to preferential transactions; but these cannot be decreased by the cost of goods sold or services intermediated from 1 January 2015. If the higher of the tax base or the accounting pre-tax profit does not reach the minimum tax base, then the minimum tax base should be considered as the tax base.

However, taxpayers may choose not to pay the tax on the minimum tax base even if they were obliged to be based on the above calculation, but they can elect to file a specific declaration to the tax authorities stating that their tax base did not reach the required minimum income level. The tax authorities specifically focus on those companies which file such a declaration when they decide whom to audit.

The minimum tax base rule does not apply in the year of foundation, nor in cases where certain natural disasters have caused a loss.



## Loss carry forwards

As from 1 January 2015, a general 5-year time limitation has been introduced in the case of tax losses arising in 2015 or later. Tax losses arising up until 2014 may be utilized (by applying the rules in force on 31 December 2014) until the end of the tax year but no later than in 2025.

From 2010, no permission needs to be obtained from the tax authority in order to carry forward losses.<sup>1</sup> Since 1 January 2010 (and in some cases for 2009), financial institutions have also been able to carry forward losses.

As of 2012, losses carried forward from previous periods may only offset half the positive tax base (calculated without the utilized loss). Accordingly, the effective utilization of losses is expected to cover double the timeframe previously seen as necessary.

Effective from 1 January 2012, in the case of a transformation, available losses may be utilized if, as a result of the transformation, no new majority shareholder is introduced in relation to the company and where income would be realized at least from one of the activities (not including holding activities) performed by the predecessor over the following 2 tax years commencing from the date of transformation. From 2013, if the successor is terminated without legal succession or if the predecessor's activities include significant holding activities, this requirement for realizing revenue is not applicable.

As of 1 January 2014, in the case of a merger, the successor will be entitled to utilize the losses arising at the predecessor in the tax year of the merger first in its tax year including the day of the merger. This rule can already be applied with regard to 2013.

Furthermore, losses carried forward cannot be utilized if majority interest is acquired in a company where the parties were not affiliated in the 2 tax years prior to the acquisition. This prohibition should not be applied if a portion of the shares of the acquirer or acquired company was introduced to a recognized stock exchange prior to the acquisition, or if the business activity of the acquired company will be continued after the acquisition over the next 2 tax years commencing from the date of acquisition (except if the company is liquidated without legal succession), and if the acquiring company will realize income from this activity and where the activity will not be significantly changed.

As of 1 January 2015, there is a further restriction that only those losses acquired may be utilized by the successor which are attributable to the original activity. A proportional adjustment should be made if new activities are pursued. This provision may be ignored if the predecessor's sole business was asset management.

## WITHHOLDING TAX

Withholding tax (WHT) rules were discontinued on 1 January 2011.<sup>2</sup>

<sup>1</sup> Before that, if the taxpayer had a negative profit before establishment of its tax position and had tax losses for 2 consecutive years (after the initial start-up period), or the total revenue of the company in the tax year did not exceed 50% of the total costs and expenses, then the carrying forward of losses was subject to the granting of permission from the tax authority

<sup>2</sup> Between 1 January 2010 and 31 December 2010, withholding tax at a rate of 30% was payable on royalties, interest and certain service fee payments granted to foreign entities. Exemption from WHT was only possible for foreign companies that were tax residents in countries having a double taxation treaty with Hungary. Having only their seat in such countries was not sufficient for exemption.

## VALUE ADDED TAX

Since 2008, the VAT treatment on the sale of buildings has depended on the wish of the taxpayer. The sale is subject to VAT if the transaction occurs:

- 1) before the first occupation; or
- 2) after the first occupation, but if less than 2 years has elapsed between the date of the occupancy permit and the date of sale. In the case of sales after 2 years of the issuance of the occupancy permit, the VAT treatment is optional for the taxpayer. After choosing either VAT-charging or VAT exempt status, the taxpayer has to retain that choice for 5 years.

If choosing VAT charging status, the taxpayer has to notify the tax authority by the end of the preceding tax year. Since 1 January 2010, the taxpayer has been able to choose to apply VAT charging status only for the sale of non-residential real estate.

Rental activity is exempt from Hungarian VAT, but there is a taxpayer option to charge the standard 27% VAT on rental fees. Since 2008, the VAT status of residential and non-residential real estate rental can be treated separately.

The VAT exempt method allows entities not to charge VAT on property rental – however, in that case, input VAT cannot be deducted or reclaimed. Companies have to submit a request to the Tax Authority by a statutory deadline if they wish to apply standard rated VAT. If such a choice is made, the VAT treatment of the rental activity cannot be changed for 5 years.

The domestic reverse charge system is applicable in cases of construction and other real estate related services, thereby reducing VAT financing costs. Since 1 May 2008, services that are provided in relation to real estate and which are eligible for official permits also fall under this rule. From 1 January 2015, the domestic reverse charge scheme is broadened to staff leasing and employee leasing.

As of 1 January 2016, the regulations in connection with periodic settlements ("continuous performance") will change. The date of the performance of business transactions subject to the rules of periodic settlement will be the closing day of the settlement period as opposed to the currently applicable due date of payment.

The new regulation will be applicable for settlement periods commencing after 31 December 2015 as long as the due date of payments also falls after 31 December 2015. This will mean an additional administrative burden for the taxpayers, as they will need to pay attention to their periodic settlements after that date. In contrast to the general rule, two additional special regulations were introduced as of 30 June 2015 regarding auditing, bookkeeping and tax advisory services, while in cases of other services it is applied as of 1 January 2016:

- if the date of issuing an invoice and the due date of payment occur before the last day of the period, then the date of issuing the invoice is the date of supply;

- if the due date of payment occurs after the last day of the period, then the date of supply is the due date of payment, but not later than the 30th day following the last day of the period.

In addition, as the term “periodic settlement” will also be re-defined, it might also be important to review whether the business transactions treated previously in compliance with the rules of “settlement for a fixed period” or “installment payment” still fall under the rules of “periodic settlement” in light of the new system of concepts.

According to the changes which came into effect on 1 October 2014, all taxpayers with Hungarian VAT numbers are obliged to report to the Hungarian Tax Authority details about which invoicing software they use, by submitting a special form.

## LOCAL BUSINESS TAX

If real estate is recognized as stock in the books of a company at the time of an asset deal, local business tax should be paid; the maximum tax rate is 2%. Rental income is also subject to local business tax. In order to calculate the amount of the local business tax base, the cost of goods sold, the amount of mediated services, the value of services provided by subcontractors, material costs and direct R&D costs can be deducted from the net sales revenue.

Effective from 1 January 2013, the deductible value of the cost of goods sold and mediated services will be limited

for local business tax base calculation purposes for entities with annual net sales revenue of over HUF 500 million. Net sales revenue ranges have been determined where certain proportions of the cost of goods sold and mediated services are allowed to be deducted, limited to decreasing percentages of the revenue (the following thresholds have been introduced in the revenue ranges: up to HUF 500 million: 100%; HUF 500 million to HUF 20 billion: 85%, HUF 20 billion to HUF 80 billion: 75%, over HUF 80 billion: 70% will be applicable).

The cost of goods sold and mediated services relating to export sales revenue will continue to be 100% deductible.

A consolidated local business tax base establishing method has been introduced for taxpayers qualified as related parties for corporate income tax purposes. When determining the local business tax base, the figures for the related parties need to be taken into account proportionally, based on the period of the existence of the related party status.

Please note that local business tax amounts are deductible from the corporate tax base only once as of 1 January 2010. As part of pre-tax profit, it is accounted as a cost under Hungarian GAAP.<sup>3</sup>

## CAPITAL GAINS ON SHARE DEALS

If the shares of a Hungarian entity are sold by a non-Hungarian entity, the gain is not taxable in Hungary. However, such capital gains are taxable in Hungary from

<sup>3</sup> Until 2009, this could be deducted from the corporate tax base as well, if a company did not have unpaid tax liabilities at the end of the tax year. This additional deduction was capped by the amount of the positive pre-tax profit under Hungarian GAAP.

1 January 2010 if shares of a real estate company are transferred. A company will be considered to be a “real estate company” if the following requirements are met:

- 1) more than 75% of its total assets on a consolidated and/or stand-alone basis are real estate units located in Hungary; and
- 2) at least one of its shareholders is resident in a state with which Hungary has not concluded a double taxation treaty, or in a state where the double taxation treaty allows such gains to be taxed in Hungary.

As of 1 January 2014, to determine whether a company qualifies as a real estate holding company, the book value of the real estate units should be considered instead of their market value effective on the balance sheet data.

According to the Act on CIT, tax liability for shareholders of a real estate company will arise when the shareholder sells, provides free of charge or as an in-kind contribution the shares of such a company to another party. The tax base will be the difference between the income from the sale of the shares and the acquisition costs including expenses related to the shares during the shareholding period.

The tax rate will be 19% (in accordance with the law, the reduced rate may not be applied).<sup>4</sup> Deciding whether or not a taxpayer qualifies as a real estate

company could give rise to considerable administrative work. A further complicating factor is that the real estate of affiliated undertakings has to be considered too.

## ASSET DEALS

If real estate is sold as an asset, the gain is subject to corporate income tax as part of the normal tax base at a rate of 10% up to a tax base of HUF 500 million, and at 19% above this threshold.

## PROPERTY TAX

Hungarian companies may be subject to local land tax or local building tax.

The maximum rate of local building tax may be 3.6% of the fair market value of the building owned or HUF 1,100 per square meter (approx. EUR 3.5 per square meter). The maximum rate of local land tax may be 3% of the market value of the plot or HUF 200 per square meter of land (i.e. approx. EUR 0.7 per square meter). The applied method of tax base calculation depends on the local municipality.<sup>5</sup>

The tax liability arising is paid in two installments (whose deadlines are 15 March and 15 September). This tax may be levied by the local municipalities at their own discretion.

## REAL ESTATE TRANSFER TAX

Until 2010, by purchasing the shares of a Hungarian entity, no VAT or real estate transfer tax (RETT) liability would arise in connection with the transaction. Only minor procedural costs would be payable

<sup>4</sup> According to the interpretation of the legislators, the reduced rate is also applicable to the owner of the real estate company, although the legislation has not yet been amended accordingly.

<sup>5</sup> Please note that the above maximum rates may be modified by changes in the consumer price index. For 2015 the maximum rate of building tax is HUF 1,852,1 per m<sup>2</sup> and the maximum rate of land tax is HUF 336,7 per m<sup>2</sup>.

to the Hungarian court of registration to register new shareholders.

However, since 1 January 2010, transfer tax liability has been payable in cases of the acquisition of shares of companies that own real estate. The liability arises at the time when the direct or indirect ownership (through the owner's related parties) of such company reaches 75%. Different conditions applied from July 2011 until 31 December 2013.

However, from January 2014, the definition of real estate holding company was amended similarly to the Act on CIT. According to this, a company qualifies as a real estate holding company,

- if the book value of the real estate presented in the balance sheet reaches 75% of the total assets, or
- if the entity owns 75% shares (directly or indirectly) in another company which has a real estate to total assets ratio of 75%.

From January 2015, beside cash and financial claims, accrued assets and loans should not be considered when calculating the amount of total assets either. In addition, an important change is that the acquisition of shares in real estate holding companies is subject to transfer tax payment liability irrespective of the company's main activity indicated in the company register.

In the case of acquisitions of real estate in Hungary, the buyer is liable to pay stamp duty on the property, based on the market price of the property. It is important to note that based on a recent court case,

the basis of the stamp duty liability should be the market value exclusive of VAT.

The standard rate of stamp duty is 4%, for the acquisition of real estate property or shares of a real estate owning company 4% up to HUF 1 billion of the value of the real estate, and 2% for the value above that, but with the maximum stamp duty liability of HUF 200 million per unit of real estate.

Furthermore, the transfer of real estate and the transfer of shares in a real estate holding company between related parties is exempted from transfer duty under certain conditions.

In special cases, lower stamp duty may be applicable:

- The stamp duty rate is 2% if the purpose of the acquisition of the property is resale/finance leasing and in the year prior to the purchase, more than 50% of the buyer's sales revenue arose from the resale of property/finance leasing, or if the buyer is licensed by the Hungarian Financial Supervisory Authority to perform financial leasing. Moreover, the buyer must declare that the property will be either sold within 2 years, or leased, with the condition that the lessee would eventually buy the property.
- Until 2013, the stamp duty rate in the case of residential properties was only 2% up to a maximum of HUF 4 million, but from January 2013, the favorable rate was abolished and the standard rate is now applicable.

- With regard to plots of land, if the buyer of the plot makes a declaration that he will build residential property on the purchased plot within 4 years, stamp duty exemption may be obtained (as long as the 4-year deadline is met).
- The SPV can have its seat outside of Hungary;
- The current SPV entities may be converted into a REIT in a tax neutral way (including transfer tax exemption);

## REAL ESTATE INVESTMENT TRUST

A new Real Estate Investment Trust (REIT) regime was introduced in 2011. Public limited companies with a minimum starting capital of HUF 5 billion, registered (at the request of the company) with the Tax Authority are eligible for REIT status if the conditions set out by the legislation are met.

The activities of a REIT entity or its 100% subsidiary project companies (SPV) are limited to the following, within and outside the territory of Hungary:

- sale of one's own real estate;
- rental and operation of one's own real estate;
- property management; or
- asset management.

The main advantages of a Hungarian REIT are the following:

- A corporate income tax exemption is available for the REIT and at SPV level (including gains on asset deals);
- Exemption from local business tax at REIT and SPV levels (including gains on asset deals) is introduced;
- The transfer tax rate is 2% (although with no upper cap);
- The REIT entity is able to hold shares in a project company.

