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Inbound Real Estate Investments: Tax

Vox Tax

The Dentons global tax report has been prepared with contribution for India from Lakshmikumaran & Sridharan.

Contents

Notes from the Editor

Dear reader,

As investors look to diversify real estate investments globally for asset and risk management, one of the key aspects necessary to understand in order to maximise return on investment, is tax.

We have therefore prepared this edition of Vox Tax which provides a high level overview of the key tax consequences of acquiring and holding real estate investment assets across the globe.

This comparative study enables investors to consider the key tax differences which may arise when investing in real estate in a jurisdiction which may be unfamiliar. In addition, with the onset of the OECD's base erosion and profit shifting project (BEPS), traditional tried and tested structures may no longer be fit for the purpose. In particular, Action Point 2 (Hybrid Mismatch Arrangements) and Action Point 4 (Interest Deductions) will have a material impact on how real estate acquisitions are funded.

To better understand the nature and scope of the real estate taxes charged in each country, we have therefore answered the following 12 questions for each jurisdiction:

1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?
2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?
3. Are there any annual taxes that may be payable on the ownership of real estate?
4. What is the tax rate imposed on rental income?
5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so, are there any restrictions, such as thin capitalization or transfer pricing? If so, is there any withholding tax on interest?
6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Allocation between land and building?
7. If so, are there tax deductions for management fees?
8. Are there any restrictions on the use, and/or the carry-forward, of losses?
9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?
10. Is there a withholding tax on rental income and/or capital gains derived from real estate?
11. Are there any tax-efficient real estate investment vehicles or structures to acquire, hold and exploit real estate that clients could utilize?
12. Are there any structures commonly used to mitigate real estate tax liabilities on acquisition and/or disposal of real estate?
13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

As you will see, the applicable taxes associated with real estate investments in the relevant jurisdictions are numerous and often complex. However, issues can be avoided by careful planning and structuring and the Dentons Global Tax Group is here to steer you through the ever more complex tax arena and assist you in achieving your real estate investment goals.

This issue of Vox Tax does not constitute tax advice and readers should note that the laws of each jurisdiction are regularly refined and/or revised, so the statements made in this report are not definitive. However, this guide does provide a summary overview of the current state of the law and will hopefully serve as a useful tool for investors to ensure they understand the unique provisions and distinctions in the various jurisdictions.

We want to express our gratitude to all contributors from Dentons offices worldwide and from Lakshmikumaran & Sridharan, who together prepared the analysis.

Please do not hesitate to contact us for any further clarification or assistance.

We hope you will enjoy this edition of Vox Tax and look forward working with you in the near future.

Yours sincerely,

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes. A property transfer tax or title transfer fee will be levied by provinces and municipalities on the transfer of real estate through sale, purchase or lease.

Whether or not there is a property transfer tax or title transfer fee depends on the province. Alberta, Newfoundland and Labrador, Northwest Territories, Nunavut, Saskatchewan and Yukon all impose a title transfer fee on registrations of title. All other provinces impose a property transfer tax.

Generally, a disposition of beneficial ownership of Canadian real estate will trigger tax consequences. In Ontario, a disposition of a beneficial interest in land will occur on the sale, transfer, assignment or any other change in entitlement to beneficial ownership of land. However, the transfer of shares of a corporation that holds Canadian real estate will not trigger property tax since this does not constitute a change in beneficial ownership of the land. Shareholders are not automatically entitled to beneficial ownership of real estate held by a corporation on the transfer of shares. In contrast, a partner that, for instance, sells an interest in a partnership that owns land will be regarded to have disposed of its proportional beneficial ownership in the land, giving rise to property transfer tax.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

The amount of the property transfer tax or title transfer fee will depend on where in Canada the property to be sold, purchased or leased is located.
For example, for properties in British Columbia that are sold, or leased for a period of more than 30 years, the rate of property transfer tax is as follows:

- 1% on first CA$200,000 fair market value of property
- 2% on more than CA$200,000, up to CA$2 million, of fair market value of property
- 3% on portion of fair market value above CA$2 million
- Additional 15% on foreign entities in Greater Vancouver Regional District

Conversely, in Alberta, there is a title transfer fee on a sale of property, the rate of which is:

- CA$50 base + CA$1 for every CA$5,000 or portion of the property value
- CA$50 base + CA$1 for every CA$5,000 or portion of the mortgage value

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

There are two forms of tax on the sale of goods and services in Canada: the goods and services tax (GST) and the harmonized sales tax (HST). Either is generally payable on the sale, purchase or lease of real estate property.

Exemptions to this general rule exist for the sale of used homes and short term rentals. HST will therefore be payable on the sale or lease of property for commercial and industrial activities. The applicability of a sales tax will depend on the province in which the supply of property is made.

The general rule is that the sale is "made" where the property is located.

HST is payable in Nova Scotia (at 15%), Prince Edward Island (at 14%) and in each of New Brunswick, Newfoundland, Labrador and Ontario (at 13%).

A 5% GST is payable in Alberta, British Columbia, Manitoba, Northwest Territories, Nunavut, Saskatchewan and Quebec. Alberta, Northwest Territories, Nunavut and Yukon do not impose any additional sales tax. British Columbia, Manitoba, Quebec and Saskatchewan also impose an additional sales tax, such as the Quebec sales tax. Exemptions and rebates are available and will depend on the use of the property.

The purchaser is liable to pay the GST and/or HST, and the vendor is required to collect and remit it to Canadian revenue authorities.

The vendor or landlord must first be registered and remain ultimately responsible to remit the tax, unless it is non-resident or where the purchaser is registered or opts to self-assess its GST or HST tax liability.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

A property tax is payable on the ownership of property in Canada and is administered by municipalities based on their individual tax revenue needs. Rates therefore vary according to the location of the property in a particular municipality. Property tax rates are calculated with reference to the assessed current value of the property and the municipal property tax rate. In the municipality of Toronto for example, property tax rates consist of a city levy, education levy and transit expansion levy. The total property tax rate for residential properties in 2016 was 0.6879731% and 2.6398602% for commercial property. The property tax rate for the municipality of Calgary in 2016 was 0.0061738% for residential properties.

4. What is the tax rate imposed on rental income?

Rental income is included in a taxpayer's income if it is derived from the renting of homes, apartments, rooms, office space and other real or immovable property. The rate of tax will depend on the nature of the taxpayer: whether it is an individual, trust, corporation, etc. The combined federal and provincial graduated income tax rate for individuals ranges between 20.05% and 53.53% for Ontario (for example). The calculation of this rate will depend on the taxpayer's income bracket and province. The general federal tax rate for corporate taxable income is 38%, which can be reduced subject to certain requirements.

Non-residents that receive Canadian rental income can elect to be taxed on their net rental income as opposed to their gross amount. This is referred to as a section 216 election. This will allow non-residents to benefit from allowable deductions from their gross rental income, such as capital cost allowances. Withholding tax of 25% will apply if the taxpayer is a non-resident.

The rate of tax will also depend on whether the rental income is considered active business income (ABI) or investment income from property. These two classifications attract different tax treatments. For example, a taxpayer that earns ABI may be entitled to a small business deduction under Canadian tax law, which includes a lower tax rate on their first CA$500,000.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes. Interest is generally deductible as long as it relates to an income-earning purpose, (such as earning rental income), and is based on a reasonable rate of interest.

Capital and current expenses can also be deducted from rental income. Current expenses include recurring costs such as repair, and capital expenses can include purchase or improvement of property, legal fees and furniture costs.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

There are thin capitalization rules that can affect interest deductibility. Generally, these rules limit the debt to equity ratio for Canadian subsidiaries of foreign entities to 1.5:1. This is done by limiting the deductibility of interest paid to non-resident shareholders. This essentially forces the Canadian subsidiary to be financed with at least 40% equity rather than solely debt.

Transfer pricing rules can also limit interest deductibility. Generally, these rules permit the Canadian tax authority to re-characterize transactions in accordance with the arm's length principle, which essentially aims to price the transaction at issue at the price that would apply between arm's length parties.

b. If so, is there any withholding tax on interest?

There is no withholding tax on the payment of interest to arm's length foreign entities. However, where the parties are not arm's length, there is a 25% withholding tax on interest. This rate can be reduced if Canada has a tax treaty with the foreign jurisdiction.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separete llocations between land and building?

Yes, capital cost allowance is permitted on buildings. Land is non-depreciable under the law, so a reasonable allocation must be made between the building and land.

Capital cost allowance works by assigning buildings to the various prescribed classes based on certain criteria. For example, a building may belong to class 1, 3 or 6, depending on what the building is made of and the date it was acquired. Once assigned to a class, there is a prescribed percentage (ranging from 4% to 10%) that applies to the balance of the class, on a declining balance basis, that can be claimed as capital cost allowance for the year.

7. Are deductions available for management fees against rental income for tax purposes?

Yes, management fees are deductible against rental income as long as they are reasonable. For example, an older Canadian case found that management fees paid to a related company were generally accepted up to a 15% markup over the expenses the company handled. This must be analyzed on a case by case basis.

8. Are there any restrictions on the use and/or the carry-forward of losses?

Yes, there are carry-forward restrictions on the use of losses in Canada. The general rule is that you can carry a non-capital (or operating) loss, arising in tax years ending after 2005, back three years and forward 20 years.

For net capital losses, the general rule is that you can carry those back three years and forward indefinitely.

There are also restrictions on claiming losses when there is a change of control of a company. In general, operating losses of the seller can potentially still be utilized by the buyer, provided that the same business is carried on with a reasonable expectation of profit throughout the particular taxation year. However, net capital losses generally cannot be carried forward after a change of control.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes, capital gains arising on the sale of real property are taxable.

Generally, 50% of the capital gain arising from the sale of the real property will be included in the vendor's income. The rate of tax will depend on the nature of the taxpayer (individual, trust, corporation or partnership).

There is a "principal residence" exemption available to individuals who dispose of real property that qualify for the exemption. This exemption allows an individual to shelter part or all of the capital gain that would otherwise be taxable upon a sale or disposition. In order to qualify for the exemption, the taxpayer must be a resident of Canada and the property must be ordinarily inhabited by the taxpayer or by his or her spouse or common-law partner, former spouse or common-law partner, or child.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

For non-residents, there is a 25% withholding tax rate on rental income and on any capital gains derived from real property.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

There are several methods to structure the purchase of a real estate investment, including, among others:

- Corporation
- Personal ownership
- Partnership (general partnership or limited partnership)
- Co-ownership / joint venture
- Trust
- Real estate investment trust (REIT)
- Mortgage investment corporations (MICs)
- Pension investment corporations
- Any combination of the above

For example, for rental properties, it may be advisable for non-resident entities to utilize a non-resident corporation to hold the relevant properties. This will allow the non-resident corporation to file a return and pay regular tax on the net income from the real property, rather than paying a flat 25% on the gross income.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Canadian corporation
For Canadian real estate acquired and sold as inventory, it is generally advisable to utilize a Canadian corporation in order to avoid the requirement to obtain a Section 116 compliance certificate. Section 116 protects the Canadian government's ability to collect tax on capital gains on real estate in Canada in respect of a disposition by a non-resident.

Real estate investment trust (REIT)
A REIT is a trust in which the investments of several investors are pooled together to invest in real property. In addition to investing in income-producing properties, REITs may also buy, develop, manage and sell a wide variety of real estate assets. A REIT is structured to flow income earned from the real property through to the unit holders without trust-level income or taxes. Each investor of a REIT will have an undivided beneficial interest in the trust's income and losses.

Bare trustee/nominee corporations
A common and simple business structure involves one party (typically a corporation) holding legal title for and on behalf of the beneficial owner(s). The holder of the legal title, known as a "bare trustee" or "nominee," is disregarded for income tax purposes. This is because a "disposition," for Canadian income tax purposes, does not generally occur until beneficial ownership has changed.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

If the corporation's principal business is the sale and purchase of real property, then it may be entitled to more favorable tax treatment (such as lower tax rates and the ability to defer certain taxes) than real property held individually. However, if investment in real property is not the primary business of a corporation, then it will be taxed at a higher rate (and may be subject to an additional tax on passive investment income), which will eliminate any tax advantage over holding real property individually.

Individuals who purchase real property for personal use will also be entitled to the "principal residence exemption," which allows an individual to shelter part or all of the capital gain that would otherwise be taxable upon a sale or disposition. Corporations do not have access to the principal residence exemption.

*Tax laws in Canada change every Federal budget, around mid-March.

China

China

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Stamp duty and deed tax are payable on the sale and purchase of real estate. Stamp duty is payable on the leasing of real estate. Stamp duty on land is also payable when a buyer acquires shares in a company holding real estate.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

For the sale and purchase of real estate, both the seller and the buyer shall be levied stamp duty at a rate of 0.05% on the contract amount. The seller shall be levied value-added tax on land, which adopts four levels of progressive rates ranging from 30% to 60%. The buyer shall be levied deed tax at rates ranging from 3% to 5% on the transaction value.

For the leasing of real estate, both the landlord and the tenant shall be levied stamp duty at a rate of 0.1% on the leasing value. Value added to tax on land is not applicable.

When a buyer indirectly acquires real estate by purchasing shares in a company holding such real estate, both the transferor and the transferee shall be levied stamp duty at a rate of 0.05% on the share transfer contract amount.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

VAT (as opposed to value-added tax on land, which is a different tax altogether in China) is payable on the sale, purchase or leasing of real estate.

The following service taxes also apply on the VAT payable on the sale, purchase or leasing of real estate: city maintenance and construction tax, education surcharges and local education surcharges.

For the sale and purchase of real estate, if the seller is a general taxpayer in China, it may opt for the simple VAT computation method, with a levy rate of 5%, or the general VAT computation method, with a rate of 11% for the selling of real estate obtained before April 30, 2016. If the seller is a general taxpayer in China, it shall apply the general VAT computation method with a rate of 11% for the selling of the real estate obtained after April 30, 2016. If the seller is a small-scale taxpayer in China, it shall apply the simple VAT computation method with a levy rate of 5%. The seller shall also be levied city maintenance and construction tax at a rate of 7%, 5% or 1%; education surcharges at a rate of 3%; and local education surcharges at a rate of 1%, in each case on the VAT actually paid.

For the leasing of real estate, if the landlord is a general taxpayer in China, it may opt for the simple VAT computation method, with a levy rate of 5%, or the general VAT computation method with a rate of 11%, for the leasing of the real estate obtained before April 30, 2016. If the landlord is a general taxpayer in China, it shall apply the general VAT computation method with a rate of 11% for the leasing of the real estate obtained after April 30, 2016. If the landlord is a small-scale taxpayer in China, it shall apply the simple VAT computation method with a levy rate of 5%. The landlord shall also be levied city maintenance and construction tax at a rate of 7%, 5% or 1%; education surcharges at a rate of 3%; and local education surcharges at a rate of 1%, in each case on the VAT actually paid.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

The owner of real estate shall be levied real estate tax annually as follows:

- The tax will be calculated on the residual value of the real estate at a rate of 1.2%, and
- The tax will be calculated on the rental income from the real estate at a rate of 12%, or at a rate of 4% for individuals, enterprises, institutions, social groups and other organizations lease residential houses.

The owner of real estate shall be levied urban land use tax annually at grade—fixed tax rates on the basis of the actual land area occupied.

4. What is the tax rate imposed on rental income?

Resident enterprises shall be levied enterprise income tax at a rate of 25% on the rental income from the real estate.

Non-resident enterprises shall be levied withholding income tax at a rate of 10% on the rental income from the real estate located in China. If a non-resident company dispatches employees or entrusts other domestic units or individuals to conduct daily management of the real estate located in China, it shall be levied enterprise income tax at a rate of 25% on the rental income.

Individuals (resident or non-resident) shall be levied individual income tax at a rate of 20% on the rental income from the real estate located in China.
If there is a treaty between China and the mother country of the non-resident enterprise or individual, the applicable tax rate of the rental income shall be determined according to the treaty.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

For resident enterprises, the interest on borrowing used to acquire real estate shall not be deducted from rental income before the real estate reaches the saleable status. When the real estate is saleable, the interest shall be allowed for deduction.

For non-resident enterprises, the interest on borrowing used to acquire real estate shall not be deducted from rental income whether its real estate is saleable or not.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

There are restrictions on deduction of the interest of the debt investment between an enterprise and its related parties. The interest payment expenses actually paid by an enterprise to its related parties that do not exceed the ratio (stipulated below), shall be allowed for deduction. Otherwise, the interest payment expenses shall not be deducted.

For a financial enterprise, the ratio between the debt investment it accepted from its related parties and the equity investment by its related parties shall be 5:1. For other enterprises, the ratio between the debt investment they accepted from the related parties and the equity investment by the related parties shall be 2:1.

b. If so, is there any withholding tax on the interest?

There is a 10% withholding income tax on the interest. If there is a treaty between China and the mother country of the creditor, the applicable tax rate of the interest shall be determined according to the treaty.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

For a resident enterprise, the expenditure and/or building capital shall be allowed for deduction from rental income. For a non-resident enterprise, the expenditure and/or building capital shall not be deducted from rental income.

In China, there is no fixed amortization rate for land, nor a fixed depreciation rate for buildings. Generally, the amortization of land use right shall adopt the straight-line method, and the rate of amortization shall be (1/usage term) x 100. The depreciation of buildings also adopts the straight-line method, and the rate of depreciation shall be ((1 - rate of estimated net residual value) / estimated useful life) x 100.

There are separate minimum periods of depreciation or amortization period between land (land use right) and building. The amortization period of land use right shall not be less than 10 years. The minimum period of depreciation of buildings shall not be less than 20 years.

7. Are deductions available for management fees against rental income for tax purposes?

For a resident enterprise in China, reasonable and relevant management fees against rental income shall be allowed for deduction. For a non-resident enterprise that shall be subject to tax withheld at the source, management fees shall not be deducted.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Yes. The period of the carry-forward of losses shall not be more than five years. When an enterprise computes its aggregate enterprise income tax payable, the losses of its overseas business entities shall not be set off against the profits of its business entities in China.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes. If the seller is a resident enterprise in China, it shall be levied enterprise income tax. If the seller is a non-resident enterprise, it shall be levied withholding income tax at a rate of 10% on such capital gains. If the seller is an individual (resident or non-resident), it shall be levied individual income tax at a rate of 20% on such capital gains.

Enterprise income tax is levied at a rate of 25%. Withholding income tax is levied at a rate of 10%. Individual income tax is levied at a rate of 20%.

If there is a treaty between China and the mother country of the non-resident enterprise or non-resident individual who is the seller, the applicable tax rate shall be determined according to the treaty. There is no exemption according to Chinese tax laws.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Yes. The rental income and/or capital gains derived from real estate obtained by non-resident enterprises and/or individuals shall be subject to tax withheld at the source at a rate of 10%, with the payer serving as the withholding agent. The tax payment shall be withheld from the amount paid or the payable amount due from each tax payment and payable amount of the withholding agent.

It should be noted that if there is a treaty between China and the home country of the non-resident enterprise or the non-resident individual, the applicable tax rate shall be determined according to the treaty.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Yes. In general, setting up a real estate collective is a tax-efficient structure. This is a tax-efficient method as it can be used to accumulate reasonable expenses, which can be deducted from taxable income.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Yes. Some transaction structures mitigate the real estate tax liabilities on the acquisition and/or disposal of real estate. For example, instead of purchasing or selling real estate directly, the parties can transfer real estate indirectly by transferring the shares of a non-listed company whose sole or main asset is real estate. This should reduce both the VAT and the VAT on land.

Since there are some differences among the tax policies of different areas in China (for example, the tax-efficient structure above may be re-categorized as selling real estate, and be levied the VAT and VAT on land), the specific tax policy of the relevant province should be considered.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Yes. Individuals are levied lower tax than companies on some taxes like real estate tax or VAT. Tax computation methods of some taxes, like VAT or income tax for individuals and companies, are different. The taxation authorities of some taxes, like VAT for individuals and companies, are different. The tax payments of some taxes, like VAT for individuals and companies, are also different.

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Any transfer of real estate must be made through a public deed that triggers notary fees as well as a registration tax and registration rights. There is no stamp duty triggered on the lease of real estate.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Notary fees for the transfer of real estate are customarily split between seller and buyer. Registration tax and rights are paid by the buyer. Notary fees are around 0.3%, while registration tax is 1% and registration rights are maximum 0.57%. In general the base is the value of the transaction, which for liquidation purposes cannot be lower than the taxable base of the annual property tax.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

As a general rule, the transfer and leasing of immovable property is not subject to VAT. As an exception, the first sale of housing units whose cost exceeds 26,800 unit of tax value (approximately US $285,000) will be taxed with VAT.

Rental of real estate used for housing and cultural/artistic performances is not subject to VAT. Rental of real estate for other purposes will be taxed with the general 19% VAT rate.

The rate of VAT for the first sale of housing units whose cost exceeds 26,800 UVT is 5%. Rental of real estate for purposes different from housing and cultural/artistic performances will be taxed with VAT at a 19% rate.

The VAT would be paid by the buyer and collected by the seller.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

There is an annual property tax on the ownership of real estate. The rate varies depending on the value and authorized use of the land. This tax varies by municipality, but it typically ranges between 0.3% and 1.1%.

4. What is the tax rate imposed on rental income?

Currently, rental income is taxed as ordinary income (34% for 2017 or 33% for 2018) for corporations. The rate for individuals depends on their tax bracket, which is based on their taxable income, with the highest bracket subject to income tax at a rate of 35%. Non-resident corporations are currently taxed at a rate of 34% for 2017 and 33% for 2018. Non-resident individuals are taxed at a 35% flat rate.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Interest on borrowings used to acquire real estate is usually deductible for tax purposes against rental income.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

There are thin capitalization rules, under which any debt that exceeds three times the net asset value of the company is not deductible. The interest rate deduction is limited to the highest rate that can be charged by financial institutions, which is around 32%.

b. If so, is there any withholding tax on the interest?