Limitations and obligations regarding the operation of a REIT:

- REIT entities have an obligation to dividend out 90%, or for SPVs 100% of their profits each year. There are mitigating rules in case free cash would not match the dividend obligation amount;
- A starting capital of HUF 5 billion is required;
- At least 25% of the shares must be traded in controlled financial markets (i.e. certain defined stock exchanges), and would have to be split among at least 20 minority shareholders (below 5% each);
- Share acquisition by banks and insurance companies would be limited to 10% in a REIT;
- The trading and the bank/insurance company thresholds could be met in an easier way from 2016;
- The entity should follow strict registration obligations administered by the Tax Authority;

- The total debt to properties ratio would be a maximum of 65% for REITs, and 70% for SPVs;
- None of the real estate's or REIT ownerships' value can exceed 20% of the balance sheet total;
- A compulsory quarterly market valuation of the property portfolio is required.

### Further notes

Since 9 July 2009, loan debt assumptions have been considered as exempt from gift duty if the assumption is carried out between two legal entities. Before that time they were subject to gift duty of 40%.

According to *oanda.com*, the exchange rate as at 20 September 2016 was EUR 1/ HUF 308.725.

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# Latvia



## CORPORATE INCOME TAX AND CAPITAL GAINS TAX

The corporate income tax (CIT) rate in Latvia is 15% charged on taxable income, which is calculated as financial profit before tax increased by disallowable expenses and decreased by additional deductions.

There is no separate capital gains tax in Latvia. All capital gains including gains on disposal of real estate (sales price less tax value) are taxed as taxable income at the general CIT rate of 15%.

Profit from the rental of real estate for a Latvian taxpayer is subject to the standard CIT rate of 15%.

## Tax depreciation

Fixed asset depreciation for financial purposes is disallowed for CIT purposes, and depreciation for tax is calculated instead in accordance with the requirements set out in the CIT Law.

Buildings are depreciated at a rate of 10% per year applying the reducing balance method for each building separately. Revaluation of property is not taken into account in the calculation of tax depreciation.

Land is not depreciated for tax purposes.

If a company has chosen to apply the fair value model instead of cost model for its property, depreciation for tax purposes can no longer be calculated, and instead the property has to be revalued on a regular basis. Profit or loss from revaluation is a non-taxable or non-deductible, respectively, for CIT purposes.

### Tax losses

Tax losses can be carried forward for an unlimited period of time.

### Thin capitalization

Interest payments may be deducted from a company's taxable income; however, the deductible amount is restricted. There are no deduction restrictions if the interest is paid to a Latvian, or an EU registered credit institution, or on funds borrowed from a credit institution in a country with which Latvia has concluded a double taxation treaty. According to the thin capitalization rules, two calculations for determining the deductible amount of interest must be made:

- interest on interest bearing loans subject to thin capitalization in excess of a 4:1 debt to equity ratio, or
- any interest in excess of the financial year average weighted interest rate applied by commercial banks published by the Bank of Latvia multiplied by a coefficient of 1.57.

If the interest payment for the tax year exceeds any of the amounts, the excess is not deductible for taxation purposes. The higher disallowance is applied.

Non-deducted interest payments cannot be carried forward for deduction in future taxation years.

## INVESTMENT INCENTIVES

The main incentives are:

- Corporate income tax relief for long-term investments which exceed EUR 10 million. Tax relief of 25% of invested amount for investments of up to EUR 50 million, and 15% on amounts from EUR 50 to EUR 100 million;
- Corporate income tax and property tax relief for companies registered in a special economic zone or free port;
- Tax relief for enterprises engaged in agricultural activity.

## WITHHOLDING TAXES

### Real estate

Withholding tax (WHT) of 2% from proceeds is applied if a Latvian resident company purchases real estate in Latvia or shares in a real estate company from a non-resident. A real estate company is a company whose real estate holdings comprise more than 50% of its assets in Latvia. The proportion is calculated based on book value as at the beginning of the financial year during which the transaction takes place.

Following payment of the WHT, the non-resident may submit to the Latvian tax authority a tax return disclosing acquisition cost and profit and reduce the tax charge to 15% from any capital gain (if lower than 2% WHT on proceeds). The overpayment would be repaid to the non-resident by the Latvian tax authority.

### Dividends

There is no WHT on dividend payments made by a Latvian resident to a non-resident unless established in a jurisdiction with low or no taxes.

Regardless of the level of ownership, dividends received are tax exempt except for dividends paid by a Latvian company which utilizes some form of corporate income tax relief, or if the payer of dividend is from a low tax or zero tax country or territory.

### Other

Latvia imposes withholding taxes on the following payments, besides proceeds from sale of real estate as described earlier, made to non-resident entities:

- management and consulting services: 10%;
- payments for the use of fixed or movable property in Latvia: 5%.

Following payment of the WHT, the non-resident may submit to the Latvian tax authority a tax return disclosing relevant costs and the profit and reduce the tax charge to 15% from the profit (if lower than WHT).

Withholding tax rates may be reduced in line with Latvia's bilateral double taxation treaties.

WHT of 15% must be withheld at source on any payments made to a non-resident company established in a jurisdiction with low or no taxes. The tax authorities may waive this payment requirement if certain conditions are met. A 30% WHT rate is applicable to interim dividends that the Latvian resident pays to a non-resident company established in a jurisdiction with low or no taxes.

### REAL ESTATE TAX

Tax on immovable property (land and buildings) is paid by individuals and legal

entities which own or have legal control over real estate.

Municipalities have the right to set the rate of property tax between 0.2% and 3% of a property's cadastral value. A tax rate of more than 1.5% of the property's cadastral value may be set only in cases where the property is not being managed properly. If a municipality has not published binding regulations on property tax rates, the following tax rates are applicable:

- for property and land used for business activities, and also for engineering or technical buildings: 1.5% of the cadastral value of the property;
- for agricultural land not currently used for agricultural purposes: 3% of the cadastral value;
- for houses, apartments for inhabitants and additional premises (garages, storage rooms, etc.) not used for business purposes, the rates are as follows:
  - 0.2% of the cadastral value if it does not exceed EUR 56,915;
  - 0.4% of the amount of the cadastral value from EUR 56,915 to EUR 106,715;
  - 0.6% of the amount of the cadastral value which exceeds EUR 106,715.

The minimum tax payment from each taxpayer for residential property to a particular municipality is EUR 7.

- for houses and apartments that belong to legal entities and which are not leased out to an individual: 1.5%;



- for engineering constructions that are taxable but are not registered in the information system of the State Cadastre of Immovable Property: 1.5%;
- for completed buildings which are in use but have not been formally commissioned: 3%.

Families with three or more children are eligible for a 50% property tax reduction for a property where they have registered their place of living, but the reduction amount must not exceed EUR 427.

In special economic zones the municipality can apply tax relief of up to 80%.

### **TAX ON CIVIL LAW TRANSACTIONS (TRANSFER TAX)**

There is a state duty on real estate transactions.

When sale or exchange agreements are concluded for commercial property consisting of only non-residential properties (with or without land), the duty

is 2% of the real estate's value up to a maximum of EUR 42,686 per title. In case of sale of residential properties, no cap is applied. If an agreement is concluded with an individual's children, spouse, parents, siblings, stepbrothers, stepsisters, grandchildren, great grandchildren or grandparents, the duty is 0.5% of the real estate's value with no cap.

Real estate transfer tax on real estate transferred as an investment in kind into the equity of a company is chargeable at a rate of 1% from the amount of investment with no cap. When a gift agreement is concluded, the duty is 3% of the real estate's value. If the agreement is concluded with an individual's children, spouse, parents, siblings, stepbrothers, stepsisters, grandchildren, great grandchildren or grandparents, the duty is 0.5% of the value of the real estate, and a cap is not applied.

If a company purchases an apartment that is designated as living space, the duty is 6%, with no cap.



Real estate transfer tax is payable by the buyer of the property.

Real estate transfer tax is calculated per title not per transaction.

The value of the property for real estate transfer tax purposes is determined as sales price or cadastral value, whichever is higher.

## VALUE ADDED TAX

### General provisions regarding real estate

According to the VAT law, the sale of unused real estate and the sale of building land are taxable at the standard VAT rate of 21%. The term “real estate” includes parts of real estate (flats, workshops, etc.), land, buildings, constructions, and immovable parts of real estate (bridges, roads, etc.) on the land.

Used real estate and land which is not building land are VAT exempt.

If it is planned that the real estate will be used only for taxable activities, then input tax is fully deductible. If the real estate will be used for both taxable and non-taxable activities, then input tax is deducted proportionally. In both cases the new real estate must be registered with the tax authority. An input tax correction has to be completed every year if the proportion between taxable and non-taxable use of the real estate changes. The proportion must be calculated for a 10-year period.

There is an option to apply VAT to the sale of used real estate if the details are registered with the tax authority.

The lease of residential property for housing purposes is VAT exempt.

The place of provision of services which are related to real estate is the place where the real estate is located.

### VAT refund under domestic law

Input VAT is refunded each month, based on a submitted VAT return. Input tax is refunded within 30 days after the deadline of submission of the VAT return.

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# Lithuania



## GENERAL

Real estate located in Lithuania is generally subject to taxation. Real estate tax is applicable for commercial property. As of 2012, residential premises held by individuals are also subject to real estate tax (certain exemptions apply). Land is subject to a separate land tax. For VAT purposes, only new buildings and land for construction is taxed at the standard VAT rate of 21%.

There is no specific transfer tax applicable to real estate transactions in Lithuania. However, certain notarization and real estate registration fees apply.

## CORPORATE INCOME TAX

Taxable profit is subject to a standard flat rate of 15%. Taxable profits are arrived at by deducting exempt income as well as allowable and partly allowable expenses from taxable income.

### Tax-exempt income

Exempt income includes received penalties and fines, revaluation of fixed assets and liabilities (except for derivative financial instruments), insurance compensation, etc.

Dividends received from European Economic Area (EEA) companies (subject to corporate income tax – CIT – or

equivalent tax) are tax exempt. Dividends received from other foreign companies (subject to CIT or equivalent tax) are tax exempt if they qualify for participation exemption (not less than 10% of the voting shares are held continuously for at least 12 months), except for dividends received from tax havens.

### **Allowable and partly allowable deductions**

Deductions allowed are all expenses actually incurred in the ordinary course of business that are necessary for the earning of income or in order to receive economic benefit.

Partly allowable expenses include: depreciation and amortization of fixed assets, business trips, advertising and entertainment, ordinary loss of inventories, taxes, bad debts, payments for the benefit of employees, granted support, membership fees, etc.

The main types of non-deductible expenses are: penalties and default interest, compensation for damages, payments to tax haven entities (if not verified this relates to the ordinary activities of tax haven entities), other payments not related to the ordinary business of a taxpayer, etc.

### **CAPITAL GAINS**

Capital gains are non-taxable if they are derived from the transfer of shares of an entity that is registered in Lithuania or another EEA country, or in a country with which Lithuania has a double tax treaty and is subject to CIT or equivalent tax (participation requirement: more than 25% of shares held continuously for at least 2 years). If the transfer of shares takes place in the course of a corporate reorganization, the minimum holding period is 3 years.

Capital gains derived by non-residents from the sale of shares in Lithuanian companies are not taxable in Lithuania.

Non-residents are taxed on capital gains arising from the disposal of real estate located in Lithuania. For resident companies, capital gains are included in the taxable income for CIT purposes.

### **Tax depreciation**

Depreciation of fixed assets is usually calculated from acquisition cost on a straight-line basis, or using a double declining balance method over periods as outlined in the Lithuanian Law on CIT. The tax depreciation period for new buildings (except residential buildings) used in a company's economic activity for tax purposes may not be less than 8 years.

### **Tax losses**

Ordinary tax losses can be carried forward indefinitely if a taxpayer continues to perform business activities from which such losses occurred. Ordinary tax losses carried forward can only be set off against up to 70% of the calculated taxable profits of the taxable period. Capital losses from the disposal of securities or financial derivatives can be carried forward for 5 years and exclusively to set off gains from the disposal of securities or financial derivatives (applicable for non-financial institutions).

### **Grouping**

Tax losses of a company incurred for the taxable period may be set off against the respective profits of another company forming a group provided the following criteria are met: the parent company directly or indirectly owns at least two-thirds of the shares in subsidiaries; and the transfer of losses is performed between companies

that have continuously been members of the group for at least 2 years, or if the participants of the transfer have been a part of the group since their incorporation and will be part of the group for at least 2 years.

Grouping with foreign losses is possible where the foreign entity transferring losses is a tax resident in the EU and where there is no possibility to carry forward respective losses in that foreign country; additionally, such losses have to be calculated according to the rules of the Lithuanian Law on CIT.

### **Thin capitalization**

A certain part of interest paid to a controlling lender may not be deductible for CIT purposes. Under the thin capitalization rules, the non-deductible part of interest expenses is calculated based on a debt/equity ratio of 4:1.

## **WITHHOLDING TAX**

### **Dividends**

In general, dividends are subject to a 15% withholding tax (WHT) rate. However, dividends paid to a company holding not less than 10% of the shares granting the same percentage of votes for at least 12 months are tax exempt, except for dividends paid to tax haven countries.

As of March 2016, general anti-avoidance provisions were implemented in the Lithuanian legislation for inbound and outbound dividends based on amendments to the EU Parent-Subsidiary Directive (amending directives 2014/86/EU and 2015/121). Tax exemptions for dividends may not apply where the main purpose (or one of the main purposes of the arrangement) is obtaining a tax advantage, which is contrary to the subject and purpose of the EU Parent-Subsidiary Directive and, therefore, such an arrangement is artificial.