Interest paid to financial institutions is subject to withholdings by the borrower, but the financial institution must make a self-withholding at a 2.5% rate. In any other case, if the payer of the interest is a withholding agent, it will be subject to a 7% withholding.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Depreciation of constructions and buildings is 2.2% annually, which is deductible for income tax purposes. Land cannot be depreciated.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees are deductible for income tax purposes.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Losses can be carried forward within 12 years.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Profit on the sale of real estate is subject to capital gains. The rate of tax applicable to capital gains is currently 10% for both residents and non-residents.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

If the purchaser is a withholding agent, it will be subject to income tax withholding at a rate of 2.5% for local sellers or 10% for non-residents. In the case of rental income, a 2.5% rate applies to locals and a 15% rate applies to non-residents.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Fiduciary agreements or real estate funds are tax-efficient vehicles for holding and exploiting real estate. The sale of rights under the fiduciary agreements or the unit of real estate funds do not trigger notary fees and registration rights and fees. Foreign real estate funds may be subject to the special foreign portfolio investment rules and taxed at a rate of 14%.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Since the base cost of the property can be used as a tax basis to determine the sale, it is usual to increase such base cost, or transfer the property (temporarily) to a fiduciary company that is subject to higher rates of property tax, which can be used in calculating the tax basis on the sale. Profit derived from a sale when there has been an increase in the property tax is not subject to taxes at the corporate level. Therefore, the further distribution of dividends to the shareholders will trigger income tax, while the sale directly by individuals will not be taxed in any case.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

There are no material differences in the way companies and individuals are taxed in real estate transactions.

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Costa Rica

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes, there is a Property Transfer Tax for the transfer of real estate, regardless of the vehicle that is used and regardless of whether performed by an individual or legal entity.

This Property Transfer Tax also applies to indirect transfers, i.e., of transfers of shares in companies entirely deriving their value from real estate.

A Stamp Tax is also applicable, but only to direct transfers of real estate.

For real estate rentals, the Stamp Tax applies only over leasing of commercial property (as opposed to residential).

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

The Property Transfer Tax rate is 1.5% of whichever amount is greater: the fiscal value or the transfer value included in the public deed.

A National Register Stamp Tax of 0.85% also applies to direct transfers by public deed. This Stamp Tax does not apply to indirect transfers without public deed, for example, share purchases.

In the case of indirect transfers by private contracts, a 0.5% stamp tax must be paid according to the estimate of the purchase.

The law does not establish who is required to pay the transfer tax. However, in practice, the buyer normally pays the tax.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Yes, in Costa Rica there is a sales tax on goods (with a few exceptions) and on some services specifically included in the law. The rate is 13%.

The sales tax applies on leases of real estate for housing purposes and for a period that does not exceed one month, for example, vacation rentals. Otherwise, for leases of more than one month, the sale and rental of real estate is not subject to sales tax in Costa Rica.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes, property owners pay an annual property tax in Costa Rica that is administrated by municipalities. The tax rate is 0.25% of the property value. This value is registered at the Tax Authority.

There is a tax exemption for real estate dedicated to housing (primary residence), which covers the real estate property of the taxpayer as long as the property value does not exceed approximately US$34,000.

4. What is the tax rate imposed on rental income?

Individuals and entities with lucrative activities in Costa Rica (including real estate) must declare and pay income tax.

The tax rate depends on the taxpayer's nature and gross income:

- For individuals, the tax rate ranges between 0% and 25%
- For legal entities, the tax rate ranges between 10% and 30%

When a non-real estate company sells a real estate property, the capital gain does not incur income tax, but rather capital gains tax (see question 9 below).

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes, under the Income Tax Law in Costa Rica, both individuals and legal entities may deduct from gross income all the costs and expenses needed to produce taxable income, as long as their income tax returns are supported with authorized invoices and as long as the borrowings are directly related to income earning purposes.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

In the case of SRLs (Costa Rica's equivalent of an LLC), when the company pays interest and financial expenses to its shareholders, the payments are considered "dividends" and will not be deductible.

No specific thin capitalization rules affect interest deductibility in Costa Rica.

Costa Rica does have transfer pricing rules. For example, when the loan is between related parties (related by at least 25% of the equity capital), they must prepare a transfer pricing study that essentially aims to price the transaction at issue at the price that would apply in the usual market (arm´s length).

b. If so, is there any withholding tax on interest?

Yes, there is a withholding tax on interest paid abroad. The rate is 15%.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Yes, a capital cost allowance is permitted on buildings as long as it fulfils the following requirements:

- Purchase of the asset-generating taxable income according to the law
- Registration of the asset within the company's accounting
- Start-up of the asset in direct generation of taxable income for the company

This provision only applies to the physical building in Costa Rica. Land is non-depreciable.

7. Are deductions available for management fees against rental income for tax purposes?

The Costa Rican tax code criterion is that both individuals and legal entities may deduct from gross income all costs and expenses needed to produce taxable income in Costa Rica, as long as these expenses are supported by authorized invoices, are directly related with the production of taxable income and are reasonable.

8. Are there any restrictions on the use and/or the carry-forward of losses?

Yes, there are carry-forward restrictions on the use of losses in Costa Rica, as follows:

- For net capital losses, industrial companies' losses may be deducted within the next three tax periods
- In the case of agricultural companies and starting-up industrial companies, their losses may be deducted within the next five years
- For starting-up companies, they must be registered with the tax authorities before the beginning of operations

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Capital gains are normally taxed at a 0% rate.

Capital gains are defined as income derived from either the transfer of moveable goods or real property assets:

- If the taxpayer's normal activity is selling real estate property, gains would be subject to income tax.
- If the taxpayer sells an asset subject to depreciation, then only a portion of the capital gain would be subject to income tax.

In these two scenarios, the capital gains are considered similar to income and are subject to income tax (see question 4 above).

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Yes, there is a withholding tax on rental income or earnings from a Costa Rican source being sent outside of the country. The tax rate is 15"%.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Under Costa Rican law, there are no tax-efficient real estate investment vehicles for this purpose.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Under Costa Rican law, there are no structures that can be used to mitigate real estate tax liabilities on the acquisition or disposal of real estate.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Both individuals and companies must pay income tax as long they are carrying out business activities. The difference will be the tax rate, which is calculated according to the generated gross income.

As mentioned above, no tax applies when only one property is sold, and the seller's business is not related to real estate business activities.

France

France

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes, per the below.

a. If so, what are the rates and who is required to pay the duty or tax (e.g, seller or buyer, landlord or tenant, etc.)?

Under a standard asset deal, transfer duties will be due by the purchaser on the acquisition price of properties in France. The applicable rates since June 1, 2016, fall between 5.09% and 5.80665%. Notary fees should be added to this amount; on average, this is 3% of the acquisition price.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

The sale of French properties may be subject to VAT at 20%, depending on the VAT regime of the seller and whether or not the property is considered as new (less than five years since construction or reconstruction). The sale of shares, however, is not a transaction liable to VAT. The rental of non-furnished property will be subject to VAT in very specific cases. The rental of non-furnished professional premises is not, in principle, subject to French VAT, but the lessor has the option of subjecting rents to VAT at the rate of 20%. VAT is then paid by the lessor (charged to the tenant) and can be deducted if the tenant is itself liable for VAT.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

3% tax on the market value
French and foreign legal entities (corporate bodies, organizations, trusts and comparable institutions) that directly or indirectly own French real estate properties, or that hold real property rights relating to such properties, are liable to a 3% annual tax on the market value of such properties or rights, unless they disclose (or commit to disclose in the event of an audit) the full ownership structure up to the end beneficial owner(s). Certain limits and restrictions apply to this tax, and it should be noted that this tax is not intended to be levied. Its purpose is to identify end-owners of French-based real estate in order to subject them to ISF (wealth tax). The structure to be set up will be subject to certain compliance obligations in order to avoid paying this tax.

Local property tax *(taxe fonciére)*
Local property tax is a local tax due annually on all properties owned on January 1 of the relevant year. The tax is due by the owner and applies to both developed and undeveloped property located in France. The tax on developed property applies to property located in France. The tax is computed by factoring a specific coefficient to half the notional rental value of the property as determined by the local land registry. This tax is levied on an annual basis and issued under the name of the owner of the property.

Tax on the creation of office premises
The construction of office space or commercial premises in the Île-de-France area (i.e., Paris and its suburbs) is subject to a tax on the creation of office space that is attached to the building permit. It is due when building works result in the creation of new office premises or in the conversion of pre-existing premises into office, commercial or storage space. The owner of the property is liable to the French Treasury, but please note that failing to pay may result in subsequent owners of the premises being jointly liable. Typically, French tax authorities collect this tax within two years following the issuance of the building permit.

Annual tax on office space
Owners of office or business storage premises in the Île-de-France area on January 1 of a given year are liable to an annual tax, calculated on the basis of the relevant floor space (i.e., office buildings and their immediate and necessary dependencies/outbuildings). It also applies to parking spaces of at least 500 square meters, in relation to the taxable premises. The tax rate varies according to the district in which the premises are located. Taxpayers must file an annual tax return and pay the corresponding tax upon filing. The applicable statute of limitations is three years following the year in which the tax is due.

Annual additional tax on parking space
Since 2015, owners of parking space located in the Île-de-France area on January 1 of a given year must file an annual return and pay the corresponding tax upon filing. The tax is calculated on the basis of the surface area of the parking lots, and its rate varies depending on the districts in which the latter parking lots are located. The applicable statute of limitation is three years following the year in which the tax is due.

CFE (cotisation fonciére des entreprises)
The CFE applies to properties subject to local property tax and is due by companies who let and/or sublet real estate property. The CFE is an annual tax assessed on the rental value of the real estate property subject to land tax, for the fiscal year of two years prior (e.g., the assessments for the purposes of the 2015 CFE take into account

the property used during fiscal year 2013). The applicable rate of the CFE may vary depending on the location of the property.

4. What is the tax rate imposed on rental income?

As regards companies subject to corporate income tax (CIT), rental income is considered a profit submitted to the standard rate of 33.33%. French or foreign companies (partnerships or corporations) owning property in France are typically taxed in France at 33.33% on their rental income, regardless of the ownership structure above the property and on the basis of the double tax treaty dispositions signed by France.

Please note that certain investment vehicles (SPPICAVs and SIICs, French closed-end real estate investment funds and French REITs) may benefit from a full CIT exemption in France on their profits if certain conditions are met. Please contact us for more details on this matter.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Interest on borrowings used to finance the acquisition of French real estate property is generally deductible from the taxable profits of the borrower, albeit with certain limitations.

a. If so, are there any restrictions (e.g. thin capitalization, transfer pricing etc.)?

The main limitations to the deduction of interest provided for by French thin capitalization rules are threefold:

- The first limitation relates to the maximum interest rate applicable for related-party debts
- The second relates to the debt-equity ratio and interest coverage ratio of the borrower (related-party debt and debts secured by a related company)
- The third is a general capping mechanism: Companies with financial expenses exceeding €3 million (including but not limited to interest), as regards both related-party loans and third-party loans, can deduct up to 75% of the interest amount

Please note that French tax authorities consider that French real estate held by non-resident companies hold source income to be determined in accordance with French standard corporate income tax rules. Therefore the above rules may apply.

b. Is there any withholding tax on interest?

There is no withholding tax on interest.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separete locations between land and building.

Depreciation on certain property-related expenditures is deductible if the entity declaring the income in France is subject to corporate taxation in France (or to an equivalent tax if established outside of France). Real estate construction expenditure can be amortized at set rates on its different parts on a duration-of-use basis. The depreciation of land is not possible according to French tax rules. Annual depreciation of expenditure is deductible from the taxable profits (including rental income) of the owner company.

7. Deductions for management fees?

Management fees are usually deductible for tax purposes, unless they are unusually high in respect of the services provided. Management fees that are not considered to be at arm's length may be challenged according to the "irregular management act" principle (l'acte anormal de gestion).

8. Are there any restrictions on the use and/or the carry-forward of losses?

As a general rule, tax losses incurred during a given fiscal year may be carried forward and offset against available profits of subsequent fiscal years for up to €1 million per year, increased by 50% of the taxable profits exceeding the €1 million threshold. Please note that the remaining tax losses can be carried forward indefinitely and used within the same limits. Losses may also be carried back and generate a tax receivable, which may be reimbursed under certain conditions and limits.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Capital gains resulting from the sale of properties or of the intermediate holding vehicle (whose assets consist of more than 50% real estate assets) would be taxed at the rate of 33.33% when the seller is a corporation, or is a see-through entity with an ultimate shareholder subject to corporate taxation. Most double tax treaties signed by France enable the government to tax such capital gains when the underlying property is located in France (see question 10).

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

French real-estate-sourced income of non-resident companies is subject to corporate income tax in France and taxed at a rate of 33.33%, since as mentioned above, most double tax treaties signed by France enable the government to tax such income when the underlying property is located in France.

Capital gains arising from the sale of real estate property or shares held in a real-estate-predominant company are subject to a withholding tax set at the standard corporate income tax rate of 33.33%. Please note, however, that a reduced rate applies to the transfer of shares held by certain real estate investment vehicles (SPPICAVs and SIICs, about which more information is located below).

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

We usually recommend implementing for each property acquired a simplified purchase structure via a French special purpose vehicle (SPV). One such example is a société civile immobiliére

(SCI), a French real estate partnership. If any commercial activity were to actually be developed, a more sophisticated tax structure may be envisaged, such as having the SPV held through a holding company, French or foreign. Certain French real estate investment vehicles such as OPCIs provide for tax relief on capital gains and real estate income; they can also be set up as companies (SPPICAV) or funds (FPI). Please note, however, that their tax exemption status is subject to certain compliance obligations, including but not limited to distributional quotas. Please also note OPCIs are regulated vehicles with the AMF, the French financial markets regulator, and are subject to investment ratios.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

The most commonly used structures are SCIs and SPPICAVs.

The acquisition of shares in a real-estate-predominant company, defined as a company with real estate assets that exceed 50% of its total assets, are subject to transfer duties in France at the flat rate of 5% of the purchase price (presumed to be the fair market value of the shares). No notary fees should be added to this price, as the transaction is mainly handled by lawyers.

Real estate lease registration is subject to a €25 registration fee.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

The main differences concern the sale of properties. Individuals are subject to social contributions on their property income at a rate of 15.5%, in addition to income tax. As a result when the seller is an individual or a see-through entity (with an ultimate shareholder being an individual), capital gains resulting from the sale of properties or of the intermediate holding vehicle (whose assets consist for more than 50% of real property) are taxed at 34.5% (19% tax plus 15.5% of social contributions). Individuals do, however, benefit from progressive holding period discounts—up to a 100% discount on income tax after 22 years and up to a 100% discount on social contributions after 30 years. They may also be fully exempt from tax on the gains resulting from the sale of their household.

A specific additional progressive capital gains levy applies to sales, on the basis of a specific calculation formula. This special tax is levied on capital gains realized directly or indirectly (via see-through partnerships) by individuals. The rates range from 2% for a gain of €50,000 to 6% for a gain of €260,000. Rates are calculated based on specific formulae.

Germany

Germany

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Germany does not levy a stamp duty. It does, however, levy a real estate transfer tax (RETT), among other taxes interalia, on the direct sale of real estate.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

The RETT rate is currently between 3.5% and 6.5% depending on where the real estate is located. The seller and buyer are jointly and severally liable for the RETT. However, it is typically agreed in the respective purchase agreement that the purchaser will bear the full burden.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Germany is part of the European VAT system and as such levies VAT at a regular rate of 19%.

In general, the sale of real estate is either not within the scope of VAT or is VAT-exempt. If it is VAT-exempt, the seller may "opt for VAT" under certain circumstances. If the option for VAT is exercised, the transaction falls within the scope of the reverse charge procedure so that the buyer is required to pay the VAT and can deduct it as input VAT to the extent that the real estate is used for VATable supplies or services and not-VAT-exempt supplies or services.

Letting real estate can be either a VATable or a VAT-exempt service. The landlord can "opt for VAT," to the extent that the tenant uses the real estate for VATable and not-VAT-exempt supplies or services. In this case, the VAT is payable by the landlord, who receives it as part of the rent from the tenant. From a landlord's perspective, a VATable lease offers the opportunity for a respective input-VAT refund or credit.

There are no other goods and services or similar taxes in Germany levied in connection with the sale, purchase or letting of real estate.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Germany levies real estate tax on the holding of real estate. Real estate tax must be paid by the owner of the real estate. The real estate tax rate depends on the type and location of the real estate. It is applied to a special value of the real estate determined by the tax authorities, which is typically much lower than its fair market value—resulting in a real estate tax typically far below 1% of the fair market value of the real estate per annum. Additionally, the real estate tax is typically borne by the tenant in the form of a surcharge on normal rent.

4. What is the tax rate imposed on rental income?

Corporations are subject to German corporate income tax (CIT) at a rate of 15% plus 5.5% solidarity surcharge, thereon resulting in an overall CIT rate of 15.825%. Additionally, corporations are typically subject to trade tax (TT) at a rate of between 7% and about 17%, depending on where the respective corporation maintains its German permanent establishment(s). The overall tax rate for corporations, which is also applicable to rental income, is therefore between 22% and about 33%.

However, in an international context, real estate transactions are typically structured in a way so that no TT falls due. This typically involves the use of a company being resident abroad, which holds the German real estate. In case of a domestic company, which holds the real estate, proper tax structuring may lead to a TT exemption for income generated from the lease or sale of the real estate.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

In general, interest on borrowings used to acquire real estate is deductible for tax purposes against rental income.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing etc.)?

The German Interest Barrier Rule (IBR) may limit the deductibility of interest payments for tax purposes. Under the IBR, interest expenses of a given business are tax-deductible only up to an amount equal to the sum of (i) the interest income of such business in the same fiscal year, and (ii) the offset-able EBITDA of such business (being defined as 30% of the EBITDA calculated for tax purposes).

There are three exemptions to this general rule. The IBR is therefore not applicable if one of these applies:

- The net interest expense of a business is below €3 million in a given fiscal year
- The business does not belong to a consolidated group of companies
- The indebtedness of the whole consolidated group is not more than two percentage points higher than the indebtedness of the given business

For the latter two exemptions there are counter-exemptions, which are fairly complicated. Overall, if the interest expenses in question are €3 million or higher per fiscal year, there are several structuring options, which may result in the IBR not being applicable.

b. Is there any withholding tax on interest?

In general no, assuming a fixed interest rate applies.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate locations between land and building?

For buildings, a tax-deductible straight-line depreciation is available at a rate of either 2% or 3% per year, depending in particular on the type of building. No depreciation or capital allowance is available for the land. An overall purchase price for the land and building is allocated according to the fair market value of both. Allocating the purchase price for the respective land and building in the purchase agreement is, among third parties, an indication of the respective fair market values and hence may avoid discussions with the tax authorities.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees are deductible for tax purposes to the extent that the "arm's length" principle is met.

8. Are there any restrictions on the use and/or the carry-forward of losses?

Tax losses which cannot be set off against earnings of the same fiscal year can be carried over to other fiscal years. The taxpayer may choose between a tax loss carry-back to the previous year (only available for CIT purposes, not for TT purposes) and an infinite tax loss carry-forward to subsequent years (available for both, CIT and TT purposes).

A tax loss carry-back is limited to an amount of €1 million. Tax losses carried forward can be deducted in subsequent year(s) by up to €1 million per year without any limitations. If the loss exceeds €1 million, it can be additionally deducted by 60% of the amount by which the income exceeds €1 million.

Tax losses and tax loss carry-forwards of a corporation may be forfeited in full or in part if the shares or voting rights in the corporation are transferred to another entity. The extent of the forfeiture depends on the proportion of share capital or voting rights transferred. A transfer of more than 50% of the share capital or voting rights in a corporation will, in general, result in the entire forfeiture of the tax losses this corporation is carrying forward. If more than 25%, but not more than 50%, of the share capital or the voting rights are transferred, the tax loss carry-forwards will be forfeited proportionally (e.g., a transfer of 30% of the share capital will result in the forfeiture of the tax loss carry-forward to the extent of 30%). Several transfers of the share capital or the voting rights within five years will be summed up for the purpose of determining the extent to which the tax loss carry-forwards are forfeited (e.g., a transfer of 25% of the share capital in 2016 followed by a subsequent transfer of 30% in 2017 will result in the entire forfeiture of all tax loss carry-forwards in 2017). These loss deduction rules apply to shares directly held and indirectly held through another corporate entity.

As an exemption to these rules, tax losses and tax loss carry-forwards are not forfeited if the transferor and the transferee are both subsidiaries, directly or indirectly, held and wholly owned by the same parent company. If this exemption, known as the Group Clause, does not apply, tax losses and tax loss carry-forwards may be preserved to the extent the corporation owns assets containing unrealized gains which, if realized, would be taxable in Germany. This is known as the Hidden Reserves Clause.

Additionally, if the business of the respective corporation is continued without any change after the transfer of shares or voting rights, the tax loss carry-forwards may on application be preserved, if certain further, formal requirements are met.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Capital gains are taxable for corporations at the regular tax rates of 15.825% CIT and (if not avoided) between 7% and about 17% TT.

One exemption is to not sell the real estate itself, but rather the shares in the company holding the real estate. Even in a purely German situation, capital gains realized by one corporation, by way of the sale of the shares in a 100% corporate subsidiary, are in general 95% tax-exempt so that only 5% of such capital gain is subject to CIT and, if applicable, TT.