It is possible to pay interim dividends in Lithuania.

### **Interest and royalties**

Interest is subject to a 10% WHT rate. However, interest paid to an EEA company, or to a company registered in a country with which Lithuania has a double taxation treaty, is tax exempt.

Royalties are generally subject to a 10% WHT rate. Royalties paid to associated EU or Swiss companies are exempt from WHT. Two companies are deemed to be associated companies if one of them directly holds at least 25% of the capital of the other, or a third EU or Swiss company holds directly at least 25% of the capital of these two companies.

A minimum holding period of 2 years is required.

### **Real estate**

Non-resident companies are subject to a 15% WHT rate on income from the sale, transfer or rental of real estate situated in Lithuania. Non-resident companies may also apply to the tax authorities to recalculate the tax withheld in order to be taxed on the net capital gains instead of the whole proceeds of the transfer of the real estate.

WHT may be reduced under the applicable tax treaties.

## **REAL ESTATE TAX**

Real estate located in Lithuania is subject to real estate tax. Land is subject to specific land tax.

The annual tax rate for legal entities ranges from 0.3% to 3% of the taxable value of real estate. Municipalities are entitled to establish a precise rate by

1 June of each year to govern transactions in the following year. The taxable value is the average market value of the real estate established by applying the mass valuation method or the recoverable value (costs) method depending on the purpose of the real estate. Owners of real estate may request an individual valuation.

Commercial property owned by individuals (for purposes other than those subject to the below taxation) is taxed in the same way as real estate owned by legal entities.

The annual tax return for commercial property has to be filed with the tax authorities and real estate tax must be paid by 15 February of the following year. In addition, advance real estate tax (applicable only for legal entities) for the first 9 months of the current tax period also has to be declared by 15 February of the current calendar year. Advance real estate amounts have to be paid by 15 March, 15 June and 15 September if the annual amount of tax payable exceeds EUR 500. Individuals paying 0.5% real estate tax (see below) must file their annual tax return and pay the tax owed by 15 December of the current year.

Lithuanian and foreign individuals owning real estate in Lithuania have to pay 0.5% real estate tax on the total taxable value exceeding EUR 220,000 (an individual non-taxable value of EUR 220,000 should be applied for each family member who owns immovable property as well as for spouses who own property under joint ownership rights). Qualifying property includes residential premises, gardens, garages, homesteads, science facilities, places of worship. The non-taxable real estate value is increased by 30% for

families raising three or more children and families raising disabled children.

### **Land tax**

Land tax is paid by the owners of private land. The land tax rates range from 0.01% to 4% of the taxable value. The rates are established by local municipalities by 1 June to cover the following year (or they are set by 1 December in specific years).

Land tax does not apply to roads of common usage, land owned by embassies, land in protected areas and also other specific areas of land. Land tax is paid annually for the whole calendar year according to the taxable value of the land owned on 30 June of the current year. The taxable value is established based on the mass valuation method, which is intended to reflect the market price of the land.

Legal entities and individuals leasing state or municipality owned land must pay land lease tax, which is not less than 0.1% and not higher than 4% of the land value. A precise tariff and payment dates for land lease tax are established by the local municipality in each individual case. The land value on which the land lease tax is estimated according to special rules is stated in the land lease agreement.

### **VALUE ADDED TAX**

#### **General provisions – real estate**

In general, the Lithuanian Law on VAT provides that the sale of buildings, land and other real estate is VAT non-taxable, except for new buildings and building land, which are both subject to the standard 21% VAT rate. A new building or structure, or a finished building or structure (within the first 24 months following its completion or following its material improvement) are

considered as unfinished buildings or structures. "Building land" means a plot of land assigned for construction works regardless of whether or not any development of the plot has been undertaken. Besides this, the land transferred together with new buildings (e.g. land beneath a new block of flats which is allocated to each flat) or structures or their parts are subject to the standard 21 % VAT rate.

If real estate is sold without VAT, but the taxpayer has deducted input VAT, they shall be obliged to adjust the VAT deduction (for real estate a 10-year term is applicable).

Rent of real estate is VAT non-taxable unless the real estate is categorized among certain exceptions. Exceptions are made for hotels, motels, camping sites, and similar accommodation services as well as short-term rentals within residential areas. The renting of garages, parking lots and similar real estate properties, as well as equipment treated as real estate, are subject to a standard VAT rate of 21 %.

A taxpayer can choose to sell or rent real estate to another VAT payer applying the standard VAT rate of 21 %. Such choices have to be declared to the tax authorities and must remain unchanged for at least 24 months from commencement.

Services related to a real estate unit which is, or will be located, in Lithuania are considered to be provided in Lithuania. Therefore, such services have to be subject to the standard Lithuanian VAT rate of 21 %. In such cases, foreign taxable persons rendering services related to real estate in Lithuania have an obligation to register for VAT in Lithuania. Services related to real estate

include construction, projecting, relevant research, engineering, architectural works, valuation, supervision and maintenance of real estate, and other real estate-related services. Since 1 July 2015, construction works are subject to the local VAT reverse charge mechanism, under which VAT for construction works is calculated and paid to the state budget by the customer, i. e. not the contractor (the construction company).

### **VAT refund under domestic law**

Application for VAT refunds may be filed with the Lithuanian tax authorities as soon as VAT has been reported (subject to certain conditions).

The VAT is typically refunded within 30 days after submission of the application. In the case of a tax review or investigation, VAT shall be refunded within 20 days as of completion of the tax review/investigation.

### **Foreign VAT refund**

Claims by EU businesses for cross-border refunding of VAT in the EU must be filed with their local tax authorities (i.e. in the country where the company is established) and not where VAT has been paid. VAT claims have to be filed electronically.

Non-EU businesses may refund input VAT incurred in Lithuania under the 13th VAT Directive if Lithuania has a reciprocity agreement with their country of establishment subject to particular conditions.

### **EC services list**

A monthly EU sales listing should be submitted to the tax authorities by the 25th day of the following month (in line with VAT return submission deadlines) in the case of supplies to other EU

member countries, which are subject to a VAT reverse charge procedure by the purchaser.

## **INVESTMENT INCENTIVES**

### **Investment incentive for certain groups of fixed assets (applicable 2009-2018)**

Companies may reduce their taxable profits up to 50% by the amount of expenses incurred for investment in certain fixed assets, machinery and equipment, computer hardware and software, communication equipment and acquired rights. As of 2014, the incentive also applies to acquired trucks, trailers and semi-trailers. Part of the acquisition costs of fixed assets which has not been utilized during the taxable year may be carried forward, but for not more than 4 years. The tax authorities should be notified that such a company is performing an investment project.

### **Incentive for research and development**

Expenses incurred via scientific research and experimental development purposes may be deducted three times in the tax period when they are incurred, provided that the research and development works are related to usual business activities.

### **Reduced rate for small companies**

Small companies are subject to a reduced 5% CIT rate if their average number of employees does not exceed 10 and their taxable income during the taxable year is less than EUR 300,000.

### **Double tax incentive for movie making supporters (applicable 2014-2018)**

An entity may deduct (from its taxable profits) an amount up to 75% of the funds they provide for production of a film or its parts in Lithuania. Furthermore, an entity's payable corporate income tax

may be reduced by up to 75% by the amount provided in order to support film production. If the amount of funds exceeds 75% of that entity's corporate income tax payable, then the exceeding amount may be carried forward to reduce profits in two subsequent tax periods.

### **Free economic zones**

A company with investments of EUR 1 million or more and operating in a free economic zone (FEZ) is exempt from Lithuanian corporate income tax for 6 taxable years and is subject to a 50% reduced corporate income tax rate in 10 subsequent years. Such relief is applicable for FEZ companies if at least 75% of the income in the tax year is derived from production, manufacturing, processing or warehousing activities performed within an FEZ, or from wholesale trade in goods stored within an FEZ, as well as services related to the above-mentioned activities. IT services (e.g. programming, computer consultancy, data processing, services of web servers etc.), aircraft and spacecraft maintenance services are also included in the list. Real estate tax is not applicable in an FEZ territory.

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# Macedonia



## GENERAL

The preferential value added tax (VAT) rate of 5% for the supply of residential buildings and apartments will apply until 31 December 2018. After that date, such supplies should be taxable at the general VAT rate of 18%.

The above only refers to the first supply of residential buildings or apartments made within five years from their completion. Subsequent supplies, as well as first supplies following the five year period from completion, are deemed VAT exempt without the right to input VAT credit.

The supply of any other real estate by Macedonian VAT registered taxpayers is VAT taxable at the general VAT rate of 18%.

## CORPORATE INCOME TAX AND CAPITAL GAINS

Corporate income tax (CIT) of 10% is due on the profit or loss for the year after adjustments for tax purposes with regards to unrecognized expenses or non-taxable income.

Under the current CIT legislation, capital gains do not have a specific tax treatment, i.e. capital gains or losses are included in the taxpayers' profit or loss,

and, as such, form part of the tax base for the year.

### **Tax depreciation**

There is no specific tax treatment for the depreciation/amortization of assets. Annual depreciation/amortization expenses are recognized for tax purposes in accordance with the applicable accounting standards.

### **Tax loss**

Accounting losses reduced for the amount of the non-deductible expenses can be carried forward and offset against future tax bases in the following three years.

However, the right to utilize such losses is subject to prior approval from the tax authorities (the request is due for submission by the end of March of the following year, and is usually subject to a tax inspection), this also being dependent on the taxpayer having covered the losses in question in accordance with the Law on Trading Companies.

### **Thin capitalization**

Interest on loans granted by direct non-resident shareholders who hold at least 25% of a company's share capital ("qualifying shareholder"), is considered non-deductible for tax purposes should the loan amount exceed three times the amount of the equity attributable to that shareholder.

The same rule applies to loans granted by a third party and which are guaranteed by a qualifying shareholder or granted in relation to a deposit provided by the qualifying shareholder to a third party.

The amount which is not recognized for tax purposes is the sum of the interest

on the part of a loan which exceeds three times the amount of the equity attributable to the qualifying shareholder.

The thin capitalization rules do not apply to loan facilities granted by direct shareholders, these being banks or other financial institutions, nor to loan facilities granted by direct shareholders to newly established entities during the first three years of their establishment.

### **WITHHOLDING TAX**

Withholding tax (WHT) at 10% is to be withheld by the payer when certain types of income are paid by a Macedonian entity to foreign legal entities, provided that the income is not derived through a permanent establishment of the foreign legal entity in Macedonia. Amongst other types, the types of income subject to WHT in Macedonia include dividends, royalties and interest as well as rental income for immovable property located in Macedonia.

The WHT rate can be reduced or the income can be exempt from WHT in Macedonia, as per the provisions of an effective double taxation treaty (DTT) to which Macedonia is party.

The application of the DTT provisions is subject to approval from the Macedonian tax authorities, following a separate formal procedure.

### **PERSONAL INCOME TAX**

Income realized by individuals from the lease of immovable property is subject to personal income tax (PIT) at a rate of 10%. Allowances, ranging between 25% and 30%, are granted in order to determine PIT.

PIT is also due from individuals who have realized capital gains from the sale of real property. The capital gain is determined as the difference between the sale price and the purchase price. The tax rate is 10%, levied on 100% of the capital gain. However, no tax will be due in certain cases explicitly noted in the law, including cases where the taxpayer sells the property after 5 years from the day of acquisition or after 3 years from the day of acquisition, provided that the taxpayer, inter alia, resided in the property for at least one year.

## REAL ESTATE TAX

Owners of immovable property situated in Macedonia are liable to property tax. The tax is levied on the market value of the property on an annual basis, at a rate ranging between 0.1% and 0.2%, depending on the municipality where the property is situated. The person liable for the property tax is the owner (legal entity or an individual) of the immovable property, or the user of the property if a limited right to use the property was granted. Property tax on immovable property in state ownership is owed by the person given the right to use that property.

## REAL ESTATE TRANSFER TAX

Tax on the transfer of immovable property ranges from 2% to 4% and is levied on the market value of the property. The tax rate is determined by the municipality where the immovable property is located. Transfer tax is due from the seller of the property, unless otherwise agreed between the parties.

Certain transfers of immovable properties are exempt from taxation, including "contribution in kind" of an immovable property, as well as the first sale of a

residential apartment provided that the supply was subject to VAT.

## VALUE ADDED TAX

Generally, the sale of immovable property (land and buildings) is considered a VAT taxable supply at the general rate of 18%. However, an exception is provided with regards to supplies of residential buildings and apartments.

Immovable property qualifying as residential premises is generally exempt from Macedonian VAT with no right to input VAT credit for related purchases, except for the first supply of residential premises made within five years of their completion. The first sale of residential premises is taxable at the preferential rate of 5% (the preferential rate is applicable until 31 December 2018, upon which these supplies will be taxable at the general rate of 18%).

Apart from the above, provision of hotel accommodation services is taxable at the preferential rate of 5%.

## Place of supply of services

The general rule is that the place of supply of services is the place where the supplier of services has its headquarters or a branch office, from where such services are physically supplied. When there is no such place, the place where the supplier of services has a permanent place of residence is considered the place of supply of the services.

A number of exceptions from the above general rules are listed in the Macedonian VAT law. These exceptions include:

- The place of supply of services connected to real estate (e.g. renting out real estate, agency services related

to real estate, valuation, construction, supervision of construction works) is the place where the real estate is situated.

- The place of supply is the place where the services are physically carried out for the following types of services:

- artistic, sporting, educational, scientific and entertainment services;
- transport and ancillary services;
- valuation and work on movable property.