10. Is there a withholding tax on rental income and/ or capital gains derived from real estate?

No.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

In an international context, German real estate is typically acquired through a foreign PropCo (in many cases resident in Luxemburg) to avoid a German TT charge. As a result, there is no tax reason for a German real estate investment vehicle.

Nevertheless, proper tax structuring may lead to a TT exemption for income generated from the lease or sale of the real estate in case of a domestic company, which holds the real estate.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

If due to factual circumstances the real estate itself needs to be acquired or sold, there is no way to avoid German RETT.

However, if instead of the real estate itself, it is possible to sell the interest in a real estate holding partnership, or the shares in a real estate holding corporation, one may make use of the 95% threshold rule in respect of the shares or partnership interests that need to be sold, transferred or unified in order for RETT to be triggered.

RETT also falls due if, within a period of five years, 95% or more of the real estate interest in a partnership holding German real estate is (directly or indirectly) transferred. The real estate does not have to be the sole or main asset of the partnership for the RETT to accrue; it is sufficient for the partnership to hold any German real estate.

Furthermore, RETT falls due on any act or transaction in which either (a) 95% or more of the shares in a corporation holding German real estate are (directly or indirectly) transferred, or (b) 95% of the shares in such corporation are (directly or indirectly) unified in "one hand," where one hand is either an individual, an entity or a group of entities related in a certain way. Again, the real estate does not have to be the sole or main asset of the corporation for the RETT to accrue.

Additionally, there are several other ways for a RETT charge to be triggered in dealing with German real estate (e.g., the economic unification of 95% or more of the direct or indirect economic interest). These need to be taken into account when structuring a real estate transaction in Germany.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

The taxation systems for individuals and for corporations are completely different and hardly comparable. For individuals, there is no fixed income tax rate, but a progressive income tax rate. In the context of real estate, an individual may sell a certain number of real estate assets during a certain period of time and with a certain minimum holding period without the capital gains being subject to any income taxation. Furthermore, individuals do not pay trade tax unless their activities exceed a certain threshold, in respect of relevant "trading activities."

India

India

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes, every instrument of sale, purchase or leasing of real estate will attract stamp duty.

No stamp duty on land will be triggered on the sale or purchase of shares in a company that holds real estate in India. Since there is no instrument for transfer of land, and since it continues to be held by the company, there will be no stamp duty implications on land.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

The rate of stamp duty will vary from state to state. For example, depending on the location of the property within or outside of a particular municipal corporation, stamp duty is payable at 5% of the market value of the property in Maharashtra and 8% in Tamil Nadu, and at 5% of the consideration set forth in the sale document for property in Delhi.

Stamp duty is payable only once, either by the buyer/lessee or by the seller/lessor, as dictated by their inter-se agreement.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

VAT is not applicable on the sale or purchase of completely constructed real estate or the sale or purchase of land. However, VAT will be applicable on the sale or purchase of an under-construction real estate property.

Service tax will be applicable on letting out of immovable property.

VAT rates differ from state to state and are based on the material value of the real estate. The rate of VAT ranges from 5% to 14%. While 5% is applicable for industrial goods, 14% is the residual rate. There are various composition schemes in force for the discharge of VAT liability on real estate.

Service tax is currently applicable at 15%, based on the value of the service.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Income tax
Indian income tax law provides for a levy tax on the notional rental income derived from buildings and from land they are on. Income tax would be levied on the higher of (a) rent that the property would generally fetch or (b) actual rent received.

However, there are two exceptions to this rule. First, individuals are granted an exemption on one property (generally their own residence). Second, for businesses, any building or land that is occupied for business or professional purposes is exempted from notional income treatment. Such notional income is taxed under the category "income from house property" (IHP). Actual rental income in some cases, such as when the person is engaged in the business of renting of house properties, can be treated as taxable under the category "profits and gains from business or profession" (PGBP).

IHP treatment allows for the following deductions: (a) standard deduction of 30%, (b) municipal and local taxes paid and (c) eligible interest deduction.

PGBP treatment allows deductions for all expenses incurred on the real estate, including depreciation, repair charges to the building, full interest and management charges.

Whether under a particular set of facts and circumstances the income will be treated as IHP or PGBP is a highly contentious issue. The answer in each case will depend on deeper scrutiny of facts and relevant documents.

Other taxes
The owner of the real estate is also be liable to pay the property tax levied by the municipal corporations. Property tax is also levied in leases of real estate, in which case either the lessor or the lessee shall discharge the liability, as agreed.

The rate of property tax differs between various localities. The average rate of property tax for residential buildings is around 30%. The property tax may be demanded monthly or six-monthly. The rate is applied to the annual value of the property.

4. What is the tax rate imposed on rental income?

Rental income classified as IHP or PGBP will be subject to tax at the normal rate applicable to the taxpayer. For individuals, the rate of tax varies as per the slabs prescribed. For companies, there is a flat rate of tax with surcharge and cess. Domestic companies are taxed at 30%, foreign companies at 40%.

Annual income of up to INR 0.25 million is not subject to income tax. Beyond this threshold, the tax rates progressively vary in slabs. For example, annual income of more than INR 1 million is taxed at 30%.

Service tax
Service tax is applicable at the rate of 15% if the receipts from rental income or any other taxable service in the financial year exceeds INR 1 million.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes, interest on borrowings used to acquire real estate is deductible in computing rental income.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

When income is treated as IHP
If a house property is being used by the owner as a residence, such deduction is limited to INR 0.2 million (from notional income even if it is NIL). In the case of let-out properties, the full interest is available as a deduction.

When income is treated as PGBP
Thin capitalization rules have been proposed by Finance Bill 2017. As per the proposed provisions, if the interest paid to a non-resident associated enterprise (AE) exceeds 30% of EBITDA, then the excess is denied deduction in that year. Such excess can however be carried forward to subsequent years for a maximum of eight years.

Further, the interest payment might be subject to transfer pricing audit if borrowings are obtained from an AE. In such case, if the Indian tax authorities conclude that the interest is paid at a rate higher than the arm's length rate, the excess interest can be denied deduction.

b. If so, is there any withholding tax on the interest?

It is required to withhold tax on the payment of interest. In India, withholding tax on interest is generally levied at 20%.

If the lender is an Indian resident, tax is to be withheld from interest payment at the rates in force. Certain lenders, such as banks, statutory corporations and insurances companies, are excluded from the purview of such withholding.

However, interest paid to non-residents is subject to withholding tax at 5% under certain conditions. Finance Bill 2017 proposes to extend this concessional rate to interest on rupee-denominated bonds as well. If monies have been borrowed from a non-resident lender, tax treaties may also need to be factored in. As such, India has only a limited right to tax such interest, and withholding tax will also be subject to a limited rate. For example, an Indian company paying interest to a UK lender would withhold tax at only 15%, due to the application of the India-UK tax treaty. Some treaties exempt interest taxation when interest is paid to central banks or specified organizations.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Indian tax law provides for depreciation on buildings. However, such depreciation can only be deducted from rental income if the same is treated as PGBP.

Depreciation rates for buildings vary from 5% to 100%. While residential buildings depreciate at 5% and hotels at 10%, purely temporary structures (such as wooden ones) depreciate at 100%.

Plant and machinery are reduced at 15%, though special rates may apply. For example, ships and vessels depreciate at 20%, computers at 60% and renewable energy devices such as windmills at 80%.

Land is a non-depreciable asset.

7. Are deductions available for management fees against rental income for tax purposes?

As above, deduction would be available for management fees if the rental income is treated as PGBP. Further deduction of such remittances may be subject to a cap of 5% of the taxpayer's income, computed in a prescribed manner.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Losses incurred on a real estate property taxable as IHP can be offset by any other income (such as salary, business income or capital gains) earned during the same year. The remaining loss, if any, can be carried forward to subsequent years (subject to a maximum of eight years), but can be offset off only by IHP. However, Finance Bill 2017 proposes to limit the maximum amount of loss that can be offset by any other income to INR 0.2 million in a year.

Losses incurred on a real estate property taxable as PGBP can be offset by any other income earned during the same year. The remaining loss can be carried forward to subsequent years (subject to a maximum of eight years), but can only be offset by income from business.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Long-term capital gains (i.e., when the asset is held for more than 36 months, though this is proposed to be reduced to 24 months by Finance Bill 2017) are taxable at 20%. Short-term capital gains (i.e., when the asset is sold within 36 months, or 24 months as proposed) are taxable at the normal rates in force.

Business profits are also taxed at normal rates in force. For example, rate of tax for a company is 30%, plus surcharge and cess.

Various exemptions are available for capital gains. However, these exemptions depend on (a) the nature of the asset transferred, (b) the amount reinvested, (c) the asset in which the amount is reinvested, (d) the time period within which the reinvestment is made and (e) the period for which reinvested asset is held by the taxpayer.

For example, capital gains arising out of the sale of real estate are exempt to the extent of reinvestment into a residential house. Another exemption often availed is through investments in certain specified bonds, whereby capital gains are exempt to the extent of the amount so invested.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Rental income earned by a person who resides in India would be subject to withholding tax of 10% on the rent, if the amount of rent payable exceeds INR 0.18 million per year (it has been proposed to extend the limit to INR 0.6 million). Rental income earned by a non-resident would generally be subject to withholding tax of 40%.

Capital gains earned by a non-resident owner/seller would be subject to withholding tax at 20%.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

India introduced a separate scheme for taxation of real estate investment trusts (REITs) in 2014. The REIT is treated as a transparent vehicle and the holder of the unit would be taxable as if the assets were directly held by the owner. This avoids additional tax liability where assets are held through an investment vehicle.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Real estate investors use various structures depending on the nature of the investment target, exit strategies, the form in which capital is to be introduced and other factors. However, these structures do not provide for any significant income-tax advantage. India's tax regime does not provide significant scope of tax avoidance though the structuring of holdings in the real estate sector.

Stamp duty, which is a state levy, is generally levied at a higher rate on real estate than on shares held in companies. Some taxpayers transfer their shares of real estate companies rather than transferring the underlying real estate, so as to mitigate stamp duty.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

The difference in taxation of rental income and capital gains depends on the purpose for which the asset is held, i.e., whether for earning passive rental income or for use in the owner's business of letting out.

There are no material differences in the way individuals and companies are taxed, except for the minimal benefit that an individual would derive because of being taxable at slab rates, rather than at a blended rate in the case of a corporate entity.

Italy

Italy

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes. On the sale of real estate property, registration tax and cadastral and mortgage taxes are due. On the lease of real estate property, only the registration tax is due.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

For the sale of real estate property, the application of the above-mentioned taxes varies depending on certain features of the transaction, such as the nature of the property, the seller and the purchaser. It also depends on whether VAT is applied.

For residential real estate:

- If exempt from VAT, the sale is subject to registration tax at a rate of 9% or 2% on the sale consideration, and subject to cadastral and mortgage taxes at the fixed amounts of €50 each
- If VAT applies, the sale is subject to registration, cadastral and mortgage taxes at the fixed amounts of €200 each

The acquisition of commercial real estate, whether VAT-exempt or not, is subject to registration tax at the fixed amount of €200, to cadastral tax at 0.5% or 1% and to mortgage tax at 1.5% or 3%.

Normally the buyer pays all three taxes, but both parties are jointly and severally liable vis-à-vis the tax office.
In the case of the lease of real estate property, the application of the registration tax depends on certain features of the transaction, such as the nature of the property and of the lessor. It also depends on whether VAT is applied.

Lease contracts shall be registered within 30 days from stipulation and are subject to the application of:

- A proportional 2% registration tax on the annual rent for residential buildings rented by owners that do not apply VAT
- A flat registration tax of €67 on the lease of residential buildings by owners applying VAT.
- A proportional 1% registration tax for commercial buildings, whether or not VAT is applied

Normally the registration tax due in connection with a lease agreement is borne equally by both parties.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Generally, both the purchase and the letting of a real estate property (residential or commercial) are exempt from VAT.

However, the VAT may apply depending on the nature of the seller (e.g., if the seller is a so-called "construction or refurbishment company"[3]) and on the nature of the real estate property.

Sales of residential real estate are subject to VAT at a rate of either 10% or 22% (for "luxury housing") if the seller is a so called "construction company," and if the sale takes place less than five years from the construction/ renovation works or if the construction company opts for the application of VAT in the deed of sale. The acquisition of commercial real estate is normally exempt from VAT.

Sales of commercial real estate are subject to VAT at a rate of either 10% (for renovated property) or 22% rate if the seller is a construction company, and if the sale takes place less than five years from the construction or the renovation works, or in any other event if the seller opts for the application of VAT in the deed of sale.

In the case of the lease, an optional VAT regime may be exercised by the lessor, through a specific clause in the relevant lease agreement, in the following cases:

- The leasing or renting of residential immovable property executed by construction or refurbishment companies, without any time limit from the date of completion of the construction or refurbishment works; the applicable VAT rate will be 10%
- The leasing or renting of residential property falling within the definition of social housing; the applicable VAT rate will be 10%
- The leasing or renting of commercial immovable property; the applicable VAT rate will be 22%

Normally the VAT is paid by the buyer and the tenant.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes. Owning real estate properties (buildings, land suitable for building and rural land) in Italy is subject to municipal tax on real estate properties (IMU) at a 0.76% rate (which municipalities can increase or decrease by up to 0.3%) and to annual tax for non-divisible local services (TASI) at a 1% rate. The taxable basis for both IMU and TASI is computed, in the case of buildings, as 105% of the cadastral value (i.e., the imputed income registered in the cadastre on January 1 of the relevant year) multiplied by a coefficient (depending on the nature of property).

However, ownership of foreign real estate properties by Italian resident taxpayers is subject to the so-called *imposta sul valore degli immobili esteri* (IVIE) at a rate of 0.76% on the value as declared in the purchase agreement the or the fair market value set in the country in which the property is located. For immovable property located in an European Economic Area country, the reference value for IVIE is the value used in the relevant foreign country as the taxable base for the purposes of any property or transfer taxes.

4. What is the tax rate imposed on rental income?

Taxable income from lease activity generated by corporate entities, calculated under general rules, is subject to 24% CIT (IRES, in its Italian acronym), and to regional income tax on productive activities (IRAP) at 3.9%, which rate can be locally increased or decreased by up to 1%.

When a corporate entity has an insufficient level of revenue, it is considered a dormant company (so-called "società di comodo"). As consequence, the company may declare a presumptive minimum taxable income that should be subject to taxation at a rate as high as 34.5% (versus the ordinary corporate tax rate of 24%). The application of the tax regime under discussion may be rebutted only by submitting an advance ruling to the Italian Tax Authority.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes, interest is generally deductible.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing etc.)?

As a general rule, interest expenses are fully deductible up to an amount equal to interest income accrued in the same tax period.

Any excess over that amount is deductible to the extent of 30% of gross operating income (EBITDA). Any excess of interest expenses above this threshold may be carried forward for deduction in the following tax periods.

If an Italian corporate vehicle is focused on real estate management activities, and provided that certain conditions are met, interest due on loans that are secured by mortgages over real estate for letting is not subject to the 30% threshold, and is therefore fully deductible.

b. If so, is there any withholding tax on interest?

In general, interest payments to non-resident companies are subject to a final withholding tax at the rate applicable to interest paid to residents, 26%. However, the tax rate of the domestic withholding tax could be reduced by the application of a double-taxation treaty in force between Italy and the lender's home country.

Furthermore, under the domestic law implementing the provisions of the EU Interest and Royalties Directive, outbound interest is exempt from any Italian tax, provided that (a) the recipient "is an associated company" of the paying company and is resident in another Member State, or (b) such a company's permanent establishment is situated in another Member State and the relevant companies must have a legal form listed in the Annex of the Directive and be subject to a corporate income tax. In addition, the domestic law implementing the EU Directive requires a one-year holding period.

Finally, provided that certain regulatory provisions are respected, no withholding tax is levied on interest on medium-term or long-term loans granted to enterprises when the lender is any of the following:

- A bank established under the law of an EU Member State
- An entity listed in article 2(5), No. 4 to 23, of Directive 2013/36/EU
- An insurance company established and licensed under the law of an EU Member State
- An institutional investor, whether or not subject to tax, set up in a country included in the Italian white list and subject to regulatory supervision in its home country

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Yes. As a general rule, depreciation of tangible assets is permitted on a straight-line basis, by applying to the assets' cost price the coefficients periodically established by the Ministry of Finance. These vary depending on the type of property and the sector of activity. Rates for buildings range between 3% and 5%.

Land is not depreciable.

7. Are deductions available for management fees against rental income for tax purposes?

Yes. As a general rule, costs and expenses may be deducted only if they are incurred for the production of income.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Yes. As a general rule, losses may be carried forward indefinitely, but may not be used to offset more than 80% of the taxable income in any tax year.

Losses accrued during the first three years of business may be carried forward without limitations and set off in full against the taxable income of any subsequent tax year, provided that the losses originate from a new activity (i.e., an activity that was not previously carried on by another person, even one unrelated to the taxpaying entity).

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Capital gains on the sale of property (calculated as the difference between the book value of the property at the time of the sale and the agreed purchase price) is subject to IRES and to IRAP at the ordinary rates. For assets held for at least three years, the capital gain from disposal may be spread evenly over a period of five years.

When a foreign entity sells real estate, any relevant DTT is applicable to determine if the capital gain may be taxed in Italy. Tax treaties signed by Italy generally give the country the right to tax capital gains on the sale of real estate located in Italy.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

All types of income derived from a real estate property (such as ongoing rental income or the capital gain earned from disposal of the asset) should be subject to taxation in Italy under the general rules.

This means that a property's owner/investor should declare all income on their annual Italian income tax return, regardless of their nation of tax residence.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

All tax treatments described in the previous answers refer to the acquisition, management and disposal of Italian real estate assets through an Italian corporate vehicle. In particular, they refer to transactions through the two major forms of resident companies: the joint stock company (SpA) and the limited liability company (Srl). The Italian tax code doesn't provide for any rules that allow such vehicles to minimize their tax burden other than those described above.

However, a more tax-efficient structure is available under Italian law: investment through real estate investment funds. If such an investment is carried out by institutional investors (such pension funds or other collective investment entities), any income deriving from the lease of the real estate property, as well as any capital gain from the sale of that property, is included in the fund's net income (which is exempt from both IRES and IRAP). That income is taxed (a) upon the distribution of income to the investor (b) upon redemption of the units with the application of a final withholding tax at the rate of 26%. If certain requirements set forth by the law are met, the latter withholding tax may be excluded in case the proceeds of the fund are distributed to certain type of investors.

12. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

One possible way to mitigate tax liabilities is to acquire a business and/or a branch of a business containing the real estate properties. In this case, the buyer will be liable only up to an amount equal to the value of the business. In order to ring-fence the buyer's liabilities, both parties may request a certificate from the Italian tax authorities. This certificate specifies the amount of the business-related tax liabilities pertaining to the business as of the acquisition date. Once this certificate is issued, the buyer's exposure will be limited to the liabilities resulting therefrom.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Yes. Some of the major differences are outlined below:

- **Tax rate:** Individuals resident in Italy are subject to PIT on their aggregate worldwide income at progressive tax rates ranging from 23% to 43%, depending on their total income declared in their annual income tax return. These rates are increased by a regional surcharge that ranges from 1.23% to 3.33%. The rates may also be increased by municipal and provincial surcharges, determined by each municipality and province, at an aggregate rate of up to 0.9%.
- **Taxation of rental income:** The taxable base for rental income is the higher of (a) its cadastral value or (b) its rental value reduced by the maintenance expenses, up to a maximum of 5% of the rental value. A further flat deduction of 30% of taxable income, as determined above, is provided for rentals of dwellings located in major cities, if rents are those that have been agreed upon between the landlords' and tenants' associations. Alternatively, the taxpayer may opt for income derived from property rented out for use as a dwelling to be subjected to a substitute tax at a rate of 21%.
- **Taxation of capital gains:** Capital gains derived by individuals on the disposal of immovable property situated in Italy (other than in the course of a business or profession) are taxed as miscellaneous income. However, such gains are exempt from tax if the seller has held the property for more than five years.

Kazakhstan

Kazakhstan

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

The Code of the Republic of Kazakhstan on Taxes and Other Obligatory payments No.99-IV, dated December 10, 2008, does not include stamp duty or transfer tax. However, it should be noted that registration of title and other rights to immovable property with the respective state authority is subject to a state registration fee.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

The rates of the registration fee are based on monthly calculation indexes (MCI), determined annually, which for 2017 is 2,269 Kazakh tenge (approximately €6.5).

The amount of the registration fee depends on the type of immovable property and the type of right subject to registration. For instance, registering rights to an individual apartment and private house carries a fee of 0.5 MCI. For a multi-apartment building, the rate is 8 MCIs. For non-residential property complexes, the fee varies from 10 MCIs to 25 MCIs, depending on amount of objects in the complex. Registration of encumbrances on real estate is subject to a fee of 0.5 MCI.

Based on this, if one buys a residential property, the registration fee payable for the registration of the respective rights (title) would be 0.5 MCI, or approximately €3.25, regardless of the price of property.

The registration fee is payable by the person or entity on behalf of which the respective rights are registered.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Certain transactions involving land and residential buildings are exempt from VAT in Kazakhstan. In particular, sale of a residential building (or part of a residential building), as well as the lease and sub-lease of such property, are exempt from VAT. However, this exemption does not apply if the property is used for provision of accommodation services (e.g., hotel services), except for several types of dormitories.

Where payable, the standard rate of VAT in Kazakhstan is 12%, which should be accrued and paid to the state budget by the recipient of the income (that is, the owner of the property or the landlord), which must be registered as a VAT payer with the tax authorities.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Ownership of an immovable property or land entails payment of property tax and/or land tax on an annual basis.

Generally, these taxes are payable by the legal owner, however, in certain cases this obligation may be transferred to a third party. For example, under a trust management, a trustee may be responsible for payment of such taxes.

The tax code provides for different ways for the calculation and payment of these taxes by individuals and legal entities.

Generally, legal entities are liable to property tax at the rate of 1.5% of average book value of taxable objects (i.e., buildings and constructions).

The rate of land tax payable depends upon several parameters of land, such as the type of land and the purpose of its use. Broadly speaking, the rates of land tax for land plots not used for agricultural or industrial purposes, based upon location, range from 0.48 tenge per square meter (in rural areas) to 28.95 tenge per square meter (in Almaty). The rates of land tax may be increased or decreased by the decision of local authorities up to 50% of the base rates.

4. What is the tax rate imposed on rental income?

There is no special tax regime applicable to rental income.

Legal entities are subject to 20% corporate income tax (CIT). Net taxable income for CIT purposes should be determined as aggregate taxable revenues less deductible expenses, subject to requirements and limitations provided by the tax code. Under provisions of the tax code a rental income is considered as sales income and, therefore, should be included in aggregate taxable revenues for CIT purposes.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Generally, expenses incurred by a taxpayer in order to generate taxable revenues may be deducted for CIT purposes.

The tax code provides that taxpayers' expenses on construction and acquisition of fixed assets, as well as other capital expenditures, should be capitalized and deducted through depreciation charges. Therefore, interest on loans obtained for acquisition of real estate should be capitalized and deducted through annual depreciation charges.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

Thin capitalization rule exist in the form of limitation of deductible interest on loans extended by related parties, loans secured by related parties and loans extended by residents of jurisdictions with preferential taxation. Interest on the loans not included in any of these categories may be deducted in full. This limitation does not apply unless the average annual amount of debt of the company exceeds four times the average annual equity (or seven times for financial organizations).

For example, if a company attracts loans from related parties or from residents of countries with preferential taxation, or loans secured by related parties, the deductible amount of interest paid by the company in respect of such loans will be calculated under the formula: (average annual equity / average annual debt) multiplied by four or seven (as appropriate), then multiplied by the interest on the restricted loans. Therefore, if the amount of the company's debt exceeds four times the amount of the company's equity, the interest on certain loans would not be deducted in full.

Kazakh law on transfer pricing applies to any cross-border transaction, including financial services. Therefore, interest rates on loans extended by foreign entities to residents of Kazakhstan may be subject to transfer pricing scrutiny. The tax authorities have the right to adjust taxable objects (revenues and expenses) if the transaction price deviates from the range of market prices.

b. If so, is there any withholding tax on the interest?

Interest payable to a foreign entity is subject to 15% withholding tax in Kazakhstan. The applicable tax rate might be reduced under the respective double taxation treaty (DTT), if applicable, subject to certain administrative requirements.

Any kind of income (including interest) payable to a resident of a state with preferential taxation is subject to withholding tax at the maximum rate of 20%.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Yes. Depreciation of fixed assets should be calculated under the declining balance method. The depreciation rate for buildings and constructions (except oil and gas wells and transmission devices) is currently 10% per annum.

7. Are deductions available for management fees against rental income for tax purposes?

The tax code does not envisage any special restrictions in respect of deduction of the management fees. Therefore, to be deductible, such expenses should comply with the general tax code requirements (i.e., incurred in connection with taxable revenues) and should be confirmed with necessary documents.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Tax losses on entrepreneurial activity (including losses from sale of real estate objects) may be carried forward for the next 10 years inclusive and may be offset against taxable revenues during these tax periods.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

A gain realized by a Kazakh legal entity or a branch of a foreign entity on the sale of a real estate recognized as a fixed asset for taxation and accounting purposes will be subject to CIT. Normally, a gain realized on the sale of a real estate object should be calculated as a positive difference between sales price and remaining depreciation balance of the real estate calculated for taxation purposes.

For individuals, any capital gain from the sale of real estate is subject to personal income tax, subject to certain exceptions. Namely, capital gains realized by individuals on sale of certain property (e.g., residential buildings, land plots) may be exempt from 10% personal income tax, provided that such property was owned more than one year.

The current rate of CIT is 20%. For individuals, the current rate of personal income tax is 10%.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Capital gains realized by a non-resident from sale of a Kazakh property is subject to 15% withholding tax, whereas residents of states with preferential taxation are subject to 20% withholding tax.

There is no withholding tax on rental income received by residents and non-residents acting through a permanent establishment in Kazakhstan.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

A foreign entity may acquire, hold and exploit real estate in Kazakhstan either through its Kazakh branch or through a local subsidiary. The organizational form that is often used for establishing a Kazakh subsidiary of foreign entities is a limited liability partnership, a legal entity that might be established by a single or several participants with the minimum charter capital of 100 MCIs (approximately €650).

There are several differences in the taxation of branches and subsidiaries. The key difference lies in taxation of net income. Branches of foreign entities are subject to 15% net income tax, which is paid annually, whereas subsidiaries pay 15% tax on dividends whenever dividends are distributed.

Applicable rates of net income tax and withholding tax on dividends may be reduced under provisions of the relevant DTTs. Moreover, under the tax code, exemption from withholding tax on dividends may be achieved if the following conditions are met: (i) the recipient of dividends is not registered in a country with preferential taxation; (ii) the share or participating interest in a Kazakhstan entity in respect of which the dividends are paid is owned for more than three years; and (iii) the dividend-paying company is not a subsoil user in Kazakhstan and does not derive more than 50% of its property from a property of a subsoil user.

Please note that the new tax code concept does not provide for the aforesaid exemption of dividends. Therefore it might be the case that such exemption will be eliminated in the future.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

There are no special structures or special tax regimes that may be used for this purpose.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

The tax code envisages different requirements for taxation of individuals and legal entities holding real estate. Similarly to legal entities, individuals are obliged to pay property tax and land tax, however, the amounts of these taxes are calculated in a different ways.

If an individual receives an income from letting real estate that exceeds the minimal threshold set out by the tax code (which, for 2017, was 293,508 tenge, or approximately €840), such individual would be obliged to register as an individual entrepreneur (without establishing of a legal entity) and to pay taxes in accordance with applicable tax regime.

Luxembourg

Luxembourg

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Please refer to the answer below, as certain duties apply to the sale and lease of real estate.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Sale of real estate / properties under construction
The sale of a Luxembourg real estate/ property located in Luxembourg entails payment of the following duties:

- A 6% registration duty
- A municipal surcharge of 50% of the above registration duties for real estate located in Luxembourg city and affected to commercial use
- A 1% transcription tax

The above gives rise to an aggregate transfer tax of 10% in Luxembourg City for commercial properties, and of 7% elsewhere in the country and in Luxembourg City for residential properties. This charge is computed on the sale price as determined by the parties. It must correspond at least to the estimated fair market value of the real estate and it is payable by the buyer (unless otherwise provided by contract). When the construction already existed at the date of the sale, it is not subject to VAT. However, if the construction is to be erected after the date of the sale it will be subject to VAT.

Lease of real estate
Voluntarily lease registration are subject to the following registration duties:
If the lease is not submitted to VAT, a proportional duty of 0.6% on the cumulated value of the rent on the total duration of the lease, as well as a 1% transcription tax for leasing of at least 9 years, are due.

If the lease is subject to VAT (see below), only a fixed registration duty of €12 is due.

Please note that as of January 1, 2017, there is no longer a requirement to register leases, subleases and subrogation of leases within three months of their signature.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Transactions exempt from VAT include:

- The supply of a building or parts thereof, and of the land on which it stands, other than the sale of buildings under construction or to be constructed at the time of signature of the sales agreement
- The leasing or letting of immovable property

The exemption does not cover:

- The provision of accommodation in hotels or similar establishments
- The letting of premises and sites for the parking of vehicles
- The letting of permanently installed equipment and machinery
- The renting of safety deposit boxes

Under certain conditions, the owner of real estate property has the option to waive the VAT exemption. This may entitle the owner to deduct, to a certain extent, the value of any VAT incurred.

Sale of real estate
If the seller is an entity conducting an economic activity (as defined by VAT laws) and sells the real estate in the course of the said activity, it may be subject to VAT at the standard rate of 17% on the net price. (The reduced 3% VAT rate may be applicable to the sale of residential property provided certain conditions are met.) The seller must file and hold a valid option to do so. Among other factors, the proper VAT treatment of the sale of real property depends on whether:

- The object of the sale is classified as a going concern; if so, the sale falls outside the scope of VAT
- The plot of land subject to the sale is developed or not; if a plot of land is developed, the VAT treatment of land follows the VAT treatment of buildings or constructions (or their parts) developed thereon
- The undeveloped land is designated for other purposes than development; if so, such supply is generally exempt from VAT

Lease services
Lease are VAT-exempt unless an option to tax has been submitted and agreed by the VAT authorities. If so, they are subject to 17% VAT. However, the lease of residential units for housing purposes is VAT-exempt. The lease of furnished offices is usually considered as a supply of service and not a letting of property, and is therefore fully taxable at the 17% standard rate.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes.

Property tax *(impôt foncier)*
Property tax is charged annually by municipalities at varying rates, depending on the location and nature of the property, applying on the unitary value of the properties.

The unitary value of the properties reflects the theoretical value of the property as of January 1, 1941. Therefore it is usually minimal of the market value of the property.

Net wealth tax for collective entities *(impôt sur la fortune)*
Real estate properties located in Luxembourg held by a Luxembourg company or by a non-resident through a Luxembourg permanent establishment (PE) are also subject to annual net wealth tax applying on the unitary value of the properties (levied at 0.5% up to net wealth of €500 million and at 0.05% for net wealth of more than €500 million. Certain minimum net wealth tax rules also apply from 2017.

Real estate properties abroad are excluded from the net wealth tax basis of Luxembourg companies/Luxembourg PE to the extent exclusively taxable in the source state under an applicable double tax treaty (DTT).

4. What is the tax rate imposed on rental income?

Individual taxpayers
For individuals acting in the course of the management of their private wealth, net rental income is subject to progressive personal income tax from 0% to a maximum effective marginal tax rate of 45.78%.

For individuals, acting in the course of a professional activity, the rental income is a business income subject to progressive personal income tax from 0% to 45.78% (or half the global tax rate under certain conditions), but also subject to municipal business tax (MBT) levied at the nominal rate of 6.75% per year in Luxembourg City.

Corporate taxpayers
Luxembourg capital companies or non-residents companies acting through a Luxembourg PE must pay Luxembourg corporate income tax (CIT) and MBT, levied at the combined standard rate of 27.08% for resident capital companies or Luxembourg PEs located in the City of Luxembourg. These taxes are due on any rental income derived from real estate properties located in Luxembourg. The rate in 2018 will be 26.01%.

For non-resident corporate taxpayers, in the absence of PE, rental income is only subject to CIT at 20.33% (19.26% in 2018).

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes, subject to the arm's length principle and certain thin capitalization rules when the loan is granted or secured by a related party.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

For corporate owners of real estate, the funding of the acquisition of real estate will need to comply with Luxembourg thin-cap rules.

Unless the Luxembourg company can prove the debt-to-equity ratio under which a third party would fund the company having the assets of the company as sole collateral, an 80/20 debt-to-equity ratio is used by the tax authorities as safe harbor.

Such a debt to equity ratio must be overall observed in presence of a partial bank financing and a partial intra-group financing to the extent the bank debt is guaranteed by the shareholder of the Luxembourg company.

b. If so, is there any withholding tax on the interest?

Interest payments are in principle not subject to withholding tax (WHT). Exceptions include:

- Interest paid not at arm's length; excessive interest on borrowing may be requalified as hidden dividend in principle subject to a 15% WHT
- Interest on certain income sharing type instruments
- 20% WHT applied on certain interest paid to Luxembourg individual residents, under what is known as the Relibi Law

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Yes, deductions for depreciation are available against rental income for tax purposes.

Real estate rented out is subject to tax depreciation at a rate ranging from 2% to 6% for new real estate finalized within the last six years.

Land is not subject to depreciation.

7. Are deductions available for management fees against rental income for tax purposes?

Business expenses such as management fees are normally deductible if (i) they remunerate services actually rendered in direct relationship with the relevant activity, (ii) they are at arm's length and (iii) they are not economically related to an exempt income.

8. Are there any restrictions on the use, and/or carry-forward, of losses?

For all Luxembourg resident taxpayers, as of January 1, 2017, the carry-forward is limited to 17 years. Tax losses incurred between January 1, 1991, and December 31, 2016, can still be carried forward without any limitation in time. The old tax losses are to be deducted first.

For individual Luxembourg resident taxpayers, the carry-forward of income tax losses is only possible for losses deriving from commercial activities, farming or independent professional activities.

9.Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes, capital gains arising on the sale of real estate are taxable.

For individuals taxpayers
Capital gains realized by individuals in the course of the management of their private wealth, are taxable either as speculative gains if realized within 2 years of the acquisition or as an extraordinary gain on sale.

- Speculative gains are subject to progressive income tax (minimum 15% for non-resident taxpayers)
- Gains realized upon on the sale of real estate (after 2 years) benefit from a €50,000 (€100,000 with spouses) tax allowance (abattement fiscal) and are taxed at half the progressive tax rate for gains, or one quarter of the progressive tax rate for gains realized during a transitional period ending on December 31, 2017.

An exemption applies to gains realized upon the sale of the main residence. Capital gains realized by individuals in the course of their profession are taxable at progressive income tax rate and are also subject to MBT at 6.75% per year.

For corporate tax payers
Gains realized upon the sale of real estate are fully taxable at 27.08% CIT and MBT.

Capital gains realized upon the sale of a real estate property located in Luxembourg by a foreign entity is taxable in Luxembourg. They will be subject to CIT at 20.33% if the asset is not attributable to a Luxembourg PE, or to CIT and MBT at 27.08% if the Luxembourg property is allocated to a PE in Luxembourg. Capital gains on shares of corporation holding a Luxembourg real estate property realized by a resident of a tax treaty country is generally not taxable in Luxembourg.

Capital gains on shares of a Luxembourg corporation holding a Luxembourg real estate property is in principle not taxable in Luxembourg if the Luxembourg corporation is held by non-resident shareholders (certain exceptions apply). Capital gains on shares of a Luxembourg corporation holding a Luxembourg real estate property realized by a Luxembourg fully taxable resident corporation is taxable in Luxembourg but could benefit from a capital gain exemption (parent-subsidiary directive regime).

10.Is there a withholding tax on rental income and/or capital gains derived from real estate?

No.

11.Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Luxembourg's legal framework offers different investment vehicles and various structures for the holding of real estate. Both regulated as well as unregulated vehicles are available. Most of these vehicles are tax neutral or almost tax neutral. However, the tax neutrality may be organized differently from one vehicle to another.
Apart from the fully taxable company (SOPARFI) used as PropCo holding the real estate (see below comments on share deals), the other commonly used vehicles are the specialized investment fund (SIF); the securitization vehicle (SV); the risk capital investment company *(société d'investissement en capital à risque,* or SICAR); and the Reserved Alternative Investment Fund (RAIF).

12.Are there any structures commonly used to mitigate real estate tax liabilities on acquisition and/or disposal of real estate?

The majority of transactions are generally carried out through a share deal rather than an asset deal, as the target company that holds the real estate can carry forward its losses and the purchaser can avoid registration duties (i.e., 0% vs. 10%). In addition, capital gains realized on shares of a Luxembourg PropCo may be exempt under the conditions of the parent/subsidiary regime.

13.Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Capital gains realized on the disposal of real estate properties in Luxembourg will be taxed at 27.08% CIT/MBT for 2017 (26.01% for 2018), versus a maximum 21% personal income tax rate for individuals under certain conditions.

Individuals, including individual enterprises, are not subject to net wealth tax.

Mexico

Mexico

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes. Sales and purchases of real estate can be subject to such taxes. Depending on the type and use of the real estate (land, fixed assets or construction, housing) and the acquiring/selling party (company or private individual), such taxes will be levied, or the transaction may be exempt. For example, sales of homes by private individuals are exempt from such tax.

Where non-exempt, purchases are normally subject to a local acquisition of assets tax. Leasing of real estate is broadly not subject to a transfer tax similar to the acquisition of assets tax.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

The buyer is responsible for the acquisition of assets tax. The rate of such tax depends upon on the state or city in which the property is located (the common rate is 2% as used in Mexico City).

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Sales of goods are subject to VAT. In the case of real estate, only land or fixed properties that are sold to be used as houses or homes are exempt from VAT. The lease of real property (with the exemption of houses) is subject to VAT. The rate of VAT is 16% for real estate supplies that are not exempt.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes. There are annual local real estate ownership taxes (prediales) collected by the cities based upon the value of the property. For example, the of prediales for property in Mexico City is currently 1%.

4. What is the tax rate imposed on rental income?

Rental income for companies is accumulated as part of the company's annual taxable income (30% rate applicable to profits).

For individuals, rental income is subject to income tax at up to 35% (if the individual uses deductions from rental income). If the individual does not use deductions from rental income, they can be subject to a flat rate of income tax of 25%.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Interest on borrowings used to acquire real estate is not deductible for private individuals, subject to certain exceptions. For example, under a recent reform, interest paid by individuals for house mortgages can be deducted, but only if the interest is less than 10%.

For companies, interest may be deductible if it can be shown that the loan was strictly necessary to comply with the business purpose of the company.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

Yes. For example, where a company borrows from a related party, the transaction must be within the arm's-length standard and supported by a transfer pricing study.

b. If so, is there any withholding tax on the interest?

There is no withholding tax on such interest payments.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Yes. For building constructions in general, a 5% depreciation rate should be available.

No such depreciation rate is available for land.

7. Are deductions available for management fees against rental income for tax purposes?

Yes, however to be deductible, the company must show that the management fees are: (i) strictly necessary for the business of the company, (iii) duly documented (by fiscal invoice) and (iii) actually paid via a legal means of payment.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

In general, losses have to be used to offset taxes in the same fiscal year they are accrued. However, balances can be carried forward, subject to a maximum of 10 years.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes, but only when said capital gains are deemed to be "income."

Capital gains can be treated as income when they are the result of sales of properties that were not destined by the company to be sold as part of the core business of the company.

The rate of capital gains tax is 30% for companies and 16% for individuals.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Other than in relation to sales of homes by private individuals (which are exempt), private individual sellers must pay a withholding tax on the price paid for the real estate (which is retained by the Public Notary at moment of transaction). The rate of withholding depends upon certain elements, including the nature of the party, year of acquisition, price paid and profit of the seller. The taxable income of the seller is accumulated annually. The highest rate of withholding tax is currently 20%.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Yes, the so-called Real Estate Infrastructure Companies and Trusts ("FIBRAs" and "SIBRAs," in their Spanish acronyms) are used for tax efficiency in holding property in Mexico. In such structures, income tax can be deferred until the property is actually sold by the FIBRA. The owner of the property placed in a FIBRA receives a FIBRA Certificate for the value of the property.

Under the FIBRAs and SIBRAs structures described above, if the buyer purchases the property by acquiring shares (real estate certificates) issued by a real estate trust that holds the property, the buyer has to pay the normal taxes as described.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Due to the tax efficiency described above, FIBRAs and SIBRAs structures are often used to acquire or dispose of real estate.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Yes, as the taxes are levied at different rates. Individuals are generally taxed more, with the only exception being in relation to the sales of homes.

Oman

Oman

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes, transfer tax on land is payable on the purchase, and municipality tax is payable on the lease, of real estate in Oman by both companies and individuals.

No stamp duty on land or municipality tax is triggered by the transfer of shares in a company holding real estate in Oman.

Only Omani and GCC nationals and corporate entities that have 30% Omani shareholding can own property in Oman, other than in specifically created zones known as integrated tourism complexes.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Transfer tax applies to the purchase of real estate at the rate of 5% of the purchase price, payable by the transferor or transferee, as per agreement by the parties.

A municipality fee of 5% of the total value of the lease is applicable on the lease rent and is generally paid by the landlord.

Some application fees are also levied for registering documents with the Ministry of Housing, the cost of which ranges from OMR 5 to OMR 50.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

VAT has not yet been introduced in Oman.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

No annual property taxes currently apply in Oman.

4. What is the tax rate imposed on rental income?

Companies and branches of foreign companies registered in Oman are subject to income tax on income derived from property. Income derived from property (including rental income) is taxed at the rate of 15% on taxable income.

Tax on rental income is not applicable to individuals, as individuals do not pay income tax in Oman.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes, interest on loans taken to acquire property is deductible from rental income for tax purposes.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

Under the thin capitalization rules, interest payable on related party loans with a debt-to-equity ratio that exceeds 2:1 is not deductible.

Transfer pricing is not well developed yet in Oman. The country's income tax law in Oman does not specifically refer to transfer pricing. However, it includes related party provisions, under which the value of related party transactions can be ignored if the price or terms agreed result in a determination of a lower taxable income or higher loss allowable.

b. If so, is there any withholding tax on interest?

Oman has introduced a 10% withholding tax on interest accrued in Oman and paid to foreign companies that do not have a permanent establishment in the country. The law does not clearly set out the type of interest (e.g., interest on loan, penalty interest) that would attract withholding tax. Amendments to the implementing regulations of the tax law have been proposed that may soon clarify this.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Deductions for depreciation are not available for land.

Depreciation deductions are however available for buildings. This is calculated at a rate of 4% for permanent buildings and 15% for semi-permanent buildings that are constructed with selected materials, as specified by the decision issued by the secretary general.