- The place where transport services are supplied shall be the place where the transport takes place, i.e. with regard to distances covered.

- The place of supply of agency services in relation to other services is the place of supply of the underlying service in connection to which the agency services were supplied.

- The place of supply of certain services is considered the place where the recipient of the services is established or if it has a fixed base for which the services were carried out. These services include the following:

- advertising services;
- banking and financial services, insurance and re-insurance services, with the exception of the hire of safes;
- obligations to refrain from pursuing or exercising, in whole or in part, an

act or a right, or to bear an action or a factual situation;

- legal, economic and technical advice and consulting, in particular activities of a notary public, solicitors, auditors, tax consultants, accountants, specified engineers, as well as other similar activities;
- services for electronic data processing and the provision of information, including know-how and expertise;
- the provision of personnel;
- the hiring of movable tangible property with the exception of all forms of transport;
- telecommunications services;
- the transfer and assignment of copyrights, patents, licenses, trademarks and other similar rights;
- also the services of agents when they procure the services listed above for their client.

### **VAT refund to resident taxpayers**

Macedonian VAT registered persons are entitled to recover input VAT in respect of taxable supplies from another VAT registered person or in respect of imported goods (with certain exceptions) if such goods are used for the purposes of their business activities. The input VAT credit claimed by a VAT registered person should be supported with an invoice or customs declaration where the VAT charged on import is separately shown, and after such documents are recorded in the accounting books of the taxable person. If in a given month the input VAT deduction declared

by the registered person exceeds the amount of output VAT charged, the excess amount is subject to reimbursement. The VAT for reimbursement is generally offset against VAT payable in the subsequent periods, unless the VAT registered person has explicitly declared that a refund is requested. The term for a VAT refund is 30 days from the filing of the respective VAT return.

### **VAT refund to non-residents:**

According to the VAT law, foreign persons registered for VAT purposes in their countries, and who are not headquartered in Macedonia and who do not have a fixed establishment in Macedonia, are, upon request, entitled to receive a refund of the VAT paid for particular purchases of goods and services in Macedonia. In order to apply for a VAT refund, the foreign taxable person should both meet certain conditions and fulfill a statutory procedure. The deadline for VAT application submissions is 30 June in the year following the year in which the purchases were made (with the exception of foreign diplomatic or consular offices, for which the deadline is 5 years after the year in which the goods/services are purchased). The Macedonian tax authorities have six months to review the application for a VAT refund submitted together with the necessary attached documents and then to make the refund.

A VAT refund from the Macedonian tax administration is made only in Macedonian Denar (MKD) which implies that non-residents should open a non-resident bank account in order to obtain that refund.

The principle of reciprocity applies for foreign persons entitled to claim a refund of Macedonian VAT.

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# Montenegro



## GENERAL

The general value added tax (VAT) rate is now 19% and it is applicable on the first transfer of ownership rights for buildings built after 1 April 2003, while 3% real estate transfer tax (RETT) is applicable on all other real estate transfers.

Gains arising from real estate deals are subject to a 9% corporate income tax (CIT) rate, which is one of the lowest in Europe.

## CORPORATE INCOME TAX AND CAPITAL GAINS

In Montenegro CIT is levied at 9% for resident entities and branches of non-resident entities. A resident is a legal entity which is incorporated or which has a place of effective management and control within the territory of Montenegro. Resident legal entities pay tax on their worldwide income.

Non-resident entities pay tax on the income generated through a permanent establishment within the territory of Montenegro.



The tax period is the financial year which is also the calendar year except in the event of liquidation or for businesses starting their business activity during the year. A corporate tax return must be submitted within 3 months of the end of the period for which the tax is assessed.

Corporate income tax liability is paid in one installment within 3 months of the end of the tax year.

Taxable income is determined on the basis of accounting profit disclosed in the annual income statement, in accordance with International Financial Reporting Standards and is subject to further adjustments in the tax balance.

Capital gains are disclosed separately in the tax return and are taxed at 9%. The capital gain is the difference between the sale and purchase price of assets (land, buildings, property rights, capital share and securities). If such a difference is negative, a capital loss is reported.

### **Tax losses**

Tax losses generated from business transactions, financial and non-business transactions, excluding capital gains and losses, may be carried forward for up to five subsequent tax periods and can be offset against future taxable income. Losses can be carried forward irrespective of mergers, acquisitions, spin-offs or other organizational changes.

Capital losses may be carried forward for 5 years and offset only against capital gains.

### **Tax depreciation**

For CIT purposes, non-current tangible assets are divided into five groups, with

depreciation rates prescribed for each group:

Group	Depreciation Rate
I	5%
II	15%
III	20%
IV	25%
V	30%

Buildings and other immovables (excluding land) are classified into tax depreciation Group I, while plant and equipment are classified into groups II-V. Non-current assets classified in Group I are depreciated using the straight-line method at 5%. A declining model is prescribed for non-current assets classified in groups II-V.

In addition, non tangible assets such as franchises, patents, authorship rights and others are tax depreciated based on their estimated useful life.

### **Thin capitalization**

There are no thin capitalization rules in Montenegro.

### **WITHHOLDING TAXES**

Withholding tax (WHT) at a rate of 9% is levied on dividends, profit sharing, royalties, interest, capital gains, lease payments for immovable and movable property, consulting services, market research services and audit services earned by non-residents. Withholding tax may be reduced via double taxation treaties.

Distribution of inter-company dividends between Montenegrin companies is subject to withholding tax.

## **DOUBLE TAXATION CONVENTIONS**

Montenegro has declared that it will honor all tax conventions that have been concluded by the state union of Serbia and Montenegro (and previously by the Federal Republic of Yugoslavia and the Socialist Federative Republic of Yugoslavia). However, the application of such agreements with Montenegro has to be confirmed on a case-by-case basis by those entering such agreements.

As at 1 January 2016, Montenegro has 41 effective double taxation conventions on income and capital with the following states: Albania, Austria, Belarus, Belgium, Bosnia & Herzegovina, Bulgaria, China, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Italy, Kuwait, Latvia, Macedonia, Moldova, Netherlands, North Korea, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine; additionally, agreements with Azerbaijan, Egypt, France, Ireland, Malaysia, Malta, Serbia, UAE and United Kingdom cover the avoidance of double taxation of income only.

## **VALUE ADDED TAX**

VAT is levied on the following:

- supplies of goods and services for business purposes by a taxpayer for consideration within the territory of Montenegro; and
- import of goods into Montenegro.

A taxpayer is any entity that independently supplies goods and services in the course of doing business.

The threshold for VAT registration is prescribed at the equivalent of EUR 18,000. Namely, if turnover in the previous 12 months exceeds or is likely to exceed EUR 18,000, then registration for VAT is obligatory.

Only the first transfer of newly built buildings (i.e. buildings built since 1 April 2003) is subject to VAT at the general rate of 19% (there is no reduced rate for residential buildings). Reduced VAT amounts to 7%. The supply of land (except the first transfer of the ownership right or the right to make use of or transfer a newly constructed building), the lease of land, as well as services linked to the leasing of residential buildings for longer than 60 days are exempt from VAT without credit.

## **PROPERTY TAX**

Tax on property is paid by the titleholder of the property rights (ownership, right of use, etc.). Property tax is paid on land and buildings. The property tax base is the market value of the property. In general, property tax rates range from 0.1% to 1.0%. For certain types of real estate (e.g. hotels in coastal areas), the rate can be even higher (up to 5.5%). Property tax is paid in two installments, on 30 June and 30 November, upon receipt of the tax assessment which is issued by 31 May for the current year.

## REAL ESTATE TRANSFER TAX

Acquisition of property rights over real estate (land and buildings) is subject to RETT unless the transaction is subject to VAT.

The RETT tax base is the market value of the real estate at the time of its acquisition. The tax rate is 3%. The taxpayer will be the acquirer of the real estate. Real estate transfer tax is not paid when a unit of real estate is included as part of an initial stake as a contribution in kind, in connection with a share capital increase, or in the event of the acquisition of real estate in the course of a merger or de-merger.

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# Poland



## RECENT DEVELOPMENTS

Generally, there have been a couple of developments in the Polish tax law recently which have affected the tax environment and may have impact on real estate.

As of 31 December 2015, the anti-abuse clause is applicable to dividend payments and other profit distributions made by a subsidiary to a parent company. As a result of the new regulation, the scope of application of the Parent-Subsidiary Directive 2011/96/UE is limited in the case of artificial arrangements (i.e. carried out without justifiable business or economic

reasons) and where the main driving force for concluding the transaction is to obtain a tax advantage (i.e. tax exemption).

A general anti-abuse clause (GAAR) has come fully into force in Polish tax legislation on 15 July 2016. On the basis of the GAAR regulations, the activity undertaken in particular with the aim of achieving a tax benefit that is contradictory in the given circumstances to the subject and aim of the regulation of the tax act, should not result in achieving such tax benefit, provided that the manner of action was artificial

(tax avoidance). Therefore, a justified business case should be in place when performing any restructuring involving Polish entities. In order to confirm that GAAR does not apply to the given action/operation/transaction, the taxpayer is entitled to obtain a protective opinion. Generally, a protective opinion, or refusal of its issuance, should be issued within 6 months. The cost of such opinion is PLN 20,000 (approx. EUR 4,500).

As of 1 February 2016, a new asset tax for financial institutions was introduced (banking tax). It applies to local institutions as well as branches of foreign institutions engaged in banking, insurance, reinsurance, credit or loaning activity.

With retail it should be noted that a new retail trade tax has come into force on 1 September 2016. Pursuant to key provisions, the new tax applies to retailers. The act does not include any specific provisions concerning vendors operating in the trade network. The monthly tax will be calculated based on turnover and the tax-free amount per year will be approx. EUR 47 million.

As of 30 April 2016, new rules for agricultural land transactions are applicable. In principle, only individual landholders (with some exceptions) can purchase agricultural land without obtaining special approval from the president of the governmental Polish Agricultural Property Agency. The new restrictions are not applicable to the sale of private agricultural parcels whose area does not exceed 0.3 ha. This is likely to add complexity to transactions for plots of land exceeding that size.

## **CORPORATE INCOME TAX AND CAPITAL GAINS**

Generally, CIT in Poland is levied on all taxable income, with some exceptions, e.g. income derived from forestry and agricultural activities. A CIT rate of 19% is payable on income which is calculated as taxable revenues reduced by eligible costs incurred to generate these revenues, or in order to retain or secure the source of taxable revenue.

The costs incurred in respect of abandoned investments may be treated as tax-deductible costs.

There is no separate capital gains tax, but gains on the disposal of fixed assets and intangibles are added to the taxpayer's mainstream income (gains from the sale of real estate property are taxed at the regular CIT rate of 19%). For the seller, profit on the sale of assets is added to the mainstream income subject to corporate income tax at normal rates. On disposal, the taxpayer can deduct the net tax value of the assets and associated disposal expenditure. Taxable income can be reduced by tax losses where they are available for utilization.

In the case of a sale of shares in a Polish company held by a non-Polish shareholder, many of the double taxation treaties Poland has concluded with other countries provide for a taxation right of respective capital gains in the jurisdiction of the shareholder. However, some double taxation treaties provide for the sale of shares of a Polish company whose assets principally (directly or indirectly) consist of real estate to be taxed in Poland at 19% CIT (for example: double taxation treaties with the UK, Spain, France, Ireland, Germany, Austria, Belgium, Denmark, Malta, Sweden and Luxembourg).

A fiscal group may be created for corporate tax purposes. There is a number of conditions that need to be met (in practice, the most difficult is the requirement for the profit of the group for tax purposes to be equal to at least 3% of gross taxable revenue). In principle, limited partnerships are able to consolidate their CIT results.

### **Tax depreciation**

Depreciation of fixed assets is usually calculated on a straight-line basis using the rates laid out in the Polish CIT Act. Depreciation write-offs are then claimed on the initial value of the individual fixed or intangible assets, in equal amounts each month, starting from the month following the month in which a particular asset was brought into use, until the end of the month in which the total depreciation write-offs equal the asset's initial value – or in the month in which it is liquidated, disposed of or found missing. The key annual depreciation rates are: 2.5% for buildings, 4.5% for constructions and 10% for technical devices. Land is not depreciated for tax purposes.

### **Tax losses**

Tax losses may be carried forward for 5 years and up to 50% of a specific tax loss can be utilized in any one year (expiring after 5 years). The ability to utilize tax losses is unaffected by a change of ownership in a company.

### **Thin capitalization**

Based on an amendment to the Polish CIT Act, from 1 January 2015 thin capitalization limitations also apply to loans provided by entities that are indirectly related to taxpayers (previously this only concerned loans made by direct shareholders or direct

affiliate companies). Under the new thin capitalization provisions, indirect participation is established based on the transfer pricing regulations (25% effective ownership is the required minimum, based on the number of voting rights proportionally entitled to the given entity).

Equity is now defined differently. Based on the amended regulations, the entire equity amount (with some exemptions) is included in the calculation of debt-to-equity ratios (previously only share capital was considered). The ratio has now been changed to 1:1 (instead of 3:1).

Also, an alternative method of applying the thin capitalization restrictions is available. By this method deductible interest expenses are limited to 1) the value corresponding to the product of the reference rate of the National Bank of Poland binding on the last day of the year preceding the tax year, increased by 1.25 percentage points, and 2) the tax value of assets in line with the provisions of the Polish Accounting Act excluding intangible assets, but not more than 50% of the operating profit, regardless of the amount of liabilities towards related entities and regardless of the equity level. Any interest not deducted under this method may be deducted in the subsequent 5 years.