Deductions to account for the depreciation of plant and machinery are also available at varying rates, depending on the nature of the fixtures, as follows:

- 33% for tractors, cranes and other heavy equipment and machinery of a similar nature, vehicles, computers, computer software and intellectual property rights, fixtures, fittings and furniture

- 10% for drilling rigs
- 15% for all other equipment

7. Are deductions available for management fees against rental income for tax purposes?

Yes, management fees are deductible against rental income for tax purposes.

Management fees accrued in Oman and paid to a foreign company that does not have a permanent establishment in Oman shall be subject to a 10% withholding tax.

8. Are there any restrictions on the use and/or the carry-forward, of losses?

Losses can be carried forward for up to 5 years, commencing from the end of the tax year during which the loss was incurred.

Where a foreign person carries on several businesses through permanent establishments, the loss, which is incurred in any tax year from carrying on any business, may be carried forward and deducted, but only after reducing there from the taxable income of the other permanent establishments owned by that person.

No loss may be deducted or carried forward if such loss was incurred from carrying on any business exempted from tax, either under any law except for establishments or Omani companies that are exempted under Article 118 of the Income Tax Law (SD 28/2009) as amended. For such companies, the net loss of the first 5 years of the exemption period may be carried forward and deducted. Such deduction and carry-forward in this case shall be made for any number of tax years, until the whole of the net loss is set off.

A loss may not be deducted in cases other than those specified above, unless it is the result of a deal or transaction of any kind resulting in earning a taxable income during the same tax year in which the loss was incurred.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes. Currently gains made on the disposal of property are taxable at 15%.

There is no difference between the scheme of tax for commercial and residential property. Only corporate landlords are taxed, individuals are not taxed.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

No withholding tax is imposed on rental income or real estate in Oman.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Investment funds are often used for such transactions. Income derived from investment funds established in Oman and from funds established outside Oman dealing in Omani securities listed on the Muscat Securities Market (MSM) are exempt from tax in Oman. These exemptions are for indefinite periods.

12. Are there any structures commonly used to mitigate real estate tax liabilities on acquisition and/or disposal of real estate?

It can be more tax-efficient to buy shares in a company that owns real estate rather than buying property directly, because the purchaser would not be subject to the land transfer tax applicable when buying property.

The relevant authorities are working on introducing regulations for real estate investment trusts (REIT) that may introduce new tax-efficient structures.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

The main difference is that only individuals are subject to the municipality charge and transfer tax upon the sale or purchase of property. However, companies may, in addition to being charged the aforementioned fees/taxes, be charged tax on rental income.

Panama

Panama

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes. Transfer tax will be levied on the transfer of real estate through sale. Since the deed of transfer must be a public deed, stamp tax will also be paid on the transfer of real estate. However, transfer tax is not payable if the real estate is transferred to a trust or as a result of a court order executing a guarantee.

In Panama, leasing of real estate is not subject to transfer tax, as there is no transfer of domain. However, if the leasing agreement is entered into via a public deed (which is not compulsory), stamp tax will also be payable.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Transfer tax is levied at 2% of the higher of the cadastral value or sale price of the real estate. Such transfer tax is payable by the seller.

Stamp tax is currently charged at US$8.00 per page.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

No. There is no value-added tax, goods and services tax or similar tax payable on the transfer of real estate.

Service tax is levied on the leasing of commercial property at a rate of 7%, payable by the tenant, though the landlord is considered the ultimate taxpayer by the tax authority. No such service tax is applicable to leasing of residential property.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes. There is property tax payable on a yearly basis, which is payable to the Treasury (for the benefit of the municipality where the property is located), at a rate of up to 2% of the cadastral value of the real estate.

Property tax is levied on both the value of the land and any improvements made thereupon, unless the construction is a new one and qualifies for the exemption. Improvements have exempted periods that could go up to 20 years for residential property and up to 10 years for commercial property. The term granted depends on several factors, including the value of the improvements and/or the date of construction.

4. What is the tax rate imposed on rental income??

The rate of tax imposed on rental income is 25%, which is levied on the net taxable income (i.e., less any relevant costs and expenses), whether received by an individual or a corporation.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes. Those that have borrowed to acquire real estate may deduct interest payable on that loan from their taxable income. However, if the debtor is a taxpayer and takes such deduction, it will be obliged to declare the identity of the creditor in order for the tax authority to verify whether the landlord is complying with its tax obligations.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

Panama has no thin capitalization rules in these cases, and transfer pricing rules do not apply.

b. If so, is there any withholding tax on interest?

No.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Allocation between land and building.

Yes, capital cost allowance is permitted on improvements on real estate at a rate of 20% per year.

Land is non-depreciable for tax purposes, so a reasonable allocation must be made between the value of the improvements and the land.

7. Are deductions available for management fees against rental income for tax purposes?

Yes. Management fees will be subject to 7% VAT, and the landlord would have to report the manager so the tax authorities can verify compliance by said manager.

8. Are there any restrictions on the use and/or the carry-forward of losses?

Losses can be carried forward for up to five years to offset income.

The general rule for income tax is that the taxpayer is liable to pay tax on the higher of 25% of net taxable income or 1.4% of gross income.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes, where a capital gain arises on the sale of real estate, such gain is subject to tax at 3% of the difference between the sale price and the cadastral value of the property at the time of acquisition. However, the cadastral authority can update the value ex officio. Such capital gains tax is payable by the seller together with the transfer tax mentioned above. It is a prerequisite to include the receipt evidencing payment of such tax in the deed of transfer in order for the notary public to be able to close it.

Certain special regimes exempt payment of capital gains tax on the sale of certain real estate, such as the legislation on free trade zones. The law grants tax incentives to investors in a private free zone. The property being used for such purpose is exempted. The same applies to hotel developments, but the exemption is only for 20 years.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

The concept of withholding in Panama is related to the provision of services outside of Panamanian territory. It is not related to concepts such as resident or taxpayer. Rent is considered as income generated locally, and therefore the landlord is obliged to file its tax return.

No withholding tax is required for capital gains from transfer of real estate.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

When acquiring real estate through the acquisition of shares in corporate entity holding, such as real estate, transfer tax is not levied. Furthermore, tax levied on the seller on any capital gain would also be waived on the transfer process. The tax will be paid on the transfer of the shares only. Acquisition of such shares attracts a 5% capital gains tax to be withheld by the purchaser, which is levied on the sale price of the shares and paid to the tax authority.

The same happens in case of a split-off—except the rule requires that the transfer is made to related parties. The split-off requires the resulting company to have the same board of directors and the same shareholders. Rent is taxable income no matter how or by whom it is earned (save in the case of rentals by the developer of a free trade zone, which are exempted).

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

As mentioned above, acquisition of shares in corporate entities holding real estate would not attract transfer tax.

There are no structures commonly used to mitigate real estate tax liabilities on the acquisition or disposal of real estate.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

No.

Poland

Poland

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes. Tax on civil law transactions (PCC, in its Polish acronym) is similar to stamp duty in other countries. It may be levied on certain civil law transactions, including sales agreements concerning real properties or parts thereof, if they benefit from a VAT exemption or fall outside the scope of VAT.

Leasing of real estate does not trigger PCC.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

PCC is levied at 2% of the fair market value of real estate. PCC is payable by the buyer.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? IF so, what are the rates and who is required to pay the tax?

Generally yes, VAT is payable, as set out below.

Sale or real estate
If the seller is an entity conducting the economic activity (within the meaning of the VAT laws) and sells the real estate in the course of the said activity, it may be subject to VAT at the standard rate of 23% on the net price. The reduced 8% VAT rate may be applicable to the sale of residential property, provided certain conditions are met. Under certain conditions, sale of the real estate may be exempt from VAT.

The proper VAT treatment of the sale of real property depends on whether, among other factors:

- The object of the sale is classified as a going concern; if so, the sale falls outside the scope of VAT
- The plot of land subject to the sale is developed or not; if a plot of land is developed, the VAT treatment of land follows the VAT treatment of buildings or constructions (or their parts) developed thereon
- The undeveloped land is designated for other purposes than development; if so, such supply is generally exempt from VAT

Lease services
Lease services are generally subject to 23% VAT. However, the lease of residential units for housing purposes is VAT-exempt.

Generally, VAT is payable by the seller.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes. Real estate tax (RET) is an annual tax which generally applies to the owners, perpetual usufructuaries and freeholders of properties. RET applies to: (i) land, (ii) buildings or parts thereof and (iii) constructions or parts thereof connected with business activity. RET is payable to local authorities in monthly instalments in case of legal persons.

The maximum RET rates applicable in 2017 (local authorities may adopt lower rates) are as follows:

- For land used for business activity: PLN 0.89 per square meter
- For buildings, or parts thereof, used for business activity: PLN 22.66 per square meter of usable surface area
- For constructions or parts thereof used for business activity: 2% of their initial value (from the tax books) adopted for income tax depreciation purposes

4. What is the tax rate imposed on rental income?

The taxable income from lease activity generated by corporate entities (legal persons) is subject to 19% corporate income tax (CTI) and is calculated under general rules.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes. Interest is generally deductible on a cash basis when paid or compounded.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

Yes. Polish thin capitalization rules put restrictions on companies deducting interest on loans granted by either:

- One or more shareholders holding, directly or indirectly, a total of at least 25% of the voting rights,
- Another company if the same shareholder holds, directly or indirectly, at least 25% of the voting rights in each of these companies, if the debt-to-equity ratio exceeds 1:1 on the day interest is paid

Interest on loans in excess of the above ratio is not tax-deductible for the borrower.

CIT regulations also introduce the possibility of selecting an alternative thin capitalization "interest ceiling" regime based on the value of the debtor's assets. Under this method, the limit of interest deducted as tax costs is based on the product of National Bank of Poland reference rate (currently 1.5%, as of March 2017) plus 1.25 percentage points and the tax value of taxpayer's assets (excluding intangible assets). Moreover, the value of tax-deductible interest cannot exceed 50% of the operating profit. This limit shall not apply to, among other entities, banks, credit institutions and leasing companies subject to additional requirements.

Under this method, a limit of deductibility of interest is applicable to all loans from both related and unrelated lenders. The interest not deducted in a given year (i.e., interest exceeding limits) will be deductible over the following five years.

The conditions of loans from related companies should be at arm's length. Otherwise, Polish transfer pricing regulations may be used by tax authorities to reassess the income of the borrower.

b. If so, is there any withholding tax on the interest?

Interest paid from Poland to a foreign lender is generally subject to 20% withholding tax, unless a relevant double-taxation treaty (DTT) provides otherwise.

Usually the withholding tax rates on interest under a relevant DTT ranges between 5% and 10%. Some of Poland's DTTs provide for a 0% withholding rate on interest (e.g., with the United States, Spain and France). In order to apply a withholding tax rate resulting from a DTT, a valid certificate confirming the tax residence of the foreign lender must be obtained.

Poland implemented EU Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. Therefore, interest payments between a parent and a subsidiary, and between direct sister companies, are free from withholding tax if certain conditions are met.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Yes. Deductions for depreciation are available against rental income for tax purposes. New commercial buildings are subject to tax depreciation at a maximum annual rate of 2.5%. Acquired buildings (used by the former owner) can be depreciated for tax purposes during the period equal to the difference between 40 years and the number of years that have passed since the building was put into use for the first time. However, that period cannot be shorter than 10 years.

Land is not subject to tax depreciation. Therefore, if real estate is acquired, it is recommended that the sales price be divided in the sales agreement between the building and the land.

7. Are deductions available for management fees against rental income for tax purposes?

Generally, yes.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Tax losses may be carried forward for five consecutive years and fully offset against tax profits during that time. However, not more than 50% of the tax loss may be offset against tax profits in any one of these five years. Tax losses cannot be carried back.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

The taxable income from the sale of real estate generated by corporate entities (legal persons) is subject to 19% CIT and is calculated under general rules.
In case of the sale of real estate by a foreign entity, the relevant DTT is applicable to determine if the capital gain may be taxed in Poland. Tax treaties signed by Poland provide the right to tax the capital gains on the sale of real estate located in Poland.

Some of Poland's DTTs include a so-called "real estate clause," which allows Poland to tax capital gains realized by foreign investors on the sale of a Polish company that owns real estate in Poland. The treaties with Germany, Spain and Luxembourg, for example, include this clause. Others, such as those with the Netherlands and Cyprus, do not.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Generally, no. If a foreign entity owns real estate located in Poland, any rental income or capital gains from the direct sale of such property should be subject to taxation in Poland under general CIT rules. This means that the foreign investor should register in Poland for CIT purposes and pay CIT.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

A Polish limited liability company is perhaps the vehicle used most often for structuring investments on the Polish real estate market. In recent years, partnerships, especially limited partnerships, have been used more frequently to conduct business activities in Poland.

A limited partnership is transparent for CIT purposes. Therefore, its earnings and costs are split pro rata among the partners, who, depending on their legal status (whether they are legal persons or individuals), are then individually assessed for either 19% CIT or the applicable personal income tax (PIT) rate.

Moreover, it is possible to use a Polish investment fund to structure real estate investments in Poland. A Polish investment fund is a legal entity regulated by the Investment Funds and Managing Alternative Investment Funds Act. One of the most popular types of Polish investment funds is the closed-end investment fund (FIZ, in its

Polish acronym), which may be closely controlled by the investors(s).

Until the end of 2016, income generated by FIZs from all sources was CIT-exempt in Poland. As of January 1, 2017, the CIT exemption is no longer available with respect to FIZ income from: (a) participation in tax-transparent entities, (b) capital gains from sale of securities issued by such tax-transparent entities and shares thereof, (c) interest on loans and other receivables owed by these tax-transparent entities to the fund, and on securities issued by these entities); and (d) certain other income related to participation in such tax-transparent entities.

Therefore, as of January 1, 2017, FIZs may no longer benefit from the CIT exemption if they generate income from partnerships. However, FIZs still benefit from CIT exemption if they own real estate directly.

Currently, there is ongoing legislative work in Poland on drawing up the REIT fund act that should introduce a new CIT-exempt vehicles for certain real estate investments

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

No.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Yes, for example:

- CIT is 19%. PIT ranges from 18% to 32%. The rate is 19% for individuals taxed as entrepreneurs.
- Specific exemptions, such as a PIT exemption regarding own-residential purposes, may apply.
- Individuals have the option to pay a flat 8.5% rate on rental revenue, if certain conditions are met.

Romania

Romania

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

No transfer taxes apply to the sale of real estate. However, stamp duties apply to registering real estate with the relevant land books.

Acquiring shares in Romanian companies is not subject to any transfer tax.

a. Is it payable on the transfer of shares in a company or an interest in an entity whose sole or main asset is real estate?

As a general rule, the buyer will be required to pay the notary fees along with the land registration office fees.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Yes, the sale of Romanian properties may be subject to a 19% VAT, depending on the VAT regime of the seller and whether or not the property is considered new. However, the sale of shares is not a VAT-liable transaction.

In the following cases, the VAT rate is 5%:

- Delivery of apartments with a floor area of maximum 120 square meters, excluding household annexes, the value of which, including the land on which it stands, does not surpass RON 450,000 (€100,000), purchased by any single person or by a family
- Delivery of buildings, including the land which they are built on, for town halls
- Delivery of buildings, including the land which they are built on, for nursing homes for old people and pensioners
- Delivery of buildings, including the land which they are built on, for orphanages, recovery centers for underage people and disabled people

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes, there are annual taxes on both land and construction.

Land tax
Land tax is calculated by a complex formula that includes a variety of factors: the type of land, its location, its total area in hectares and its category as classified by a local council. The formula differs for land located within urban areas and land outside urban areas. Land tax is due for the entire fiscal year, paid by the person who owns the land as of December 31 of the previous fiscal year.

Building tax
Building tax is set by local authorities (e.g., local councils of towns/communes) and by the General Council of Bucharest or local councils of Bucharest districts, within the limits established by the Fiscal Code. This tax is paid annually and differs depending on whether the building is residential or non-residential, and on whether the owner is an individual (aka, a "natural person") or a corporation/other legal entity (a "legal person").

Thus, for residential buildings and buildings owned by natural persons, the Fiscal Code provides for a tax rate between 0.08% and 0.2% of the taxable value of the building.

For non-residential buildings owned natural persons, the tax rate is between 0.2% and 1.3% on the taxable value of the building. That value may be determined by:

- The amount resulting from an evaluation report prepared up by an authorized evaluator, during the five years preceding the reference year
- The final value of construction works and new buildings built in the five years preceding the reference year
- The value of buildings resulting from the act of transfer ownership, acquired in the five years preceding the reference year

If the value of the building cannot be calculated according to the above, the tax is calculated by applying the rate of 2% on the taxable value determined under applicable residential buildings owned by individuals.

In regard to legal persons, the tax code provides the following tax rates:

- For residential buildings, the tax rate is established of between 0.08% and 2% on the taxable value of the building
- For non-residential buildings, the tax rate is established between 0.2% and 1.3% on the taxable value of the building

4. What is the tax rate imposed on rental income?

The tax rate imposed on rental income is a 16% flat rate.

With respect to the income paid by natural persons, the 16% rate is applied to a net income of 60% (as 40% is deducted from gross income). Natural persons must also pay a compulsory contribution to the state health system of 5.5% of gross income.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Yes.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

Interest is deductible subject to thin capitalization limitations as well as transfer pricing, if applicable.

b. Is there any withholding tax on interest?

Romania implemented the EU Interest Royalty Directive as of January 2011. Thus, there is generally no withholding tax applicable to outbound interests paid to residents of EU Member States (subject to the relevant 10% holding of the shares for a period of one year). Otherwise, withholding tax is applicable based on relevant double-taxation treaties as the case may be or, otherwise, 16%.

As a general rule, interest expenses will be entirely deductible in the event that the debt-to-equity ratio calculated for the Romanian entity receiving the non-bank loan is not higher than 3:1.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Land cannot be subject to depreciation, only buildings. General limitations apply to deductible expenses apply.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees fall within the category of deductible expenses. However, evidence of relevant service must be produced.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Losses can be carried forward for a maximum of seven years.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes, capital gains resulting from the sale of properties are taxed at a flat rate of 16%.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

For individuals, rental income derived from real estate is taxed at a 16% rate, which is applied to a net income of 60% (as 40% is deducted from the gross income). In addition, a 5.5% compulsory contribution to the state health system is due.

For companies, the proceeds from the sale of real estate go to the tax base for corporate income tax purposes. The applicable rate is 16% flat.

11. Are there are tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Yes, there are two options in this regard: either a limited liability company (in Romanian, societate cu raspundere limitata) or a joint stock company (societate pe acțiuni).

A limited liability company (LLC) is the most common type of company structure. It may be established by one member or by as many as 50 members. It has a minimum capitalization of just RON 200 (approximately €45). Compared to other companies structures, an LLC has simpler management-related requirements, greater flexibility and lower share capital requirements.

A joint stock company must have minimum of two shareholders and a minimum capitalization of RON 90,000 (approximately €25,000). It has a more complex management structure than an LLC.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

A commonly used structure would consist of incorporating one or two special purpose vehicles, both LLCs. One would hold real estate (in the event real estate is acquired, not leased); the other would be operational, to perform other activities.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

As of February 1, 2017, the seller pays a 3% tax on the sale of real estate (including land and/or construction).

If the value of the sale is below RON 450,000 (€100,000), the transaction is tax exempted. If the transaction exceeds RON 450,000, taxation will amount to the value exceeding that amount.

The above rules only apply to natural persons. Companies are subject to a flat 16% rate.

Russia

Russia

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Russia imposes no transfer tax on the sale, purchase or leasing of real estate.

At the same time, notarization of a real estate purchase agreement is subject to notary fees. Notarization is generally non-mandatory (subject to certain exceptions).

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Notary fees includes a state fee of 0.5% of the acquisition price (but not less than RUR 300 and not more than RUR 20,000). Registration of the title to the real estate, as well as registration of a leasing agreement, is subject to a registration fee of RUR 2,000 for individuals and RUR 22,000 for companies.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

The sale of commercial real estate may be subject to VAT at 18%, depending on the VAT regime of the seller. The sale of residential property and land plots, however, is not a VAT-liable transaction. The rental of real estate may be subject to VAT at 18%, depending on the VAT regime of the lessor. VAT is charged to the tenant and can be offset by the tenant, if it is VAT-liable. However, lease of the real estate to foreign individuals and legal entities accredited in Russia is exempt from VAT provided foreign individuals are residents (legal entities are incorporated) in the countries listed by the Russian government or in the countries where the same rules apply to lease of real estate to Russian residents and legal entities. The exemption is mandatory.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Corporate property tax
Russian and foreign legal entities that own Russian real estate properties qualifying as fixed assets are liable for the annual corporate property tax. The maximum rate is currently 2.2% of the average net book value of the fixed assets, but rates may vary depending on regional laws. Specific rates are set by local authorities.

Commercial property (including business or shopping centers) as well as residential properties not booked as fixed assets are taxed at a rate of 2.2% of their cadastral value, provided such real estate properties are included in the specific list of properties subject to taxation based on the cadastral value, which is approved by the local authorities. The cadastral value is determined by such authorities on January 1 of each year.

Individual property tax
Russian and foreign individuals who own Russian real estate properties are liable for the annual individual property tax.

The tax is levied on different kinds of real estate properties, excluding land plots. The tax rates are:

- 0.1% for residential properties (including buildings under construction), garages, parking lots and amenities
- 2% for real estate properties that are put on the list of properties taxed at their cadastral value approved by the local authorities, as well as real estate properties worth more than RUR 300 million. From 2015 through 2018, the amount of tax calculated at the cadastral value is paid in the reduced amounts—roughly 20% in 2015, 40% in 2016, 60% in 2017 and 80% in 2018—of the full amount of tax
- 0.5% for other real estate properties

This tax is levied on an annual basis and is charged to the owner of the property. For real estate properties taxed at their cadastral value, such cadastral value is set by local authorities on January 1 of each year.