The new regulations do not apply to loans already granted provided that actual cash-flow took place before the end of 2014 (the "grandfather clause").

The old Polish thin capitalization rules limit the tax deductibility of interest paid or capitalized on loans granted by qualified lenders, i.e.:

- from a direct shareholder solely holding at least 25% of voting rights or from shareholders jointly holding at least 25% of voting rights of the borrowing company;
- from a sister company which has the same direct shareholder as the borrower, if the shareholder owns at least 25% of voting rights of both the lending and the borrowing company (i.e. they are clearly linked).

Generally, the thin capitalization restrictions apply to interest paid in relation to the above loans by a Polish company if as per the date of its payment the total debt (payable to the above qualifying lenders and shareholders of a parent entity with at least 25% of voting rights in the parent entity) exceeds three times the equity of the Polish company.

In principle, the interest paid from the part of the loan exceeding this debt to equity ratio is tax deductible. There was some uncertainty about how the old thin capitalization regime should be applied in practice.

### **Controlled foreign corporations rules**

From 1 January 2015, certain income or gain derived by foreign subsidiaries owned by Polish taxpayers are now taxed in Poland. The controlled foreign corporations rules (CFC) apply if the following criteria are satisfied: (1) the subsidiary is considered a CFC because (a) its seat or place of management is in a black-listed country (practicing harmful tax competition), or in a country with which Poland has not concluded an agreement containing an exchange of information clause; (b) the income/gain derived by the subsidiary is passive in nature, e.g. gain from the disposal

of shares, interest income, IP income, etc.; (c) the above income/gains are tax exempt in the subsidiary country or are taxed at a rate lower than 14.25%; or (2) because no genuine economic activity is carried out by the subsidiary.

### **Transfer pricing**

As of 1 January 2017 new transfer pricing regulations will enter into force. In reference to the provisions adopted, the capital relation threshold will increase from 5% to 25%. The obligation to prepare transfer pricing documentation will be dependent on the fulfillment of two criteria, i.e. 1) revenue, and 2) the significance of the transaction on the taxpayer's tax result. The changes will exert the greatest effect upon taxpayers whose revenues/expenses in the year preceding the tax year exceeded EUR 10 million – apart from a “local file” they will have to prepare benchmarking studies; for those that exceed EUR 20 million, they will be required to prepare a “master file” which includes information about group structure and capital relations between the group entities.

### **WITHHOLDING TAX**

#### **Dividends**

Dividends are subject to 19% withholding tax (WHT). This is generally reduced under double taxation treaties to which Poland is a party. To apply the reduced rate, the payer should be in possession of a tax residence certificate of its shareholder. Dividends paid to a qualifying Polish resident company, EU/EEA resident companies (or their foreign permanent establishments), or to qualifying Swiss companies are exempt from Polish withholding tax if the shareholder owns at least 10% (for Swiss shareholders at least 25%) of the payer's shares and the shares have



been uninterruptedly held for at least 2 years. The withholding tax exemption is also applicable if the dividend payments were made before the end of this period; but, if the shares were disposed of earlier, any withholding tax due is payable together with penalty interest. In order to apply reduced rates, the relevant treaty should provide for the exchange of information between the Polish tax authorities and the relevant country, and the payer should also be in possession of a tax residence certificate of its shareholder. Moreover, in order to apply the WHT exemption based on the EU directive, the payer should possess written confirmation from the dividend recipient that he is not CIT exempt in his country of residence.

The WHT exemption described above also applies to dividends paid by Polish joint-stock partnerships, but only with respect to the profits generated on or since 1 January 2014 (with respect to profits generated until 31 December 2013, the exemption does not apply). Moreover, based on the amended tax regulations, the general partner is not entitled to benefit from withholding tax exemption with respect to income generated from participation in a joint-stock partnership.

It should be also noted that since 31 December 2015, an anti-abuse clause, as referred to at the beginning of the chapter, is applicable to dividend payments.

### **Interest, royalties and intangible services**

Under Polish domestic legislation, withholding tax of 20% is applied on payments of interest, and on royalties and fees for intangible services made abroad.

This is generally reduced or eliminated under the double taxation treaties to which Poland is a party. However, in order to apply the treaty rates, the payer should hold a certificate of tax residence of the recipient and the relevant treaty should provide for the exchange of information between tax authorities.

Interest and royalties are subject to withholding tax exemptions, if they are paid to qualifying EU entities. To apply the EU Interest and Royalties Directive provisions, a 2-year holding period is required. These provisions can also be applied before the 2-year holding period has been fulfilled, but if the shares are disposed of earlier, any withholding tax due is payable together with penalty



interest. In order to apply the reduced rate (or exemption), the payer should hold a certificate of tax residence of the recipient and the relevant treaty should provide for the exchange of information between tax authorities. Moreover, the payer should also hold written confirmation from the recipient that he is not CIT exempt in his country of residence.

Similar provisions apply to qualifying Swiss resident companies.

### REAL ESTATE TAX

Real estate tax is a local tax which applies to land (and perpetual use of land), buildings and constructions (or installations).

The taxable base for all buildings is the floorspace area of the building. For land (and perpetual use of land), it is the land area. For constructions (installations), the depreciation value is taken into account. The current (for 2015) maximum rates for real estate tax cannot exceed:

- PLN 0.89 per square meter for land used for business activities;
- PLN 0.47 per square meter for other land;
- PLN 0.75 per square meter for dwellings;
- PLN 22.86 per square meter for buildings used for business activities;



- PLN 768 per square meter for other buildings;
- 2% of the value of constructions/ installations (in principle the value being the base for tax depreciation purposes at 1 January each year, before any depreciation deductions).

Year after year the government has intended to implement a new real estate tax where the basis for the taxation would be the value of the real estate (cadastral tax). However, the implementation of this tax has been postponed each year and no information has yet been forthcoming about when (if at all) it will be implemented.

## **TAX ON CIVIL LAW TRANSACTIONS (TRANSFER TAX)**

A 0.5% tax on civil law transactions (PCC) is imposed on capital injections to a newly registered company, as well as on any increases of the share capital or additional payments made to the reserve capital of the company (or on the value of contributed assets in respect of partnerships). Shareholder loans are PCC exempt, while non-shareholder loans are generally subject to 2% PCC (the borrower is obliged to pay the transfer tax; if certain conditions are met, there is no obligation to pay PCC on loans).

Moreover, the sale and exchange of goods and property rights are subject to PCC if they fall outside the scope of VAT. If the sale is VAT exempt, it is usually also exempt from PCC, except for land and buildings (purchase of real estate is subject to 2% transfer tax on its market value even if VAT exempt).

Acquisition of shares in Polish companies is, in principle, subject in Poland to 1%

transfer tax payable by the buyer, but some tax management methods may be used.

## **VALUE ADDED TAX General provisions regarding real estate**

Generally, the sale of buildings, constructions and their parts is value added tax (VAT) exempt (except if the sale is performed before or within the scope of first occupation, or if the sale is performed during the first 2 years of the first occupation). However, in most cases taxpayers are able to waive the exemption if special conditions are met. Supplies of buildings, constructions or their parts are also exempt from VAT if the supplier had no right to deduct input VAT upon acquisition of such buildings or constructions and if additional conditions on the level of improvements are met.

In the case of a VAT exempt sale of buildings, constructions and their parts, the transaction is subject to 2% transfer tax. In the case of a sale of land along with a building upon it, which qualifies for a VAT exemption, both assets are VAT exempt and are subject to 2% transfer tax.

The standard VAT rate in Poland on the sale of land and buildings which are not VAT exempt is 23%. The reduced 8% VAT rate for sales of residential property applies only if the property meets the criteria of being part of a social housing program (houses no larger than 300 square meters and apartments no larger than 150 square meters). If the area of a house or apartment exceeds these respective values, both VAT rates apply (8% for areas up to 300 square meters/150 square meters, and 23% for the portion of the area exceeding those statutory limits).

Where a property is acquired as a going concern (as a whole business or organized part of a business) such transactions are not subject to VAT. For these, transfer tax applies at 2% on the value of property and is payable by the buyer (if an enterprise consists of various components, transfer tax of 2% applies to sales of real estate, movables and perpetual land use rights; 1% applies to the sale of other property rights).

The lease of office and rental space is subject to 23% VAT. The lease of residential property for housing purposes is VAT exempt.

### **Tax point**

Based on the Polish VAT provisions, the tax point arises when goods are supplied or services are provided, whereas for the supply of construction services, the special VAT point is determined with the issuance of a VAT invoice (but not later than 30 days after the completion of services).

The current Polish VAT provisions include a definition of the taxable amount which complements the definition from the VAT Directive. As a result, all payments constitute taxable amounts for VAT purposes. Moreover, the supplier or service provider should, in general, issue an invoice by the 15th day of the month following the month when goods were supplied or services provided. For the provision of construction services, according to special regulations, the invoice should be issued within 30 days from the day the services were provided.

Also, based on the VAT provisions, the VAT payer is entitled to deduct VAT from the given invoice if a tax point already arose for the seller in respect of the given sale and in respect of domestic purchases, the

VAT payer is also entitled to deduct VAT in the period in which he received an invoice, whereas in respect of the intra-community acquisition of goods, the VAT payer is entitled to deduct VAT provided that he receives the VAT invoice within 3 months from the end of the month in which the tax point arose.

### **Place of supply of services**

Generally, the place of supply of services performed for a taxpayer is a place where the purchaser has its seat, fixed place of business or permanent place of residence. However, in cases where the supply of services is provided to entities other than taxpayers, the place of supply of services is where the service provider has its seat, fixed place of business or permanent place of residence.

For services related to real estate, the place of supply of services is where this real estate is situated.

Services (including, amongst others, advisory and engineering services) provided to a non-taxpayer having its seat or permanent place of residence outside of the EU, are subject to taxation where the purchaser has its seat or permanent place of residence.

### **Entities obliged to settle VAT**

Generally, for services provided to taxpayers by a foreign taxpayer (without a seat or fixed place of business in Poland), VAT is settled by the purchaser.

However, in cases where the services relate to real estate, VAT is also, as a rule, settled by the purchaser but only if the supplier is not registered for VAT purposes in Poland. Otherwise, the supplier is obliged to settle this VAT.

## VAT refund and domestic law

The standard VAT refund period is 60 days. In order to apply for a direct refund of input VAT excess within the standard 60 days, the taxpayer has to perform a taxable transaction. The standard period of refund (60 days) can be shortened to 25 days if all purchase invoices in which VAT is declared in the specific VAT return were paid by the time the VAT return has been submitted to the tax office. If there is no VAT-able activity, then a VAT refund may still be obtainable. However, in such a case, the deadline is 180 days (but an application for the refund must be submitted). This period can be shortened to 60 days if the taxpayer files a security deposit.

## Foreign VAT refund under VIII Directive

Eighth Directive reclaims must be filed with the local VAT authority (where a company is registered), not where VAT has been paid. VAT reclaims have to be filed electronically.

## EC services list

EC services lists must be filed monthly by taxpayers if they supply services to taxpayers from other EU countries where the reverse-charge mechanism applies. Advisory services where VAT is charged in the recipient's country have to be included. Services relating to local real estate where the VAT is charged locally need not be reported.

The EC services lists must be filed by the 15th of the following month – or by the 25th of the following month if filed electronically.

## Uncollectable debts

According to the VAT regulations, taxpayers are able to benefit from bad debt relief (i.e. to adjust the tax base and the output

tax) where the debt will not be settled within 150 days from the date of payment. The debtor, in turn, is obliged to adjust the amount of input tax, regardless of whether or not the debtor has amended their output VAT. The adjustment should be made in the settlement for a period of 150 days from the date of payment. In the absence of such an adjustment, the debtor may be subject to a fine of 30% of this unadjusted VAT.

Based on the amendments of the VAT Act, starting from 1 July 2015, bad debt relief will, provisionally, also apply for related parties (i.e. if there is a capital, pecuniary, family or employment relation between creditor and debtor). The other important change is that the debtor will not be obliged to adjust the amount of input tax if he is involved in liquidation or bankruptcy proceedings on and up to the last day of the 150 days from the date of payment.

## Further notes

According to *oanda.com*, the exchange rate as at 20 September 2016 was EUR 1/ PLN 4.2964.

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# Romania



## GENERAL

Significant changes to the Romanian tax legislation have been introduced as of 1 January 2016, most notably a reduction of the dividend tax rate from 16% to 5%, a reduction of the standard VAT rate from 24% to 20% and new rules regarding building tax.

## CORPORATE TAX, INCOME TAX AND CAPITAL GAINS TAX

Taxable profits are determined based on accounting profits, as recognized in accordance with Romanian accounting standards, subject to certain specific adjustments as provided by corporate

tax law. The standard corporate tax rate is 16%.

Capital gains realized by corporate entities from the sale of assets are deemed to be corporate profits and are taxed at 16%.

Income realized by individuals from the transfer of real estate is subject to lower tax rates on income (not on profits). Capital gains derived by individuals from the sale of shares is subject to a 16% personal income tax rate, irrespective of the period for which the shares are held.

A special taxation regime (1-3% on revenue, depending on the number of

employees) is applicable instead of 16% on profit for so-called micro-enterprises (companies fulfilling certain conditions, e.g. an annual turnover below EUR 100,000).

Income from immovable property located in Romania is subject to 16% capital gains tax. Income from immovable property located in Romania mainly includes income from the rental or the grant of use of immovable property located in Romania and gains from the sale-assignment of the rights of ownership or other rights related to immovable property located in Romania.

Non-Romanian vendors may be entitled to claim Romanian tax exemption under double taxation treaties where applicable.

However, certain double taxation treaties (e.g. those with Germany, France and Austria) provide special regimes for capital gains if the shares being sold derive their value mainly from real estate located in Romania, such gains being taxable in Romania.

There are no corporate tax consolidation rules in Romania.

Taxpayers can opt for a fiscal year corresponding to the accounting year, which can be different than the calendar year.

### **Tax depreciation**

The following depreciation methods are available for tax purposes:

- straight-line method;
- reducing balance method (may be applied only to certain assets);

- accelerated depreciation method (may be used for technological equipment such as machinery and installations, computers and related equipment). The accelerated method allows for a deduction of 50% of the cost of the asset during the first year of operation.

Land and goodwill cannot be depreciated for tax purposes. Buildings can be depreciated only using the straight-line method. The tax depreciation period for buildings is between 40 and 60 years. Certain assets attached to a building can be treated as separate movable assets for tax purposes and therefore can be depreciated over a shorter period.

### **Tax losses**

Tax losses can be carried forward and deducted from taxable profits recorded during the following seven years on a "first in, first out" basis.

Fiscal losses recorded by taxpayers performing transfers of activities following a spin-off/merger can be taken over by the new parent company under specific rules provided in the law.

There is no withdrawal of the tax loss carry-forward right if there is a change of ownership or activity. Tax losses can only be carried forward, not carried back.

### **Thin capitalization**

There are two basic Romanian thin capitalization rules to be considered, as follows:

Deductibility of interest is restricted to 4% for non-RON denominated loans and up to the level of the interest rate of the National Bank of Romania (NBR) corresponding to the last month of the quarter for loans denominated in

RON, 1.75% as of August 2016 (please note that the National Bank of Romania (NBR) rate is updated throughout the year, depending on the NBR's policy). This limitation is applicable for each loan. The restriction of deductibility is determined before the calculation of the debt-to-equity ratio. Interest which is non deductible after the application of this rule is deemed permanently non deductible.

Interest expenses in respect of non-bank loans which exceed one year, are wholly deductible if the debt-to-equity ratio of the borrowing company is less than 3:1.

If the debt-to-equity ratio is three to one or more (or negative), interest expenses are non deductible (but not permanently non deductible – see below).

Interest and foreign exchange losses relating to loans received from Romanian or foreign banks, non-banking financial institutions (including leasing companies), mortgage credit companies, and other regulated lending institutions are exempt from the scope of thin capitalization rules.

Any interest which is not deductible due to the lender having negative equity, or a debt-to-equity ratio higher than 3:1, can be carried forward to be deducted against income earned in future periods, but only if and when the company's debt-to-equity ratio falls below the relevant thresholds.

If foreign exchange losses recorded by a company in relation to non-bank loans subject to debt-to-equity limitation, as described above, exceed the foreign exchange gains, then the deductibility of net foreign exchange losses is subject to the same restrictions as for interest.

Under Romanian law, unrealized foreign exchange differences on monetary items have been recognized on a monthly basis and are taxable or deductible upon corporate tax calculation (subject to potential thin capitalization deductibility restrictions).

The right to carry forward interest expenses and net foreign exchange losses for taxpayers who cease their operations as a result of a merger or de-merger operation may be transferred to newly-established taxpayers, or to those which take over the assets and liabilities of the absorbed or divided company, as appropriate, but this must be in proportion to the assets, equity and liabilities transferred to the beneficiary legal entities, as provided in the merger/de-merger plan.

## WITHHOLDING TAX

The standard Romanian withholding tax (WHT) rate is 16%. However, this rate can be reduced in accordance with double taxation treaties (Romania has concluded double taxation treaties with around 90 countries).

If the income is paid in a state with which Romania has not concluded a treaty for the exchange of information and the payment is deemed to be related to an artificial transaction, a special WHT rate of 50% is applicable.

## Dividends

Generally, a 5% dividend tax rate applies to dividends paid to non-residents (whether individuals or companies).

However, dividend payments made by a resident legal entity to an EU legal entity which holds at least 10% of the

Romanian entity's shareholding for a period of at least 1 year at the moment of distribution, are tax exempt. If the holding period conditions are not fulfilled at the moment of distribution, the dividend tax paid may be reclaimed when this condition is fulfilled.

### **Interest and royalties**

Income derived from interest and royalties is exempt if the beneficial owner of the income is a legal entity which is located in an EU member state, or a permanent establishment of a company from an EU member state, or if it is located in another EU member state. Exemption applies subject to the condition of direct ownership of at least 25% of the shares for an uninterrupted period of at least 2 years.

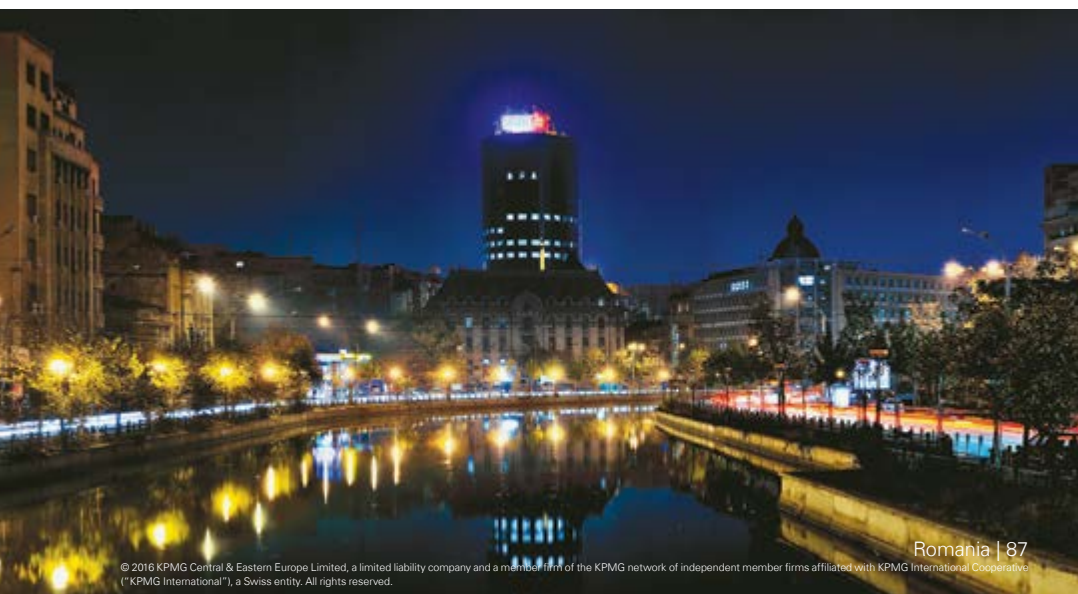
### **REQUIREMENTS FOR APPLYING EU DIRECTIVES**

To apply the provisions of EU Directives, a non-resident should provide Romanian companies with their certificate of tax residence and with an affidavit stipulating

that the non-resident fulfills the mandatory holding conditions mentioned above.

### **PARTICIPATION EXEMPTION RULES**

Certain sources of income are non-taxable for Romanian corporate tax purposes under participation exemption rules. These include dividends, gains from the sale/transfer/(re)valuation of shares and proceeds from liquidation, if the legal entities in which the company holds shares are Romanian or foreign entities from states with which Romania has concluded double tax treaties (both EU and non-EU). These revenues are non-taxable, provided that certain conditions are met (the seller/transferor is a Romanian legal entity or a foreign entity located in a state with which Romania has concluded a double tax treaty and at the time of the sale/transfer transaction or at the time when the liquidation process starts, the seller/transferor must have owned at least 10% of the share capital of the legal entity for an uninterrupted period of at least 1 year).



## REAL ESTATE TAX

Real estate tax comprises land tax and building tax.

Tax on land is determined by taking into account the area of the land in square meters, the status of the locality where the land is located, and the area and/or category of use of the land, in accordance with relevant guidelines issued by the local council where the land is located.

For companies, tax on buildings varies between 0.2% and 1.95% of the taxable value (usually 1.5%) for non-residential buildings and between 0.08% and 0.3% for residential buildings (for mixed use, tax is calculated proportionally). For buildings used in agriculture, the tax rate is 0.4% of the taxable value.

The taxable value is generally determined by valuation for tax purposes (carried out by an authorized valuator, at the owner's expense).

If the taxable value of buildings has not been updated in the 3 previous years, the building tax rate is 5%.

For individuals, the same principles apply (e.g. the distinction between residential and non-residential buildings), however tax rates and taxable values may be different from those applicable for companies.

## TAX ON CONSTRUCTIONS

A tax of 1% applies to the book value of constructions held at 31 December of the previous year, except for the value of buildings that are subject to building tax. Tax on constructions is to be eliminated starting from 1 January 2017.

## REAL ESTATE TRANSFER TAX

There is no real estate transfer tax as such.

Transfers of real estate may result in land/building registry taxes and notary fees of approximately 1% of the value of the transaction.

## VALUE ADDED TAX

The standard value added tax (VAT) rate applicable in Romania is 20% in 2016 and it is expected to decrease to 19% starting from 1 January 2017.

A reduced rate of 9% is applicable for certain supplies of goods and services (e.g. accommodation, foodstuffs, restaurant and catering services, medicines).

A reduced VAT rate of 5% is applicable, among others, for sales of dwellings to specific segments of the population as part of the government's social policy, under certain conditions (e.g. a threshold of RON 450,000 / approx. EUR 100,000 per house sold).

As a general rule, supplies of buildings, parts of buildings and land are VAT exempt without credit (i.e. any input VAT incurred on the relevant expenditures is not allowed to be offset against output VAT, but should be borne by the company as an extra cost).

However, there is an exception for supplies of "new" buildings, parts of "new" buildings and building land (i.e. any land on which buildings can be erected), which are subject to VAT and for which the taxpayer is entitled to deduct the VAT incurred on the related costs, if certain conditions are met.



Rental of real estate is also VAT exempt without credit.

For both rental and sales of real estate property, companies may opt to charge VAT and, when they do so, a formal notification must be submitted to the tax office.

Starting from 1 January 2016, the reverse charge mechanism applies to supplies of buildings, parts thereof and any type of land, if taxable either by law or by option.

The VAT grouping system applicable in Romania allows only the mere consolidation of the VAT returns of the members of the VAT group, possibly leading to a reduction in the amount of VAT payable.

A VAT cash accounting system may be applied by eligible taxpayers, i.e. resident companies with a turnover below RON 2,250,000 (the approximate equivalent of EUR 500,000).

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# Serbia



## GENERAL

The general value added tax (VAT) rate currently stands at 20%. The reduced VAT rate is now 10%.

Value added tax is applicable on the first transfer of ownership rights for newly built residential buildings constructed after 1 January 2005. Residential buildings are subject to a reduced VAT rate, while all other buildings are subject to the general VAT rate.

In addition, a VAT reverse charge scheme is in place to govern the sale of real estate and the provision of construction services. Under certain conditions buyers

of buildings and construction services can apply the reverse charge mechanism. Such measures are intended to reduce the costs of VAT financing in real estate and construction deals.

The corporate income tax (CIT) rate is 15%.

## CORPORATE INCOME TAX AND CAPITAL GAINS

Corporate income tax is levied at 15% on resident entities and branches of non-resident entities. A resident entity is a legal entity which is incorporated or has a place of effective management and control within the territory of Serbia. Resident legal entities pay tax on their worldwide income in the

country. Non-resident entities pay tax on the income generated through a permanent establishment within the territory of Serbia.

The tax period is usually the calendar year.

A CIT return for each year has to be filed within 180 days from the end of the tax year. Corporate income tax liability is payable in monthly advanced payments (by the 15th day of the following month). Corporate income tax payable is settled by the CIT return filing date. Upon request, a taxpayer may change its tax year to a period of any 12 consecutive months, but only if the foreign parent entity has a financial year which differs from the calendar year.

Taxable income is determined on the basis of accounting profit disclosed in the annual income statement, in accordance with International Financial Reporting Standards, and is subject to further adjustments in the tax balance.

Capital gains are disclosed separately in the tax balance and are subject to 15% tax. The capital gain is the difference between the sale and purchase price of assets (real estate, shares/securities, intellectual property rights, investment units). If this difference is negative, a capital loss is reported.

Capital gains realized by non-resident entities which do not have a permanent establishment in Serbia, are subject to 20% tax unless otherwise prescribed by a respective double tax treaty.

## Losses

Tax losses generated from business transactions, financial and non-business transactions, excluding capital gains and losses, may be carried forward for up to five subsequent tax periods and can be offset against future taxable income.

There are no change of ownership rules (i.e. losses carried forward are not lost in the case of a change of ownership, or of mergers, acquisitions, spin-offs or other organizational changes).

Capital losses may be carried forward for 5 years and offset only against capital gains.

## Tax depreciation

For CIT purposes, non-current assets are divided into five groups, with depreciation rates prescribed for each group:

Group	Depreciation Rate
I	2.5%
II	10%
III	15%
IV	20%
V	30%

Non-current assets classified under Group I are depreciated using the straight-line method at 2.5%, while a declining balance method is prescribed for non-current assets categorized into groups II-V. Buildings and other immovables (excluding land) are placed into tax depreciation Group I, while plant and equipment are in groups II-V.

If a non-current asset is acquired from a related party, the tax depreciation base will be the lower of:

- the transfer price of the non-current asset;
- the amount/value determined in line with the arm's length principle.

## Thin capitalization

Interest and related expenses arising from business with related entities are deductible to a value of up to four times the taxpayer's equity (the limit for banks and finance lease entities is 10 times the entity's equity).