Land tax
Land tax is a local tax payable on land that is owned by a resident or non-resident legal entity or individual. The tax base is the cadastral value of land, which is set by local authorities on January 1 of each year. The rates vary depending on the specific types of land. The maximum rate is 0.3% for land used for agricultural or housing properties and 1.5% for other types of land. Specific rates are defined by the local authorities.

4. What is the tax rate imposed on rental income?

As regards companies subject to corporate profits tax (CPT), rental income is subject to the standard rate of 20%. Russian or foreign companies owning property in Russia are typically subject to CPT on their rental income. In the case of a foreign entity letting real estate properties, tax should be withheld and paid by the lessee, unless such foreign entity has a permanent establishment in Russia that is letting such real estate properties. In the latter case, the tax shall be paid by the foreign entity on its own.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Interest related to loans aimed at the acquisition of Russian real estate property is generally deductible for Russian CPT purposes.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

The main limitations for the deduction of interest are stipulated by Russian transfer pricing rules and thin capitalization rules with the following effects:

- If the loan is provided between the interdependent parties, the interest rate is limited by the upper and lower limits depending on the currency of the loan
- If interest is payable (directly or indirectly) to a foreign legal entity or the loan is secured by a foreign legal entity, the amount deductible by the Russian borrower can be reduced subject to a specific thin capitalization formula; the excess amount is requalified into dividends

b. Is there any withholding tax on interest?

Interest paid to a foreign company that has no PE in Russia is subject to withholding tax (WHT) at the rate of 20%. Interest requalified into dividends in accordance with thin capitalization rules is generally subject to 15% WHT. The amount of tax can be reduced in accordance with a double-taxation treaty (DTT) concluded between Russia and the interest recipient's country of residence.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocation between land and building?

Depreciation of property is deductible if the entity declaring income in Russia is subject to corporate taxation in Russia (or to an equivalent tax established outside of Russia). Real estate constructions can be depreciated at rates set on the basis of their duration of use. Annual depreciation expenses are deductible from the taxable profits (including rental income) of the owner company.

Depreciation of land is not available in Russia. However, the purchase price paid for the land can be deducted at the moment of its sale.

Because of the different tax treatment of acquisition costs for buildings and for land plots, asset purchase agreements should account for these costs separately.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees are usually deductible for tax purposes, unless those are unreasonably high and inconsistent with the nature and volume of services provided. Fees that are not considered as being at arm's length may be challenged on the basis of Russian transfer pricing rules or on the basis of unsubstantiated tax benefit concept.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

As a general rule, tax losses incurred during a given fiscal year may be carried forward and offset against the available profits of subsequent fiscal years, with some restrictions. For the fiscal years from 2017 through 2020, special rules provide for the possibility to carry forward and offset losses in the amount of up to 50% of total profits for the corresponding fiscal year only.

Please note the remaining tax losses can be carried forward indefinitely and used within the same limits.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Capital gains resulting from the sale of properties or of an intermediate holding vehicle (whose assets consist of more than 50% of real property located in Russia) would be taxed at the rate of 20%, if the seller is a corporation. DTTs signed by Russia also mainly provide for Russia's right to tax such capital gains when the underlying property is located in Russia (see question 10).

Capital gains resulting from the sale of stock in a property-rich company may be exempt from taxation, provided that the shares are held by a high-tech company, that they qualify as listed and that their holding duration is at least five years starting from 2011.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Russian real-estate-sourced income of non-resident companies is subject to corporate profits tax in Russia and taxed at a rate of 20%, since most DTTs signed by Russia enable Russia to tax such income when the underlying property is located in Russia.

Also, capital gains arising from the sale of real estate property or shares in a property-rich company are subject to WHT at the standard CPT rate of 20%.

11. Are there tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

As already mentioned above, capital gains resulting from the sale of stock in a property-rich company may be exempt from taxation provided that the shares are held by a high-tech company, that they qualify as listed and that their holding duration is at least five years starting from 2011.

Also, capital gains derived from the sale of shares in a holding vehicle may be tax-exempt, provided that the holding duration of the shares is at least five years starting from 2011, and that assets of the holding company consist of less than 50% of real property located in Russia.

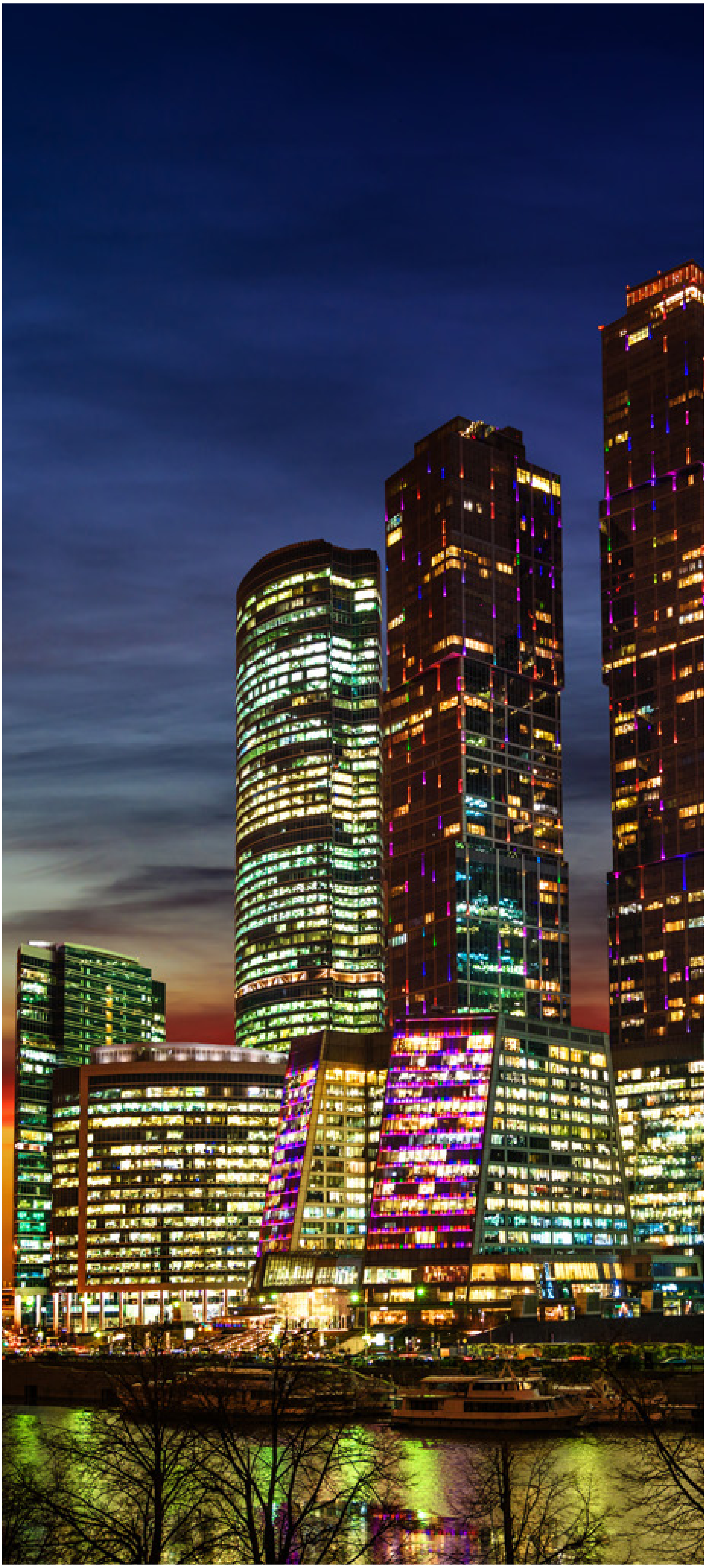
12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Currently no specific structures would enjoy real estate income and capital gains tax relief, except for those mentioned in question 11. Special structures could be elaborated depending on the types of immovable property, purposes of its use, its acquisition history and other aspects.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

The main differences concern the sale of properties. Individuals are subject to personal income tax on their property income at a rate of 13% for Russian tax residents and 30% for non-residents.

As a result, if the seller is an individual, capital gains resulting from the sale of properties or of the intermediate holding vehicle (whose assets consist of more than 50% of real property) are taxed at 13% or 30%. No social contributions apply to sale of real estate properties. However, an exemption of capital gains derived from the disposal of real estate is available for Russian tax-resident individuals, provided that property is held for more than five years (under certain conditions the minimum holding period may be reduced to three years) and is used for private purposes only.



Singapore

Effective March 11, 2017 additional conveyance duties (ACD) apply to the purchase or sale of shares or units ("equity interests") in property-holding entities (PHEs) that own primarily residential properties in Singapore. The ACD applies to the purchase or sale of equity interests by persons or entities who are significant owners of the PHE or who become so after the purchase. ACD has been implemented with the intention of closing the previous stamp duty rate differential between a direct asset purchase or sale of residential properties and an indirect purchase or sale of equity interests in PHEs owning primarily residential properties.

Singapore

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes, stamp duty is applicable on instruments for the sale, purchase or lease of immovable property in Singapore.

For a sale or purchase of **residential** property, the following duties apply:

- Buyer's stamp duty (BSD)
- Additional buyer's stamp duty (ABSD)
- Seller's stamp duty (SSD) for residential property

Effective March 11, 2017, additional conveyance duties (ACD) apply to the purchase or sale of shares or units ("equity interests") in property-holding entities (PHEs) that own primarily residential properties in Singapore. The ACD applies to the purchase or sale of equity interests by persons or entities who are significant owners of the PHE, or who become so after the purchase. ACD has been implemented with the intention of closing the previous stamp duty rate differential between a direct asset purchase or sale of residential properties, and an indirect purchase or sale of equity interests in PHEs owning primarily residential properties.

For a sale or purchase of **non-residential** property, the following duties apply:

- BSD
- SSD for industrial property

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Lease
Generally, for the grant of a lease of immovable property in Singapore with fixed rent, the tenant is required to pay stamp duty based on the higher of contracted rental or the market rental at the following lease duty rates:

Average annual rent (AAR)	Lease duty rates
Does not exceed S$1,000	Exempted
Exceeds S$1,000 and:	
Lease period of 4 years or less	0.4% of total rent for the period of the lease
Lease period of more than 4 years or for any indefinite term	0.4% of 4 times the AAR for the period of the lease

A lease with premium is one for which there is a lump-sum payment. Stamp duty is payable on the premium based on the BSD rates. If there is a rental in addition to the premium, stamp duty is payable on the rental based on lease duty rates.

Sale or purchase
For a sale or purchase of immovable property in Singapore, the following duties are payable on the relevant instrument(s):

Residential property

- ***BSD:*** The purchaser of the property is required to pay BSD based on the higher of the purchase price or the market value of the property, which is generally payable at the following rates:

Purchase price or market value of the property	BSD rates
First S$180,000	1%
Next S$180,000	2%
Remaining amount	3%

- ***ABSD:*** The purchaser of the residential property may also be required to pay ABSD in addition to BSD, once again based on the higher of the purchase price or the market value of the property, depending on the profile and residency status of the purchaser and the relevant count of residential properties, as follows:

Profile of purchaser	ABSD rates
Singaporean citizen (SC) buying first residential property	N/A
SC buying second residential property	7%
SC buying third and subsequent residential property	10%
Singaporean permanent resident (SPR) buying first residential property	5%
SPR buying second and subsequent residential property	10%
Foreigners and entities buying any residential property	15%

- ***SSD for residential property:*** The seller of the property may be required to pay SSD based on the higher of the sale price or the market value of the property, depending on the seller's holding period (from the date of purchase to date of sale) of the property, as follows (assuming a date of purchase on or after January 14, 2011):

Holding period	SSD rates	
	Date of purchase between January 14, 2011 – March 10, 2017	Date of purchase on or after March 10, 2017
Up to 1 year	16%	12%
More than 1 year and up to 2 years	12%	8%
More than 2 years and up to 3 years	8%	4%
More than 3 years and up to 4 years	4%	No SSD payable
More than 4 years	No SSD payable	

- **ACD for equity interests in PHEs*:*** In addition to existing stamp duty for shares, ACD applies to qualifying transfers of equity interests in a PHE as follows, based on the prevailing market value of the PHE's underlying residential property at the time of the qualifying equity transfer, pro-rated by the percentage of the beneficial equity interest transferred in the PHE:
  - **Additional conveyance duties for buyers (ACDB)**

    Existing BSD at 1% to 3%; and
    ABSD at 15% (flat rate)
  - **Additional conveyance duties for sellers (ACDS)**

    SSD at 12% (flat rate) for sales within the first three years of purchase

Non-residential property

- ***BSD:*** The BSD for non-residential property is payable by the purchaser at the same rates as in residential property above.

- ***SSD for industrial property:*** The seller of the property may be required to pay SSD depending on the seller's holding period of the property, as follows (assuming a date of purchase on or after January 12, 2013):

Holding period	SSD rates
Up to 1 year	15%
More than 1 year and up to 2 years	10%
More than 2 years and up to 3 years	5%
More than 3 years	No SSD payable

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

The sale, purchase and lease of **residential** properties in Singapore are exempted from goods and services tax (GST) in Singapore, although where any such residential property is furnished, the supply of movable furniture and fittings (not including any fixtures to the property) therein is GST-chargeable.

On the other hand, the sale, purchase or lease of **non-residential** properties are subject to GST.

GST is currently chargeable at 7%, and is typically added to the price charged to the purchaser. It is required to be charged, collected and accounted for by relevant sellers who are GST-registered in Singapore.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Property tax is imposed on the annual value of immovable properties in Singapore. The annual value of a property is generally derived based on the estimated annual rent the property could fetch if it were rented out on an unfurnished basis.

Property tax rates are applied on a progressive scale from 0% to 16% for owner-occupied residential properties, and from 10% to 20% for non-owner-occupied residential properties. For non-residential properties, such as commercial and industrial buildings and land, the property tax rate is 10%.

4. What is the tax rate imposed on rental income?

There is no specific tax rate on rental income, which is taxed at local personal income tax rates (progressive; currently from 0% to 22%) or the local corporate income tax rate (currently 17%), as the case may be.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Deductions are allowed in Singapore on expenses that are incurred wholly and exclusively in the production of the rental income and during the period of tenancy. In this regard, interest paid on the loan taken to purchase the property that is rented out is generally tax deductible.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

There are no thin capitalization rules in Singapore. Loans entered into between related parties are, however, subject to transfer pricing rules, under which interest is to be determined for tax purposes at an arm's-length rate.

b. If so, is there any withholding tax on the interest?

The withholding tax rate on interest paid to non-residents is 15%, subject to any reduced rates in any applicable avoidance of double taxation treaties.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Capital allowances on qualifying expenditures incurred on buildings or structures for qualifying activities may be deductible against rental income, in addition to the deduction of allowable expenses of a revenue nature. There is no tax depreciation available on land.

7. Are deductions available for management fees against rental income for tax purposes?

Costs of engaging a third party (e.g., a property agent) to carry out property management activities, such as ensuring rentals are paid promptly or performing maintenance and upkeep of properties, are generally considered allowable expenses against rental income. However, where the management fees are paid to a related party, the owners are required to justify that the amount paid is at market rate and commensurate with the services rendered.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Unutilized trade losses may be carried forward indefinitely and deducted against future income, subject to the satisfaction of the continuity of substantial shareholders test, i.e., at least 50% of the relevant entity's total number of issued shares must be beneficially owned by the same person(s) between the last day of the year in which the losses were incurred, and the first day of the year of tax assessment in which the losses are to be deducted.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

There is no tax on capital gains in Singapore. Gains from the sale of real estate in Singapore will, however, be taxable if they are of an income nature.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

There is no withholding tax on rental income from immovable property, nor any tax on capital gains in Singapore.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Due to the generally advantageous tax regime in Singapore (for example, the lack of tax on dividends and capital gains, and a relatively low corporate tax rate), real estate investment vehicles in Singapore are often simply organized in the form of limited liability companies.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Due to the difference between BSD (as explained above) on a purchase of immovable property and stamp duty on a purchase of shares in Singapore (being 0.2% of the market value of the shares), acquisitions and/or disposals of immovable property in Singapore may be structured in the form of share, as opposed to asset, sales.

However, the recent legislative changes, which apply ACD to the acquisition and/or disposal of equity interests in PHEs, are likely to stem such structuring to a certain degree in the residential properties sector. No announcement as yet has been made on the commercial properties sector. It remains to be seen if such structuring may now be caught under the general anti-avoidance provision in the law.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Apart from the differences in individual and corporate income tax rates, and the fact that companies are subject to higher ABSD rates than individuals for acquisitions of residential property, there are no material differences.

Spain

Spain

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Acquisition/purchase: The acquisition of real estate is either subject to transfer tax (TT) or value-added tax (VAT). Broadly, VAT applies if the asset is purchased from a VATable person, but VAT exemptions could lead to the application of TT. VAT is generally recoverable (with some relevant exceptions), while TT represents a real cost for the purchaser.

Stamp duty is triggered when a real estate acquisition is subject to VAT.

Leasing: This would mainly depend on the type of asset, the type of lease and if the lessor is a VATable entity or not. Generally, if the lessor is a VATable entity, the leasing will be subject to VAT. There are also relevant exceptions.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Depending on the type of asset, VAT would be either a super-reduced rate of 4%, a reduce rate of 10% or the standard rate of 21%. VAT is normally paid by the purchaser/tenant but the application of the "reverse charge mechanism" generally reduces the VAT leakage on the acquisition of real estate.

TT rates range from 6% to 11%, depending on the region where the asset is located). Reduced rates could apply under certain circumstances. This tax is paid by the purchaser.

Stamp duty rates range from 0.5% to 2.5%, depending on the region where the real estate asset is located. This tax is paid by the purchaser.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

See question 1 above.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

Yes. Property tax is a local tax that is levied annually for the ownership of real estate assets. The tax due ranges from 0.4% to 1.1%, depending on the municipality, over the cadastral value of the asset (an administrative value of the property).

Depending on the municipality of where the asset is located, minor taxes such as the garbage tax or the parking rate could be triggered.

4. What is the tax rate imposed on rental income?

Taxable income obtained by a Spanish entity from the exploitation of a real estate asset (i.e., the net rental income) is subject to corporate income tax (CIT) at a 25% rate.

Non-resident entities could benefit from a reduced 19% rate on lease income, under certain circumstances and provided that they will not be acting in Spain through a permanent establishment (PE).

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Broadly, the deductibility of interest is limited to up to 30% of the operating profit (as defined in the CIT Act) of the Spanish entity. Nevertheless, there is a minimum € 1 million threshold that is deductible in any case.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

The interest paid must also comply with transfer pricing rules if the loan is made by a related party.

Generally, non-resident entities acting without a PE cannot deduct the interest expense.

b. Is there any withholding tax on interest?

Generally, if the lender is an EU resident (other than a blacklisted territory), it would benefit from a withholding tax exemption on interest payments, subject to anti-abuse provisions.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Provided the real estate asset is recorded as a fixed asset on the balance sheet of the Spanish entity, the accounting depreciation would be deductible for tax purposes.

Plots of land cannot be depreciated.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees are deductible for CIT purposes, provided certain conditions are met. For example, the effectiveness and reality of the services must be proven, the services must represent a real economic or commercial interest to the Spanish entity, there must not be any duplicity in these services, the services must be duly accounted for and they must be calculated on an arm's length basis.

8. Are there any restrictions on the use and/or the carry-forward of losses?

Carry-forward tax losses can be used to offset the CIT taxable income, but only up to 70% of the taxable income. In any case, up to €1 million of carry-forward losses may be offset against CIT taxable income without limitation.

Additional restrictions apply when the turnover of the company exceeds €20 million.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Capital gains arising from the sale of real estate assets by a Spanish entity are taxed at a 25% rate for CIT purposes.

Certain exemptions/non-taxation rules could apply if the Spanish entity is under a special tax regime. For instance, capital gains on the sale of real estate properties created by Spanish real estate investment trusts (REITs, or Spanish SOCIMIs) would be exempt, provided certain conditions are met.

The transfer of real estate could also be subject to a municipal tax on the increase in value of the urban land (in Spanish, *plusvalía municipal)*. This tax would be payable by the transferor upon the transfer of the assets, based on the deemed increase in the value of the land which forms part of the property. The applicable tax rate may vary depending on the municipality where the real estate assets are located, with a 30% limit.

However, this tax is heavily contested by taxpayers when the sale of the asset results in a loss. The Constitutional Court of Spain (the nation's highest court) has recently aligned with taxpayers.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Rental income: If the lease agreement is between Spanish entities, it is most likely that the rental income would be subject to a 19% withholding tax. This withholding tax would be deductible from the CIT amount due. Nevertheless, provided certain conditions are met (e.g., the cadastral value of the lessor's properties is higher than €600,000), the withholding tax may not apply.

Capital gains: Capital gains generated by a Spanish entity are not subject to withholding taxation. Conversely, transfer of a real estate property by a non-Spanish resident entity (without a PE) is subject to a 3% withholding rate that applies in respect of the purchase price (i.e., total consideration).

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Yes, one could incorporate a Spanish REIT. In a nutshell, a 0% rate would apply provided certain conditions are met. For example, the properties should be rented out for at least a three-year period, and shareholders with at least a 5% stake should then be taxed at a minimum 10% rate. Nevertheless, because this structure is intended for institutional investors, the REIT must be listed on a regulated market.