## Related-party interest

Interest expenses arising from business with related entities, which are allowable according to thin capitalization rules, are subject to transfer pricing rules. Taxpayers have an option either to apply a safe harbor interest rate prescribed by the Ministry of Finance or to assess a market interest rate by applying general transfer pricing rules.

## Transfer pricing

Transactions with related parties need to be separately disclosed in the tax return. Penalties are prescribed for non-compliance. Transfer pricing documentation must be submitted along with the CIT return.

Acceptable methods for assessing the "arm's length" principle of transactions with related parties have been harmonized with OECD methods and include:

- comparable uncontrolled prices method;
- cost plus method;
- resale price method;
- transaction net margin method;
- profit split method;
- any other method, provided the above-mentioned methods are not applicable or if the other method is more appropriate.

## WITHHOLDING TAXES

Withholding tax (WHT) at 20% is withheld from dividends, the share in profits, liquidation surplus, royalties, interest, service fees (used or rendered in Serbia) and lease payments for movable and immovable assets located in Serbia and which is derived by non-residents. Withholding tax may be reduced in line with double taxation treaties.

If a non-resident taxpayer receives capital gains from a Serbian resident, from a non-Serbian resident based in Serbia, from a non-resident individual, or from an open investment fund within the territory of Serbia, then 20% tax has to be paid unless otherwise prescribed in line with a double taxation treaty. A non-resident taxpayer has to submit a special tax return within 30 days of generating the capital gains via proxy, based on which the tax authorities assess the tax liability.

Withholding tax at 25% is applied on royalties, interest, lease payments for movable and immovable assets and service fees (irrespective of the place where they are provided or used) paid by a resident entity to a non-resident registered in a jurisdiction with a preferential tax system (i.e. tax havens). There is a list of 51 preferential tax jurisdictions to which this special regime applies.

## DOUBLE TAXATION CONVENTIONS

As at 1 January 2016, Serbia has 54 effective double taxation conventions on income and capital with the following countries: Albania, Austria, Azerbaijan, Belarus, Belgium, Bosnia & Herzegovina, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Hungary, Iran, India, Italy, Kuwait, Latvia, Lithuania, Macedonia, Moldova, Netherlands,

North Korea, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Turkey and Ukraine. Agreements with Egypt, Estonia, France, Ireland, Libya, Malaysia, Malta, Montenegro, Pakistan, Qatar, UAE, United Kingdom and Vietnam cover the avoidance of double taxation of income only.

## VALUE ADDED TAX

Value added tax is levied on the following:

- supplies of goods and services for business purposes by a taxpayer within the territory of Serbia; and
- the import of goods into Serbia.

A taxpayer is any entity that independently supplies goods and services in the course of doing business.

Each entity whose turnover in the previous 12 months (sales of goods and services excluding sales of real estate and equipment used in performing business activities) exceeds RSD 8 million (approx. EUR 65,000) is obliged to register for VAT.

The first transfer of newly built buildings (currently for buildings constructed since 1 January 2005) is subject to VAT at 10% (for residential buildings) or 20% (other buildings). Supplies of land, as well as the renting of land and real estate for residential purposes, are exempt from VAT without input VAT recovery. There is a possibility to apply VAT on any transfer of buildings (option to tax) through a reverse charge mechanism if both the purchaser and the seller are VAT registered. In addition, there is an obligation to accrue VAT through a reverse charge mechanism on construction services if such construction services are specifically listed

as subject to reverse charge mechanism in the government decree.

## PROPERTY TAX

In Serbia, tax on property is paid by the titleholder of the property rights (ownership, right of use, tenure, etc.). The property tax base is the market value for most entities instead of its book value. Each municipality issues detailed rules on how to calculate property tax liability. Entities applying fair value accounting use the book value as the tax base.

Property tax rate may not exceed 0.4%.

Property tax returns are submitted by 31 March of the current year.

## REAL ESTATE TRANSFER TAX

The transfer of ownership for real estate which is not subject to VAT is subject to transfer tax at a rate of 2.5%. The taxpayer is the seller (i.e. transferor of the ownership right, intellectual property right, or the person who leases or gets use of the construction land).

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# Slovakia



## GENERAL

The Slovak tax system was fundamentally changed following major tax reforms in 2004 making the tax system fully EU compliant. In 2009, an amendment to the Slovak tax legislation introduced new tax treatment for business combinations, effective from 1 January 2010. The amendment to the Income Tax Act effective from 1 January 2012, among other changes, modified certain aspects of tax depreciation. With effect from 1 January 2013, inter alia, the corporate income tax rate was increased from 19% to 23%, while from 1 January 2014 this tax rate was reduced to 22% besides other major changes. The amendment to the Slovak tax legislation

effective as of 1 January 2015 introduced new depreciation rules, certain limitations on tax deductibility of selected costs and new transfer pricing and anti-avoidance rules.

The amendment to the value added tax (VAT) legislation passed in 2009 introduced the possibility of VAT grouping and accelerated VAT refunds for qualifying taxpayers. The amendment to the VAT Act effective from 1 January 2011 extended the period for the application of a capital goods scheme to real estate from 10 to 20 years and temporarily increased the basic VAT rate from 19% to 20%. From 1 October 2012, a further amendment was introduced with the aim of countering tax fraud in the VAT

area. This was followed by an amendment to the VAT legislation effective from 1 January 2013, also implementing, *inter alia*, the EU invoicing directive.

As of 1 January 2014, all VAT payers and certain other entities became obliged to file all their filings with the tax authorities electronically. By 2017, it is hoped that all companies and individuals communicating with all public authorities will be doing so electronically.

## **CORPORATE INCOME TAX AND CAPITAL GAINS**

Corporate income tax (CIT) in Slovakia is levied on all taxable income at the standard corporate tax rate of 22%. Income is computed as taxable revenues reduced by eligible costs incurred to generate, assure or maintain taxable income, subject to additional tax adjustments.

There is no separate capital gains tax in Slovakia and gains on the disposal of fixed assets and intangibles are included in a taxpayer's total income. On disposal, the taxpayer can deduct the net tax value of the assets (after accumulated depreciation) and associated disposal expenditures up to the amount of the income from related sales. Taxable income can be reduced by the amount of tax losses available for utilization. Losses on the sale of certain buildings are not tax deductible, nor are losses on the sale of land. The capital gains on sales of real estate, rental income or other income from real estate situated in Slovakia is also subject to local rules; hence there is also a liability to pay income tax if both parties involved in the transaction are Slovak tax non-residents not having a permanent establishment in Slovakia, unless a double tax treaty provides exemption from paying tax.

In the case of a sale of shares in a Slovak company held by a foreign shareholder,

under the domestic rules the capital gain is taxable in Slovakia but exemptions may be available to EU resident taxpayers. Also, Slovakia has an extensive array of double tax treaties which normally (but not always) provide the right to tax the capital gain in the jurisdiction of the seller. Potential gains here may also be taxable if the Slovak company holds substantial real estate.

## **Fiscal grouping**

There is no concept of fiscal grouping for corporate income tax purposes in Slovakia.

## **Minimum tax/tax licenses**

With effect from 1 January 2014, a taxpayer declaring any tax loss or tax liability which is lower than a defined minimum amount is obliged to pay a "tax license", which is in fact a minimum tax. The amount of the tax license ranges from EUR 480 to EUR 2,880 depending on the entity's turnover and on whether the entity is a VAT payer. Payment of the tax license is due within the filing period of the corporate income tax return (i.e. by 31 March the following year if the deadline is not extended). A positive difference between the minimum tax and the actual tax liability may be offset against future tax liabilities in excess of the amount of the minimum tax in the following three tax periods.

## **Tax depreciation**

Depreciation of fixed assets is calculated on a straight-line or accelerated basis, using rates laid out in legislation. Depreciation is based on categorization of assets into groups with depreciation periods. Effective from 1 January 2015, the number of depreciation groups has been increased from four to six groups with a maximum tax depreciation period amounting to 40 years. Accelerated tax depreciation may only apply to depreciation groups two and three (mostly on technological equipment).



Buildings are depreciated over 20 or 40 years depending on the type of the building. It is possible to decide to interrupt (not claim) depreciation of tangible assets in any particular year, but with effect from 1 January 2015 the interruption of tax depreciation of tangible assets is not possible during a tax audit and only via a supplementary income tax return for a tax period that was already subject to a tax audit. Generally, interruption of depreciation of tangible assets prolongs the depreciation period. Land cannot be depreciated for tax purposes.

In the case of certain components of (multiple unit) real estate it is also possible to divide a fixed asset into separate components if the acquisition value of each respective component is higher than EUR 1,700 – and also to depreciate them separately in a different tax depreciation group.

### **Tax losses**

Tax losses incurred from 2014 onwards may be carried forward over 4 years in equal installments. Tax losses incurred for the 2010 to 2013 taxable periods can be carried forward equally over 4 years starting with the taxable period beginning 1 January 2014. A company wound up without liquidation (e.g. for a merger), is allowed to transfer the right to carry forward its tax losses to its legal successor to set off against subsequent taxable profits. Subject to certain anti-avoidance limitations, the legal successor may deduct the tax losses of a dissolved legal entity. Different rules may apply to tax losses of companies benefiting from various tax incentive schemes.

### **Thin capitalization/earnings stripping rules**

In tax periods commencing on or after 1 January 2015, interest and other expenses related to loans received from a related

party exceeding 25% of an amount roughly corresponding to EBITDA will be tax non-deductible. The rules apply to related parties – in line with the definition of related parties for transfer pricing purposes, i.e. to foreign and domestic related parties. These rules do not apply to certain financial institutions, e.g. banks, insurance companies, re-insurance companies and others.

## **WITHHOLDING TAX**

### **Dividends**

Dividends are currently not subject to any withholding tax if paid out of profits generated from 1 January 2004 onwards. Dividends paid out from older profit may still be taxable, whilst exemptions are provided to EU/ EEA resident companies under the terms of the EU Parent-Subsidiary Directive. Dividend income received by individuals may be subject to compulsory health insurance contributions.

### **Interest, royalties and intangible services**

Under Slovak domestic legislation, withholding tax of 19% applies to payments of interest, royalties and fees for intangible services paid to treaty countries. This is generally reduced or eliminated under the double taxation treaties to which Slovakia is a party. However, in order to apply the treaty rates, the payer should hold a certificate of tax residence of the recipient. Furthermore, the Interest and Royalties Directive fully applies in Slovakia.

In the case of non-treaty countries, the withholding tax rate is increased to 35% as of 1 March 2014. The Ministry of Finance issues a list of the treaty countries annually.

Currently, withholding tax is regarded as the final tax with certain exceptions, such as certain income of tax non-residents listed in line with the tax legislation.

## SECURITY TAX

Payments to an entity which has or may have a permanent establishment in Slovakia are subject to 35% security tax with the exception of treaty counties, in the case of which the security tax rate remains at 19%. This is not applied if the receiving entity holds a certificate proving it makes advance payments of tax or if the receiving entity has its registered seat or address within the EU.

## BUSINESS COMBINATIONS

Taxpayers in Slovakia may decide that in the case of certain business combinations/activities the fair value will be used not only for accounting, but also for tax purposes.

In such a case, the revaluation difference arising from the restructuring must be included in the taxable base in line with the tax law. On the other hand, the company may depreciate assets from their fair value and must not continue with the tax depreciation of assets from their tax residual value. In addition, the amortization of goodwill may, under certain conditions, be tax deductible.

## REAL ESTATE TAX

In general, real estate tax is applied to companies and individuals owning land and buildings. The tax is based on the area of the land and building, the number of floors of a building, usage and location. There is considerable flexibility for local authorities in the setting of these rates of tax.

## REAL ESTATE TRANSFER TAX AND OTHER TRANSFER TAXES AND DUTIES

Real estate transfer tax was abolished in 2005. There are no significant stamp or other duties on the transfer of land or buildings. Acquisition of shares in Slovak companies is not subject to any transfer tax or significant stamp duties.

## VALUE ADDED TAX

### General provisions for real estate

Generally, the sale of property or parts thereof is subject to VAT in Slovakia if sold after 5 years of the first occupancy permit or first use. The sale of building land is also subject to VAT. Since January 2011, the standard 20% VAT rate is applicable in Slovakia with respect to the supply of building land and buildings.

If real estate sales meet these conditions they are VAT exempt, but the supplier has the option to choose to charge VAT.

Rental of real estate or parts thereof is exempt from VAT, but the supplier may opt to charge VAT if the supply is made to a taxable person.

The VAT payer who acquires immovable property with the intention to use the property for both business and non-business purposes is only entitled to deduct the proportional part of the input VAT in the amount that corresponds with the scope of the business use of the respective property.

The Slovak VAT Act contains provisions for capital goods scheme purposes, according to which the VAT payer is obliged to pursue for VAT purposes the change of use (for business/non-business purposes as well as for exempt/non-exempt use) of immovable property (buildings, building lands, flats, commercial premises, building superstructures, extensions and reconstructions of buildings, flats and commercial premises requiring a building permit) for a period of 20 years and to adjust the input VAT deducted accordingly.

### VAT grouping

VAT grouping was introduced in Slovakia with effect from 1 January 2010. A VAT group is defined as a group of

taxable persons with their seat(s), places of business or establishment in the territory of Slovakia and which are connected financially, economically and organizationally. Members of a VAT group act as one taxable entity under one assigned VAT ID number.

The tax authorities should register the VAT group with effect from 1 January of the calendar year following the year in which the application for registration was submitted, if the respective application has been filed by 31 October of the current calendar year.

Should the application for VAT group registration be filed after 31 October of the current year, the tax authorities will register the group with effect from 1 January of the second year following the calendar year in which the application for the registration of the VAT group was filed.

From 1 January 2014, a new member may join the existing VAT group anytime during the calendar year.

VAT grouping can positively affect the cash flow of companies in a VAT group since VAT is not charged on transactions between VAT group members.

### **VAT refund**

If a company is established in another EU Member State, it can submit an electronic claim for VAT refunds under EU Directive 2008/9/EC. A non-EU business can also recover VAT under the principles of the 13th EU VAT Directive.

Under both of these provisions, there are strict time limits for making claims. Applications must be submitted within 6 months following the end of the calendar year in which the VAT was charged or paid

to non-EU businesses and within 9 months in the case of payments to EU entities. Alternatively, for EU entities, a shorter period is allowed if at least 3 calendar months are involved and VAT incurred during this period amounts to at least EUR 400.

The tax authorities determine whether the claim is to be paid for EU business within 4 months of receipt of the application, or if additional information is requested, with a period of up to 8 months, or for non-EU entities within 6 months.

VAT payers with seats in Slovakia and foreign entities who do not fulfill the conditions for refunding of VAT under the EU Directive 2008/9/EC or the 13th EU VAT Directive, and which are VAT registered in Slovakia, may apply for a refund of VAT incurred via the filing of VAT returns.

Generally, the refunding by way of VAT returns takes approximately 90 days if the supplier is a monthly VAT payer.

However, an accelerated VAT remittance procedure is available for persons registered for VAT in Slovakia, under which a VAT refund is possible within 30 days of the deadline for filing the VAT return for the respective period. This is subject to certain conditions, e.g. the taxable period being a calendar month, registration for VAT purposes for at least 12 months before claiming the excess VAT deduction, and underpayments up to EUR 1,000 towards the state budget or towards social/health insurance institutions during 6 calendar months before the end of the calendar month in which the excess VAT deduction arose. VAT payers who comply with these conditions must note this in the respective VAT return.

## **Slovak Act on Value Added Tax – general rule for determining the place of supply of services**

General rules on “place of taxation” stipulate that the place of supply of services to a taxable person (so-called business to business services) is the place where the customer is established; and the place of supply of service to a person other than a taxable person (so-called business to consumer services) is in the member state of the service supplier.

Exceptions to the general rule apply for specific services, e.g. the place of supply of services connected with immovable property, including the services of estate agents and of related experts, accommodation services, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of persons providing on-site supervision, should be the place where the immovable property is located.

## **TRANSFER PRICING**

Prices used in transactions between related parties must comply with arm's length principles. Under Slovak tax law, if the agreed price for a transaction is notably different from a fair market price and the difference would lead to a decrease of the taxable base of the Slovak related party, a fair market price will be substituted for tax purposes. Related parties are generally defined as economically or personally connected individuals or legal entities. Economic connection is understood to be participation of more than 25% in share capital or voting rights. Personal connection is understood to include participation in the management or control of the other person.

Up until the end of 2014, the transfer-pricing rules have only applied to cross-border transactions. As of 2015, the transfer pricing rules have been extended to apply to transactions between related domestic entities.

Based on transfer pricing principles, the transfer price should reflect the risks borne and functions performed by parties involved in the transaction. In principle, any method recognized by the OECD could be used for price determination (e.g. cost plus, resale minus, comparable uncontrolled price). If the price charged for goods or for a service significantly differs from prices charged in similar transactions between independent companies, the tax authorities may challenge the transaction.

Formal transfer pricing documentation requirements have been effective since 1 January 2009. The Ministry of Finance issues guidelines on transfer pricing documentation rules. Transfer pricing documentation must be provided to the tax authorities within 15 days of their request.

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# Slovenia



## GENERAL

A standard value added tax (VAT) rate of 22% is applicable in Slovenia, whereas a reduced rate of 9.5% may be applied in some cases.

The sale of building land is subject to 22% VAT. However, the sale of buildings or parts thereof, and of the land on which they stand (occupied for longer than 2 years), is VAT exempt; consequently, 2% real estate transfer tax (RETT) is payable. Notwithstanding the above, the seller (taxable person) and the buyer (taxable person having the right to full deductions of VAT) can make an arrangement to charge VAT on the sale. In such a case

the buyer and the seller agree in a joint declaration regarding VAT taxation and submit it to the tax authority prior to the time of supply.

The reduced 9.5% VAT rate on the sale of residential property applies only if the property meets the criteria of a social housing program. If the area of a house or apartment exceeds a certain area in square meters then the standard VAT rate applies. Details are provided under the "Value added tax" section below.

## CORPORATE INCOME TAX

Resident companies are taxed on their worldwide income. According to the

Corporate Income Tax Act (henceforth the Slovene CIT Act), revenues and expenditure disclosed in companies' profit and loss accounts are adjusted for tax purposes.

The corporate income tax (CIT) rate is currently 17%.

Investment funds subject to tax under the Slovene CIT Act, which are established in accordance with an act regulating investment funds and fund management companies, shall pay CIT for the tax period at a rate of 0% of the tax base, provided that at least 90% of the operating profit generated in the preceding tax period has been distributed by 30 November of the tax period in question.

### Capital gains

Capital gains are included in the tax base and are subject to CIT. However, under certain conditions (i.e. if the taxpayer holds at least 8% of the share capital for a minimum period of 6 months and employs one employee on a full time basis), 47.5% of the capital gain may be exempt from taxation. Fifty percent (50%) of capital losses are treated as non-deductible expenses, if realized from the alienation of shares and if the above-mentioned conditions are met.

### Tax depreciation

Based on the Slovene CIT Act, depreciation and amortization may not exceed the level arrived at using the straight-line depreciation method and the maximum annual depreciation rates prescribed by the CIT Act. Any excessive amount should be treated as a tax non-deductible expense until the asset has been completely depreciated or disposed of.

Examples of maximum depreciation rates are:

- 3% for buildings and investment property;
- 6% for parts of building projects, including parts of investment property;
- 20% for equipment, vehicles and machinery;
- 50% for computers, hardware and software;
- 10% for other investments.

### Tax losses

Tax losses may be carried forward for an indefinite period and may be used for the reduction of the taxpayer's positive CIT base, but only up to 50% of that taxpayer's CIT base for the current tax period. Tax losses from the current and previous years may not be carried forward if the direct or indirect ownership of capital or voting rights of the taxpayer changes by at least 50%, and where:

- the taxpayer, before the changes of ownership, did not carry out the business activity for 2 years; or
- the taxpayer essentially changed its business activities in the last 2 years before or after the change of ownership, unless the change of business activities is necessary for the continuation of employment or due to business restructuring.

### Thin capitalization

Except in the case of loan recipients that are banks or insurance providers, the interest paid on loans (loans received from a shareholder who at any time



during the tax period directly or indirectly owns at least 25% of the shares in the equity capital, or the voting rights of the taxpayer) will not be recognized as an expense, if at any time during the tax period the loans exceed the prescribed debt/equity ratio of 4:1. However, if the taxpayer can prove that the excess loan could also be granted by a non-related entity under the same or similar circumstances, then thin capitalization rules do not apply.

## **WITHHOLDING TAX**

The general withholding tax (WHT) rate is 15% and is applicable for payments of dividends, interest, royalties, lease payments for immovable property located in Slovenia, on payments for the performances of artists and sportsmen, in all those cases provided that the payment is made to another person, and for payments for any services to an entity resident in a country listed on the “black list” which is published by the Slovene Ministry of Finance.

Slovenia applies the EC Parent-Subsidiary Directive and Interest and Royalties Directive which reduce WHT to 0% when this income is paid to EU resident companies. If none of the aforementioned Directives apply, there is also a possibility to apply the relevant double tax treaty between Slovenia and the respective country.

## **Dividends**

No withholding tax is levied on any payments made by a Slovenian company to another Slovenian company which communicates its tax identification number to the payer (the procedure normally followed).

Under the Slovene CIT Act, which lays down the provisions of the EC Parent-Subsidiary Directive, dividends are exempt from withholding tax if the recipient is an EU company listed in the Directive and subject to corporate income tax, and which directly holds at least 10% of the capital or voting rights of the paying company.

A continuous minimum holding period of 2 years is required. If the 2-year holding period has not yet elapsed, the exemption can be directly applied if the recipient lodges a bank guarantee.

Notwithstanding the conditions above, dividends are exempt from withholding tax if the recipient is an EU or EEA company that is unable to offset the Slovenian withholding tax because it benefits from a participation exemption regime in its country of residence. In such cases, any withholding tax already paid may also be refunded.

## **Interest and royalties**

According to the Slovene CIT Act, which lays down the provisions of the EC Interest and Royalties Directive, interest and royalty payments made by resident companies are generally exempt from withholding tax, provided that at the time of the payment:

- the payments are made to the beneficial owner, which is a company registered in an EU member state;
- the payer and the beneficial owner are related such that a) the payer directly participates in the beneficial owner's capital by not less than 25%, or b) the beneficial owner directly participates

in the payer's capital by not less than 25%, or c) the same company directly participates in the payer's and the beneficial owner's capital by not less than 25%, where participation between the companies of the EU member states is concerned;

- the duration of the minimum participation is not less than 24 months.

However, an exemption from withholding tax shall only apply to the amount of the payments that are at arm's length.

For the above-mentioned withholding tax exemption, a special application must be submitted to the Slovene Tax Authorities. If the conditions are fulfilled, the tax authorities have to pre-approve the application of that WHT exemption.

## REAL ESTATE TRANSFER TAX

The transfer of real estate property or establishing and transferring the right of superficies is subject to real estate transfer tax (RETT). If VAT is charged on the transaction, RETT is not imposed (i.e. for supplies of construction land, new immovable property – buildings and land at the time of first use or within 2 years of first use, etc.).

The taxable person is the seller of the real estate property, unless otherwise agreed. In establishing the right of superficies, the taxable person is the owner who first acquired the right to the superficies, while in transferring the right of superficies; the taxable person is the owner who transfers the right to the superficies.



This tax is payable at a rate of 2% of the tax base. The tax base is the selling price of the real property. In establishing or transferring the right of superficies, the tax base is the realized payment equaling the market value of the right of superficies.

## **TAX ON CIVIL LAW TRANSACTIONS (TRANSFER TAX)**

Slovenia does not impose a special tax on civil law transactions.

## **VALUE ADDED TAX**

### **General provisions regarding real estate**

Generally, according to Article 44 of the Slovene VAT Act, the sale of buildings, constructions and their parts are VAT exempt (except if the sale is made before the first occupation or if the sale is performed within 2 years of the first occupation and except for the sale of building land). However, in most cases taxpayers are able to give up the exemption if special conditions according to Article 45 of the Slovene VAT Act are fulfilled, i.e.:

- the seller and the buyer of immovable property have made a joint declaration (regarding the VAT-able transaction) to the competent tax authority prior to the supply thereof (filed electronically); and
- the buyer of the immovable property has the right to full deduction of input VAT.

If the supply of immovable property is subject to VAT (according to Article 45 of the Slovene VAT Act), then the VAT is payable by the buyer based on the local

reverse charge mechanism, as long as the buyer is registered for VAT in Slovenia (using the domestic reverse charge mechanism according to Article 76a of VAT Act). In this case, the seller is obliged to report every taxable transaction with regard to such immovable property to the tax authorities on a monthly basis in accordance with Article 76a of the VAT Act (reverse charge mechanism).

In the case of a VAT-exempt sale of buildings, constructions and their parts, the transaction is subject to 2% RETT.

The standard VAT rate in Slovenia is 22% and the reduced rate is 9.5%.

The reduced VAT rate applies only to flats, housing and other facilities intended for permanent residence and parts of these buildings that are part of a social policy, including the construction, renovation and repair thereof, the maximum floor space for these being 120 m<sup>2</sup> for apartments and 250 m<sup>2</sup> for houses.

The leasing of an office and certain rental space is, in general, also VAT exempt (except for accommodation in hotels, the lease of garages and parking areas, the lease of permanently installed machinery and equipment and the lease of safes). However, the lease of an office and certain rental space might be subject to VAT if certain conditions are met (e.g. where a joint declaration is signed and provided to the tax authorities).

## **Place of supply of services**

Generally, since 2010, the place of supply of services to a taxpayer registered for VAT purposes in another EU country

or third country is the place where the taxpayer has established his business, permanent place of residence or permanent place of conducting business. However, in cases where the supply of services is made to a person other than a taxpayer, the place of supply of services is where the service provider has its seat, permanent place of residence or permanent place of conducting business.

In cases of services related to real estate, the place of supply of services is where the real estate is situated.

### **EC services list**

Since 1 January 2010, relevant monthly EC sales lists have had to be filed by taxpayers if they supply goods or services to taxpayers from other EU countries where the reverse-charge mechanism is applied. Advisory services where VAT is charged on a reverse charge mechanism basis in the recipient's country have to be included in the EC sales list. Services relating to local real estate where the VAT is charged locally do not need to be reported in the EC sales list.

EC sales lists should be filed electronically by the 20th of the month following the transaction. If EC sales lists are filed, then VAT returns should also be filed by the 20th of the following month, otherwise the deadline for filing VAT returns is on the last working day in the month following the tax period in question. Blank EC sales lists do not need to be filed. However, the VAT liability should always be paid by the last working day of the month following the taxable period in question.

### **VAT refund under domestic law**

The standard refund period relating to VAT returns (i.e. the refund of VAT surplus) is 21 days after the date of filing of the VAT return.

### **Foreign VAT refund under VIII Directive**

Since 1 January 2010, VAT reclaims under the VIII Directive must be filed with the local VAT authority (in the country where the requestor is registered) and not where VAT has been paid. VAT reclaims must be filed electronically.

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