There is also a special tax regime for entities that lease residential properties as their main activity. This, for example, may result in an 85% reduction in the CIT tax liability.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Not really. This will generally depend on the type of asset and the particular circumstances of the seller, such as whether it has tax debts pending or to be paid, the nature of such tax debts, the nature of its activities and other factors.

Provided that the underlying real estate assets are devoted to business activities, no VAT or TT is triggered on the transfer of shares.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Yes. Individual taxation is slightly different from Corporate taxation. For individuals, it is important to consider whether the individual is tax-resident in Spain or not, and whether the individual will be exploiting the real estate asset within a business activity or not.

Ukraine

Ukraine

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

The sale, purchase, mortgage or lease (if the lease is concluded for more than three years) of real estate is subject to notary certification.

Notary certification of the agreements with real estate by public notaries requires the payment of the stamp duty, by private notaries. The amount of the notarial fee is determined by the private notary and the individual or legal entity, but must not be less than the rates of state duty, which is levied by public notaries for similar notarial acts.

In addition to the stamp duty, a purchaser of real estate is required to pay pension fund duty at the rate of 1% based on the estate value.

Ukraine does not impose any other transfer tax.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Notary certification of the sale and purchase of real estate by public notaries is subject to 1% of stamp duty, based on the amount stated in the agreement. The lease of an estate certified by public notaries is subject to stamp duty of 0.01% of the mortgaged object's value. However, this duty is bounded by a minimum and a maximum amount, even if the assessed duty falls outside this range. As of March 2017, the minimum is equivalent to approximately €2.80 and the maximum is equivalent to approximately €28. The mortgage certified by public notaries is subject to 0.01% stamp duty.

The law does not establish the party that is liable to pay the stamp duty or the notarial fee. As a matter of practice, this issue is resolved at the parties' discretion.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Generally, the sale, purchase or leasing of real estate is subject to 20% VAT, excluding the sale of land plots or the sale (except for the first sale) of residential property.

The 20% VAT is determined in the contract (agreement) based on the sale or purchase price and is paid by the buyer. The seller is required to report VAT tax liabilities in its tax books. The seller is required to issue a VAT invoice with the amount of VAT and register the invoice in the electronic register of VAT invoices. The buyer pays VAT and has the right to offset VAT credit against its VAT liabilities.

Please note that the purchase of residential real estate is exempt from VAT, except of the first supply operation. The first supply means the first sale of residential real estate (i.e., the transfer of title to the newly erected real estate) or, alternatively, the supply of services on construction of such residential real estate, including cost of construction materials. This first supply is subject to 20% VAT and is paid by the buyer.

The letting and leasing of real estate is subject to 20% VAT and is paid by the lessee.

No VAT applies to the acquisition of land plots, except for land plots acquired together with the real estate objects that constitute an integral part of real estate.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

The real estate tax is imposed on owners of residential and nonresidential property, individuals and legal entities, including non-residents. The annual tax rate is set by rural, city or district authorities. It should not exceed 1.5% of the minimum wage effective as of January 1 of the reporting (tax) year per square meter. (The minimum wage as of January 1, 2017, is approximately €108).

The following real estate residential objects are exempt from real estate tax: residential apartments of less than 60 square meter, houses of less than 120 square meters and other types of property of less than 180 square meters.

Land tax is paid by the owners and users of the land, depending on whether the land is owned or leased. The tax applies equally to individuals or non-person legal entities. The tax rate of 1%, 3%, 5% or 12% depends on the classification, type and location of the land and on whether the land value has been assessed.

The tax rate of up to 3% (except for cultivated agricultural lands and common-use lands) applies to settled land with the normative monetary value, the tax rate of up to 5% applies to other types of assessable land. The tax rate of up to 12% of the normative monetary value applies to land plots permanently used by the subjects of economic activities (except for state and communal property). The marginal measure of land tax rates related to cultivated agricultural lands is up to 1% of their normative monetary value.

4. What is the tax rate imposed on rental income?

Rental income from legal entities is subject to Ukrainian corporate profit tax (CPT) at the rate of 18%.

Rental income received by individuals, both Ukrainian tax residents and non-residents, is subject to personal income tax at rates of 18% as well as temporary military tax at the rate of 1.5%.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

There are no special rules with respect to deductibility of interest on borrowings used to acquire real estate objects for tax purposes against rental income. As a general rule, legal entities can deduct interest if such borrowing is used in their business activities, such as for acquiring real estate for business purposes.

a. If so, are there any restrictions on the interest (e.g. thin capitalization, transfer pricing etc.)?

General thin capitalization rules in Ukraine normally apply to loan transactions with related parties, non-residents, where the debt-to-equity ratio exceeds 3.5:1. The ratio is computed as total amount of arithmetical average of borrowings to total amount of arithmetical average of equity at the beginning and the end of the tax period (year).

The deduction of interest paid on loans exceeding this ratio is limited to 50% of profits before tax (plus the amount of interest expense and accounting depreciation) in a specific tax period. The profit before tax in Ukraine is computed based on national accounting standards (NAS) or international financial reporting standards (IFRS), depending on which type of reporting standards the taxpayer would choose. The non-deducted portion of interest can be carried forward to future periods subject to the same limitation, but the balance carried forward should be reduced annually at 5% of the interest amount until the interest if fully relieved.

As a general comment, Ukrainian transfer pricing rules apply in each case when a transaction is recognized as controlled transactions with non-residents, related parties and some other non-residents when the taxpayer's annual income exceeds the equivalent of €5 million, and when the volume of transactions with each counterparty exceeds the equivalent of €330,000.

b. If so, is there any withholding tax on the interest?

As a matter of Ukrainian banking law, a borrower will be disallowed from paying interest to a foreign lender in excess of the maximum interest rate, which is currently established to be:

- 9.8% per year for fixed-rate loans with a maturity of up to one year
- 10% per year for fixed-rate loans with a maturity between one and three years
- 11% per year for fixed-rate loans with a maturity of longer than three years
- For floating-rate loans, LIBOR for three-month US dollar deposits plus 750 basis points

Interest payable to a non-resident creditor is subject to 15% of Ukrainian withholding tax (WHT), unless a relevant double-taxation treaty (DTT) provides a reduced or zero rate of WHT.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Ukrainian tax law allows deductions for depreciation and/or building capital allowance against rental income or any other income for tax purposes, if real estate object qualifies as fixed asset. The assets (construction objects) may be depreciated using one of the methods over the period of an asset's lifetime, provided that they are used in business activity of the entity (production fixed assets).

Land plots are not subject to depreciation.

Tax depreciation terms for fixed assets are outlined in the following chart:

N	Fixed assets	Term
1	Group 1 - Land plots	-
2	Group 2 - Improvements of land not related to capital construction	15 years
3	Group 3 - Construction objects	20 years
4	Structures/buildings	15 years

The calculation of depreciation for land and real estate is carried out according to NAS or IFRS and is subject to certain limitations by law.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees are usually deductible against any of the taxpayer's income, including rental income, provided that such fees are related to business activity of the taxpayer and computed at arm's length, if applicable.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

Generally, Ukrainian companies can carry forward business losses and capital losses indefinitely. The change of control should not, in principle, affect the taxpayer's right to carry forward and utilize accumulated tax losses in subsequent tax periods.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Income from the disposal of real estate exceeding its book value (i.e., a capital gain) is subject to 18% CPT. Such taxable income may be offset against any allowable deductible expenses of the seller.

The 15% WHT applies to income derived by a non-resident from the sale of real estate, unless the non-resident has permanent establishment in Ukraine. If so, then such income is subject to 18% CPT.

No specific exemptions apply to taxation of capital gains arising from the sale of real estate.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

The 15% withholding tax applies to rental income, unless a non-resident has permanent establishment in Ukraine. If so, then such income is subject to 18% CPT.

As a general rule, 15% WHT applies to a capital gain from the sale of real estate property or the sale of shares in a Ukrainian company that owns real estate property.

Relief applies, and the capital gain from the sale of shares is exempt from 15% WHT, in cases when a DTT exempts capital gains from the sale of shares. Usually this relief applies if shares derive their value directly or indirectly from immovable property for less than 50%. Otherwise, if the greatest part of shares value (more then 50%) directly or indirectly derives value from immovable property situated in Ukraine, 15% WHT will apply. Most DTTs signed by Ukraine enable the country to tax such income as described above.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

We usually recommend implementing a simplified purchase structure via a Ukrainian special purpose vehicle (SPV) for each real estate property acquired. If any commercial activity were actually to be developed, a more sophisticated tax structure could be envisaged (e.g., having the SPV held through a holding company, either Ukrainian or foreign).

Regarding investment structure for the purchase of the agricultural land, the two-tier structure is recommended due to the following. Under Ukrainian law, only domestic companies have the right to own agricultural land. In this case more sophisticated structuring should apply, and a two-tier structure should be established. Under the two-tier structure, the underlying company that owns the agricultural land is a Ukrainian company established by another Ukrainian company, whose founders are resident and non-resident.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

If a real estate structure is arranged via a Ukrainian SPV, in the case of disposal we recommend selling the shares of that SPV.

The sale of shares transaction (a share deal) is not subject to 20% VAT. No stamp duty or pension fund duty applies. Thus the share deal is viewed to be more tax-efficient than the sale of real estate assets (an asset deal).

In certain cases, when more sophisticated holding structures are implemented (for instance, through the non-resident holding SPV) the sale of shares of such non-resident holding SPV may be applied.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

For Ukrainian individual residents, income derived by the seller from the sale of commercial and residential real estate property is subject to 5% personal income tax (PIT) and 1.5% temporary military tax. Individuals are also required to pay 1% stamp duty. The buyer should pay 1% of pension fund charge based on the asset's value.

The sale of residential property owned for more than three years, provided this is the individual's first sale of residential property during current tax period (one year), is exempt from PIT and temporary military tax.

Income derived by non-residents the from sale of real estate is subject to 18% PIT and 1.5% temporary military tax.

Income derived by residents and non-residents from the lease of real estate is subject to 18% PIT and 1.5% temporary military tax.

The tax consequences for companies are described above.

United Kingdom

United Kingdom

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

Yes, stamp duty land tax (SDLT) is payable on the direct purchase or leases of property situated in the UK.

No SDLT is payable on the purchase of shares in a company that owns or leases UK property. If the shares purchased are in a UK company stamp duty at 0.5% may be payable instead. Stamp duty is generally not payable on the transfer of shares in a non-UK company.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

SDLT is payable by the buyer or tenant on increasing portions of the chargeable consideration, at a rate that depends upon the commercial or residential use of the property and the type of consideration.

Where two or more property transactions are "linked" and the parties are "connected," the rates apply to the total consideration of all such transactions.

Commercial and mixed-use property
The current rates of SDLT for acquisitions of commercial, or mixed-use (i.e., mix of commercial and residential use) property are as follows:

Property value (including any VAT)	SDLT rate
Up to £150,000	0%
The portion from £150,001 to £250,000	2%
The portion above £250,000	5%

In relation to leases of commercial UK property, SDLT is payable on the premium at the above rates and, in the case of new leases (rather than existing assigned leases), SDLT is also payable on rent as follows:

Net present value of rent (including any VAT)	SDLT rate
Up to £150,000	0%
£150,000 to £5 million	1%
More than £5 million	2%

Residential property
The current basic rates of SDLT for acquisitions of residential property are as follows:

Property value	SDLT rate
Up to £125,000	0%
The portion from £125,001 to £250,000	2%
The portion from £250,001 to £925,000	5%
The portion from £925,001 to £1.5 million	10%
The portion over £1.5 million	12%

If the acquisition is of a new leasehold interest, SDLT is payable on the lease premium as per the above rates, and, if the net present value of rent over the life the lease is more than £125,000, SDLT is payable at 1% on the portion above £125,000. Where a lease is assigned, SDLT is only payable on the lease premium.

If a company, partnership with a corporate member or collective investment scheme purchases high-value residential property (currently anything more than £500,000), SDLT is payable at 15% on the entire purchase price. There are, however, reliefs available from the 15% rate, including for high-value residential properties purchased as part of a property development, property rental or property-trading business.

If an individual buys residential property otherwise than to replace their existing main residence, the buyer must pay an additional 3% on each portion of the consideration or lease premium paid, at the rates above.

2. Is value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

Supplies of interests in land or buildings are generally exempt supplies for VAT purposes, subject to certain exceptions, and depending on whether the property is commercial or residential. No VAT is chargeable on the supply of assets or services of a business where that business is transferred as a going concern (a TOGC), in which case the totality of transferred assets will be treated as neither a supply of assets nor goods, so long as:

- The transfer is between taxable persons, or in the case of the transferee, persons liable to be VAT registered as a result of the transfer (if not already VAT registered)
- The business is capable of being carried on as an independent economic activity, and
- The transferee intended to use the assets in the same kind of business as carried on by the transferor

If the UK property sold or purchased is rented at the time of disposal, the transfer is likely to be considered a TOGC, and hence not subject to VAT.

Where an exception applies, the supply may be standard or zero-rated, depending on the type of property.

The main exceptions, which are standard-rated at the current rate of 20%, are the sale of a freehold interest in an uncompleted commercial building; the sale of a freehold interest in a commercial building completed less than three years before the sale; and any supply of an interest in land or buildings where an option to tax has been exercised by the supplier in relation to such land and has not been revoked.

A landlord of a commercial building who makes exempt supplies, and is therefore not able to recover any VAT incurred in making its supply, may "opt to tax" the property so that it charges an amount of VAT at the standard 20% rate and can recover the VAT incurred on costs relating to its supply of the property. On the basis that the property supplied to tenants is predominantly non-residential, there should generally be no restrictions to input tax recovery for the landlord.

A conversion of a commercial building into a residential building, which is then disposed of, is a zero-rated supply. The seller need not charge VAT, but can recover any VAT it has incurred in making that supply.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

There is an annual tax on enveloped dwellings (ATED) payable in relation to each day that a corporate entity holds UK residential property valued at more than £500,000. The current annual charges are as follows:

Property value	ATED charge
More than £500,000 but not more than £1 million	£3,500
More than £1 million but not more than £2 million	£7,000
More than £2 million but not more than £5 million	£23,350
More than £5 million but not more than £10 million	£54,450
More than £10 million but not more than £20 million	£109,050
More than £20 million	£218,200

Similar to the 15% SDLT charge on high value residential property, there are reliefs available for (among others) property rental businesses, property development trades and property dealers.

ATED does not apply to individual purchasers of UK residential property, nor to UK commercial property.

4. What is the tax rate imposed on rental income?

UK companies are subject to corporation tax on (worldwide) rental income, which is currently chargeable at a rate of 19% but is proposed to fall to 17% in April 2020.

Non-resident corporate landlords are subject to income tax at the basic rate of 20%, rather than the corporation tax rate of 19%. Tenants/letting agents are required to deduct the basis rate of income tax from rental payments unless the non-resident landlord has applied under the Non-Resident Landlord Scheme (NRLS) to receive payments of rent gross.

Individuals are subject to income tax charged on a progressive scale, which is currently 20% for basic rate taxpayers, 40% for higher rate taxpayers and 45% for additional rate taxpayers.

Non-residents that are also taxed in their country of residence on UK income may be able to claim tax relief under the terms of any double-taxation agreement with the UK.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

UK tax-residents are generally entitled, for corporation tax purposes, to deduct interest on borrowings used to acquire UK property against other profits (either income or capital), subject to certain restrictions.

Non-residents, however, fall within the UK's income tax regime, which permits the deduction of interest only if it is incurred "wholly and exclusively" for the purpose of their property rental business. The entire amount of the expenditure must be made for the purpose of the business. This should be the case where borrowed money is used to directly fund the acquisition of a property. However, if the expenditure had a dual purpose or was used to acquire an interest in a property holding vehicle, it may not be deductible.

The UK government is consulting on whether to bring non-residents out of the UK income tax regime and into the UK corporation tax regime, to provide consistency of tax treatment. The consultation document indicates that the aim of the proposal is to apply the new corporate interest and loss relief reforms to non-resident investors in UK real property. A key question for consultation is whether this can be done within the existing income tax regime or whether it is more appropriate to apply those reforms within the corporation tax regime. We expect that, following consultation later in 2017, the government's preference will be to apply the reforms within the corporation tax regime, possibly with effect from April 2018.

a. If so, are there any restrictions (e.g., thin capitalization, transfer pricing, etc.)?

Yes. UK residents are subject to restrictions including the UK's new corporate interest restriction and hybrid mismatch rules. Both UK residents and non-residents are subject to the UK's transfer pricing rules.

New corporate interest restriction

The UK corporate interest restriction, imposing a fixed and group interest-to-EBITDA (earnings before interest, tax, depreciation and amortization) ratio, is intended to take effect from April 1, 2017. The rules have not yet received Royal Assent, but we expect this to be arranged by the new government later in 2017 after the general election, with effect from April 1, 2017.

The restriction follows recommendations by the Organization for Economic Cooperation and Development's (OECD) BEPS project in October 2015 and a UK government consultation from 2015 to 2016. It includes two formal ratio rules, the Fixed Ratio Rule and the Group Ratio Rule. It also retains a modified form of the previous Worldwide Debt Cap.

Broadly, the Fixed Ratio Rule permits tax deductions for UK net interest expenses up to the amount of 30% of the UK group's taxable EBITDA. The UK group may allocate restricted interest between group companies. The restricted interest may be carried forward and deducted in future years if there is sufficient capacity within the 30% limit, and spare capacity may be carried forward and used in subsequent periods for up to five years. This means that if a group does not use its capacity in the early years of a project, it may claim deductions when it makes a profit.

The Group Ratio Rule provides relief for groups with third-party interest expenses above the fixed ratio, by allowing interest deductions for UK net interest expenses up to the amount of the group's ratio of worldwide net interest expense to worldwide EBITDA, capped at a maximum ratio of 100% of EBITDA.

The Modified Debt Cap broadly applies to restrict interest deductions to the extent that the UK net interest exceeds the worldwide group's total external interest expense. In the context of the new rules, the Modified Debt Cap will apply to ensure that any groups which have little external debt, who would therefore be caught by the previous Worldwide Debt Cap, are unable to take advantage of the new Fixed Ratio Rule by gearing up to 30% of the UK group's EBITDA.

Overriding all of the new rules is a £2 million annual interest allowance. This is significant as it ensures that the UK group may deduct £2 million of net interest expense each year, irrespective of whether it is in breach of the Fixed Ratio Rule, Group Ratio Rule or the Modified Debt Cap. This is intended to assist small businesses but in fact assists any business that has net interest expense. We would expect the amount of the £2 million allowance to be increased over time if UK interest rates rise substantially.

New hybrid mismatch rules

The new UK hybrid mismatch rules came into force on 1 January 2017. They are intended to implement the OECD's final recommendations on BEPS Action 2. HMRC provided updated draft guidance on the new rules in March 2017 and additional updates are expected, due to the complexity of the rules and the difficulties encountered during their implementation.

An aim of the rules is to disallow a deduction of interest, for corporation tax purposes, where the interest is deductible in the UK without a corresponding amount of income being taxable for another person (known as a "deduction/non-inclusion" mismatch). They may also apply where interest is deductible from more than one person's income or for the purposes of more than one tax (a "double deduction" mismatch).

Some of the transactions that may give rise to mismatches include shareholder loans, Luxembourg financing, UK companies with overseas permanent establishments, companies operating through a UK permanent establishment and US "check the box" regime and hybrid entities. For example, there is a risk that a UK payer of interest that is "checked open" for US tax purposes may be regarded as a person for UK tax purposes but not under the law of the US, so that it is entitled to a tax deduction in the UK for its interest expense, but no corresponding amount of income is taxable in the US, as the payment is ignored.

Where the conditions for a deduction/non-inclusion mismatch are met, the mismatch is counteracted by denying the UK deduction. However, the rules provide potential relief, as the amount of the restricted deduction may be allowed as a deduction from any "dual inclusion" income of the hybrid payer. Broadly, dual inclusion income means income that is ordinary income of the UK payer for corporation tax purposes and is also ordinary income of the offshore payee for the offshore country's tax purposes, which arises in connection with the loan arrangement. The restricted deduction is set first against dual inclusion income arising in the same accounting period, with unused amounts carried forward to later accounting periods.

For mismatches resulting in a deduction offshore with no corresponding income in the UK, the counteraction would be to treat the amount of the interest income as taxable income in the UK.

Corporation tax rules connected with tax avoidance might also be applied, including the "unallowable purpose" rule which can apply to disallow debits or reduce credits if a loan has a tax avoidance purpose.

Transfer pricing

The UK's transfer pricing rules can limit the deductibility of interest on a loan, particularly where the loan-to-value percentage or the interest rate margin is excessive. There is no single test to determine whether a company is in breach of the rules. Instead, the UK applies the arm's length principle pursuant to which Her Majesty's Revenue and Customs (HMRC) can treat the terms of the actual transaction as having instead taken place on the independent, arm's length terms. As a result of this principle, a company's liability may be adjusted. For example, if the interest rate is excessive then the deduction for interest payments may be denied.

Loans from third-party providers (such as bank loans) will generally be considered to be on arm's length terms, as they are negotiated between unconnected parties in the course of a commercial transaction, and so should not be subject to any transfer pricing adjustments. However, if guarantees are given by entities within the group this will need to be taken into account.

The UK transfer pricing rules may apply to shareholder loans if the shareholder loans have non-arm's length terms that reduce the UK tax liability of an entity. In particular, the UK rules may apply to deny the tax deduction for interest payments if (i) the loan to value ratio (LTV) is greater than a normal third-party loan or a loan would not be made at all at arm's length; or (ii) the interest rate margin exceeds an arm's length amount (or other terms are agreed that would not be agreed at arm's length).

In these instances there is an element of subjectivity as to what is an appropriate LTV and what is an excessive rate of interest. It is necessary to gather objective evidence to justify the interest deductions and this is generally done in one of three ways, depending on the complexity of the arrangements: (i) entering into advance agreement with HMRC; (ii) benchmarking the proposed structure usually an internally produced economic analysis; or (iii) commissioning a report by a third-party transfer pricing specialist.

b. Is there any withholding tax on the interest?

UK withholding tax on interest may be payable, at a rate of 20%, if the loan is intended to continue for at least one year and the interest payable on the loan is deemed to have a UK source.

Whether interest has a UK source depends on a number of criteria. The key factors to consider are the residence of the debtor, the place of performance of the contract, the method of payment, the governing law of the contract and jurisdiction for proper enforcement, the residence of any guarantor and location of any security. HMRC's view is that the residence of the debtor is the most important criterion, together with the location of the debtor's assets, because this is where a creditor would usually seek to enforce a debt. When determining the residence of a debtor, it is necessary to look at where their main seat of business or center of activity is, or other form of principal establishment (not the same as tax residence).

An exemption from interest withholding tax may be available if the lender qualifies for a domestic exemption (e.g., if it lends through a London branch and is therefore within the scope of UK corporation tax), or if the lender is eligible under a relevant double taxation treaty to receive interest payments gross.

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

Capital allowances are available on qualifying capital expenditure on capital assets for use wholly or partly for a taxable business, which reflect depreciation of those assets.

Buildings themselves do not usually qualify for capital allowances, but capital allowances are available for most plant and machinery (for which the allowance is 18% per year). Certain "special rate" plant and machinery (including integral features such as electrical systems, lifts and escalators) attracts a reduced 8% rate of written down allowance.

The availability of capital allowances may be restricted however, depending on the tax history of the property and allowances claimed by previous owners (due to the pooling and fixed value requirements imposed on commercial buildings).

Capital allowances are not deductible for non-resident landlords that are not within the NRLS.

7. Are deductions available for management fees against rental income for tax purposes?

Deductions for management fees are generally available for UK-residents under the corporation tax regime, provided that the amount of the fees is calculated at arm's length for transfer pricing purposes.

Non-residents under the income tax regime must ensure that the fees are incurred "wholly and exclusively" in the course of their business. They must also comply with transfer pricing principles. Non-resident landlords outside of the NRLS may only deduct expenses that a tenant (or agent) has paid.

8. Are there any restrictions on the use, and/or carry-forward, of losses?

UK-resident companies can set off trading losses of a property business against all profits (whatever the trade of origin) within the same accounting period, or an accounting period in the preceding one year. Until recently, a UK company could not carry forward its

losses into future years to set those losses off against profits of other companies in its UK group. It could only set those losses off against its own profits.

Under the new carried forward loss rules effective from April 1, 2017 (which, like the corporate interest restriction, are expected to receive Royal Assent later in 2017), carried-forward losses arising on or after April 1, 2017, can be set off against the profits of other companies within a UK group. Coupled with this new flexibility, however, is a new restriction to limit the set-off to 50% of group profits exceeding £5 million per year. These restrictions apply to all existing and future carried-forward losses, not just those arising on or after April 1, 2017. For pre-April 2017 carried-forward losses, therefore, there is no flexibility to set off losses against profits of other group members, and they are subject to the 50% limitation from April 1, 2017. Carried-forward losses arising from April 1, 2017, however, can be used flexibly among UK group members, subject to the 50% restriction on profits exceeding £5 million, calculated on a group-wide basis.

Non-resident companies can generally set off trading losses of a property business against property income or, in limited circumstances, against other net income (e.g., if the losses have a capital allowances connection). Losses can only be carried forward and set against income from the same property business for the following tax year. However, if non-residents are brought into the corporation tax regime following the current consultation, we expect that the new carried-forward loss rules will also apply to them.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Subject to the below, UK companies are subject to corporation tax (at 19%) on their business profits, which includes chargeable gains. Group relief may be available for transfers of property between 75% group companies such that the transaction is made on a no gain/no loss basis.

Generally, non-resident companies disposing of commercial property are not subject to capital gains tax, unless they are in fact UK-resident or they are carrying on a trade of dealing in or developing UK land.

UK-resident individuals are subject to capital gains tax (CGT) at 10% or 20% (with a surcharge of 8% for disposals of residential property), depending on their level of taxable income in the relevant tax year. Individuals and trust benefit from an annual exempt amount (currently £11,100). No CGT charge arises if a UK individual disposes of their only or main residence.

Non-residents disposing of residential property are subject to non-resident capital gains tax (NRCGT) (where ATED-related CGT does not apply, which takes precedence over NRCGT), subject to certain carve outs for trade-related disposals. NRCGT is chargeable at 18% or 28% for individuals (depending on their level of total taxable income and gains in the relevant tax year), 28% for trustees and 20% for companies (rather than corporation tax). As with UK CGT, principal private residence relief should negate any NRCGT that would otherwise be payable for an individual disposing of their only or main residence.
Companies (UK and otherwise) that are subject to ATED may be subject to ATED-related CGT, where the relevant high-value residential property is later disposed of. ATED-related CGT is chargeable at 28%.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

Non-resident landlords are subject to withholding tax at the basic rate (20%) on rental income. Such non-resident landlords may apply for the NRLS, under which applicants can apply for the rental income to be paid gross. Whilst this is a cash flow benefit, such landlords will continue to be taxed on the rental income.

No withholding tax is imposed in the UK on any capital gains deriving from UK property.

11. Are there any tax-efficient real estate investment vehicles or structures to acquire, hold and exploit real estate that could be utilized?

Jersey property unit trusts (JPUTs) are frequently used to acquire and hold interests in UK commercial real estate. The main advantage is that they provide transparency for income tax purposes, provided the trust deed is drafted as a "Baker" trust that gives unitholders entitlement to their share of the income of the trust as and when it arises, and they can be treated as opaque for UK capital gains tax purposes, so that an exemption applies, provided that they are a "unit trust scheme" for the purposes of the Financial Services and Markets Act 2000 and are managed and controlled outside the UK.

Real estate investment trusts (REIT) that carry on a property-letting business and are quoted on a recognized stock exchange can be tax-efficient for holders of multiple property, as a REIT is exempt from corporation tax on income and gains from its qualifying rental business if certain conditions are met.

In relation to residential property, prior to the recent changes, companies were often used to hold UK property. However, with the introduction of the 15% SDLT charge and ATED charges on enveloped UK property, this has now become less tax-efficient.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

It is common for UK commercial property to be owned by an offshore special purpose vehicle (in jurisdictions such as Jersey, BVI and Luxembourg). The reason for this is twofold:

- firstly, an offshore vehicle can dispose of UK commercial investment property free from UK tax on capital gains;
- secondly, the acquisition of a offshore vehicle holding UK real estate is generally free from UK SDLT and stamp duty. This brings a 5% reduction in acquisition costs for the purchaser by avoiding the SDLT charge.

It is therefore common in the UK market to look to sell UK commercial real estate by selling the company owning the asset, with the buyer and seller negotiating who obtains the benefit of the SDLT saving. Obviously, buying the property owning company means that the purchaser will be inheriting any historic liabilities (tax or otherwise) which are in the entity. It has become common in the UK market for full due diligence of the company to be carried out and indemnities and warranties to be given on the sale of the company. More often than not, a warranty and indemnity insurance policy is obtained, so that the seller can have a "clean break" and not have to stand behind the warranties.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Following the changes imposed by the UK government with effect from this year, the number of material differences between individuals and companies transferring UK property have been diminished.

The SDLT treatment differs between corporates and individuals in relation to residential property, and with the imposition of ATED (and ATED-related CGT) on corporates acquiring and holding residential property, it has generally become less tax-efficient for corporates in relation to UK transfer taxes.

The tax on rental income is less for corporates (at 19% for UK residents and 20% for non-residents), compared to UK-resident individuals who are subject to income tax at up to 45% (plus impending restrictions on interest deductibility for rented residential property).

A key difference remains in CGT applicable to commercial property disposals, with individuals subject to CGT at 10% to 20% and UK corporates at 20%, whilst non-residents remain exempt from any capital gains tax on disposals of commercial property unless they are trading.

United States

United States

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1. Is stamp duty, transfer tax or a similar tax payable on the sale, purchase or leasing of real estate?

At least 35 US states, and a number of counties and cities, impose a tax on the transfer of an interest in real estate. The definition of an "interest in real estate" varies by jurisdiction, and can include options and certain leasehold interests.

a. If so, what are the rates and who is required to pay the duty or tax (e.g., seller or buyer, landlord or tenant, etc.)?

Rates in various states range from 0.1% to 5%, including local and county taxes (where applicable). Most jurisdictions impose the tax on the consideration paid for the real estate interest, while others base the tax on the value of the interest. Among the jurisdictions with the highest tax rates are Pennsylvania (rates vary by locality from 2% to 5%) and New York City (maximum combined state and local rate of 3.025%).

Some jurisdictions dictate which party is obligated to pay the tax, and in certain cases impose the primary payment obligation on one party and a secondary obligation on the other party. Where state or local law does not obligate a particular party, the parties must agree on which party will pay the tax.

2. Is there value added tax, goods and service tax or a similar tax payable on the sale or purchase of real estate, and the letting of real estate? If so, what are the rates and who is required to pay the tax?

No. However, state sales tax may be imposed on the transfer of personal property together with the real estate. In transactions involving hotels, among other asset classes, the amount of personal property can be significant. Where such sales tax is imposed on personal property, it generally ranges from 2.9% to 7%.

3. Are there any annual taxes that may be payable on the ownership of real estate (e.g., annual land tax, municipal taxes, surtaxes, etc.)?

All 50 states and many municipalities impose annual real estate taxes at rates that vary widely by jurisdiction. For owner-occupied housing in 2014, New Jersey had the highest effective annual real property tax rate of 2.11%, whereas Hawaii had the lowest at 0.28%. State and local real estate taxes are generally deductible against federal taxable income, subject to certain limitations.

4. What is the rate of tax imposed on rental income?

US individuals are subject to federal tax on net rental income at graduated rates up to 39.6%. An additional 3.8% Medicare tax generally applies to high-income earners on rental income not derived from an active business.

US corporations are subject to federal tax on net rental income at graduated rates up to 35%. Individual and corporate taxpayers may also incur state and/or local income tax. State and local tax rates vary by location, and may be significant. A domestic corporation that earns rental income from real property located in New York City, for example, will be subject to an effective income tax rate of more than 46%.

Foreign investors are taxed on US-source rental income at a 30% rate without offsetting deductions, unless the rent is attributable to a US trade or business, in which case the investor would be subject to tax on net income at graduated rates that are the same as those paid by US investors. A foreign investor may elect to be taxed on a net basis as if the rent were US trade or business income ("net election"). Although higher marginal rates could apply in the case of a net election, the offsetting deductions for depreciation, interest, real estate taxes and other expenses typically would significantly reduce the investor's overall tax burden. The Medicare tax does not apply to foreign investors.

A foreign corporation that conducts an active rental business in the United States, or that makes a net election, may also be subject to a 30% branch profits tax on rents that are deemed repatriated from its US branch. The branch profits tax may be reduced, or in certain cases eliminated, by an applicable double tax treaty.

5. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income?

Interest on borrowings used to acquire US real estate is generally deductible against rental income for US federal income tax purposes. Deductibility of interest for state and local income tax purposes varies by jurisdiction.

a. If so, are there any restrictions on the interest (e.g., thin capitalization, transfer pricing, etc.)?

Foreign investors can deduct interest on borrowings used to acquire US real estate only against rental income that is attributable to an active rental business.

If acquisition debt issued by a corporation is re-characterized as equity for tax purposes, the interest payments generally will be treated as non-deductible dividends. If debt issued by a partnership is so re-characterized, the interest payments may in certain circumstances be treated as non-deductible. In order for debt to be respected for tax purposes, there generally must be a reasonable expectation of repayment and market terms.

Under the passive loss rules, individuals may deduct interest expense in a taxable year only to the extent of rental income and income from other passive activities. Any disallowed interest expense can be carried forward to offset rental income or other passive income in subsequent taxable years. The passive loss rules do not apply to real estate professionals who materially participate in active rental real estate businesses.

To the extent not taken into account under the passive loss rules, interest paid by an individual may be subject to limitation on deductibility under the investment interest limitation rule. This rule generally limits the deductibility of investment, rather than business, interest expense to the amount of the taxpayer's net investment income.

Under an "earnings stripping" rule, a US corporation (or foreign corporation that is engaged in a US trade or business) with a debt-to-equity ratio exceeding 1.5 to 1 may be subject to restrictions on the deductibility of certain interest paid to related foreign persons. These restrictions apply only to interest not subject to US withholding tax at the full 30% rate, for example, due to treaty relief or domestic law exemption. If the earnings stripping rule applies, the corporation's deduction of net interest expense is generally limited to 50% of earnings before interest, taxes, depreciation and amortization (EBITDA). Disallowed interest is carried forward indefinitely.

Effective for taxable years ending after January 18, 2017, certain related-party debt issued by US corporations may be re-characterized as stock to the extent that (i) certain threshold documentation requirements are not satisfied or (ii) the debt instrument is issued to a controlling shareholder in a distribution or in another transaction that achieves an economically similar result.

Under US transfer pricing rules, the Internal Revenue Service (IRS) may reallocate income among related taxpayers with respect to intercompany loans that do not bear an arm's-length interest rate.

b. If so, is there any withholding tax on the interest?

Foreign investors are subject to a 30% withholding tax on interest payments received from US sources, unless the interest is effectively connected with a US trade or business. This withholding tax may be reduced or eliminated under an applicable double tax treaty.
The United States does not impose withholding taxes on "portfolio interest." Portfolio interest generally includes non-contingent interest paid on certain US registered obligations, unless the interest is received by:

- A controlled foreign corporation from a person related to the issuer
- A bank on an extension of credit pursuant to an ordinary course lending agreement, or
- A 10% shareholder of the issuer

6. Are deductions for depreciation and/or building capital allowance available against rental income for tax purposes? Are there separate allocations between land and building?

US persons who own real property can claim depreciation deductions for property used in a trade or business or held for the production of income. Foreign investors can claim depreciation deductions for real property if the property is used in the active conduct of a US trade or business or if a net election has been made.

Depreciation deductions can be claimed only for that portion of real property which is depreciable. Because land is not depreciable, an allocation must be made between the value of improvements and the underlying land. Under the Modified Accelerated Cost Recovery System (MACRS), commercial real estate generally is depreciable over 39 years, using a straight-line method. Residential real estate is depreciable ratably over 27.5 years. Certain components of improved real estate may be eligible for depreciation over shorter periods of time.

7. Are deductions available for management fees against rental income for tax purposes?

Management fees incurred by individuals in connection with an investment or other nonbusiness activity are deductible for US federal income tax purposes only to the extent such deductions, along with other so-called miscellaneous itemized deductions, exceed 2% of adjusted gross income.

The amount in excess of the 2% threshold is further limited to the excess of the total itemized deductions exceeding 3% of adjusted gross income above a specified base, or 80% of the itemized deductions, whichever is lower. Deductibility of fees for state and local income tax purposes varies by jurisdiction.

8. Are there any restrictions on the use, and/or the carry-forward, of losses?

For US federal income tax purposes, net operating losses (NOLs) generally can be carried back two years and carried forward 20 years, subject to certain limitations. Corporate NOLs may be subject to further restriction upon certain shifts in ownership of the corporation's stock.

For state and local income tax purposes, the calculation of NOLs, and the ability to carry back and carry forward such NOLs, varies by jurisdiction.

9. Are capital gains arising on the sale of real estate taxable? If so, what are the rates and are there any exemptions?

Yes, capital gains on real estate are taxable.

Although a foreign person is generally not subject to US federal income tax on capital gains (subject to certain exceptions), there is a general exception for capital gains realized on the disposition of a US real property interest. US real property interests include parcels of US real property and stock in domestic corporations that are US real property holding corporations, and certain other interests in US real property.

State and local income taxes may also be imposed on capital gains on real estate.

For individuals, if the real estate has been held for one year or less, or if the seller is a "real estate dealer," a gain recognized on the sale of real estate is subject to US federal income tax at graduated rates of up to 39.6%. By contrast, long-term capital gains on the sale of real estate not held as inventory generally are taxable at a preferential US federal income rate of 20% (though recapture of a gain attributable to past depreciation deductions will be taxed at a 25% rate).

An additional 3.8% Medicare tax generally applies to US high-income earners on gains not derived from the ordinary course of a trade or business. In addition to federal taxes, state and local income taxes may also be imposed on capital gains.

For corporations, capital gains recognized on the sale of real estate are subject to US federal income tax at graduated rates of up to 35%, and may also be subject to state or local income taxes. A foreign corporation that held the real estate in a US trade or business, or that has made a net election, may also be subject to a 30% branch profits tax on capital gains that are deemed to be repatriated from the US branch (subject to reduction or elimination under an applicable US tax treaty, as noted above in Question 4). However, a branch termination exception may apply to the taxable year in which a foreign corporation completely terminates all of its US trade or business activities.

10. Is there a withholding tax on rental income and/or capital gains derived from real estate?

No withholding tax is imposed on rental income or capital gains received by US persons. Generally, there is a 30% US withholding tax on US-source rental income received by foreign persons.

Under the Foreign Investment in Real Property Tax Act (FIRPTA), purchasers of US real property interests from foreign persons are generally required to withhold from the purchase price a tax equal to 15% of the total consideration. Any amount so withheld may be applied as a credit against the federal income tax liability of the foreign seller and may be recovered as a refund in the event of overpayment if the withholding tax collected exceeds the seller's US tax liability on the capital gain.

11. Are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate that could be utilized?

Real estate investment trusts (REITs) can provide a tax-efficient investment structure for investments in US real estate, because a REIT's income generally is subject to only one level of US federal income tax. The single level of tax is accomplished by permitting REITs to deduct dividends paid, which dividends are then reported as income by shareholders.

The US federal income tax rate for non-US shareholders is 30%, subject to reduction under an applicable US tax treaty. The reduced treaty rate typically is not available for capital gain dividends, which occur when a REIT distributes the proceeds from its sale of real estate. Under FIRPTA, non-US shareholders generally are subject to the FIRPTA tax on capital gains realized on the sale of REIT shares. Under a FIRPTA exception, foreign investors can avoid US federal income tax on capital gains tax on sale of stock in a domestically controlled REIT. REITs may also be subject to state and local income tax.

While REITs offer a tax-efficient structure for investments in US real estate, they are not suitable for all investments, as only certain asset classes qualify as permissible REIT assets. For example, an investor planning to acquire a US condominium development project would not do so through a REIT, as gain realized on the condominium units would be subject to a 100% tax on income from so-called dealer activities.

12. Are there any structures commonly used to mitigate real estate tax liabilities on the acquisition and/or disposal of real estate?

Foreign investors commonly invest in US real estate through a corporate leveraged blocker structure, in which the foreign investor owns a non-US corporation (the "foreign blocker"), which in turn owns a US corporation (the "US blocker"). The US blocker then purchases the interest in the US real estate. The reasons for this structure include:

- The US blocker insulates the foreign blocker from branch profits tax and FIRPTA withholding
- The foreign blocker shields the foreign investor from US estate tax exposure
- Neither the foreign blocker nor the foreign investor would be required to file US tax returns

Although income from the real property will be subject to US federal corporate-level income tax at graduated rates of up to 35%, the overall tax burden can be substantially reduced if the US blocker is capitalized with a combination of debt and equity, because the interest payments should reduce the US tax base.

For example, if the foreign investor qualifies for a treaty-reduced 10% withholding rate on interest, each dollar of interest paid to the investor trades a 40% corporate-level deduction for a 10% investor-level tax on the interest income. Return of capital distributions are not taxable if a FIRPTA withholding certificate is obtained. However, the debt instrument held by the foreign blocker may be re-characterized as stock under recent debt-equity regulations to the extent that a distribution by the US blocker exceeds accumulated earnings and profits.

Further, although dividends from the US blocker generally are subject to withholding tax at a rate of 30%, this rate may be reduced by treaty.
Additionally, the FIRPTA tax does not apply to a liquidating distribution by the US blocker, which is made only after the corporation first sells all of its real estate in taxable transactions (i.e., the cleansing exception). To facilitate the cleansing exception, foreign investors typically hold each real estate investment through a separate US blocker.

Foreign investors who reside in high-tax jurisdictions may prefer to invest in US real estate through an unblocked structure, either directly or through a flow-through entity. This structure typically works better if the investor can qualify for the preferential US capital gains tax rate (i.e., an individual) and does not mind filing US tax returns. Additionally, 16 states impose a tax on the transfer of a controlling interest in an entity that directly or indirectly owns an interest in real estate. The definition of "controlling interest" varies by state, from 50% to 90% ownership. Certain controlling-interest transfers may be exempt from this tax, including, for example, a transfer that effects a mere change in identity or form of ownership.

13. Are there any material differences in the way individuals and companies are taxed on acquiring, letting and/or disposing of real estate?

Perhaps the most important difference concerns the federal taxation of capital gains arising from the sale of real estate. Individuals can qualify for preferential US capital gain tax rates of 20% if the property is held for more than one year, whereas corporations will be subject to regular federal tax rates of up to 35% on the same gains (plus, potentially, branch profits tax as discussed above). Other material distinctions relate to limitations on the deductibility of interest and other expenses incurred in connection with real estate investments. Finally, the additional 3.8% Medicare tax on net investment income applies only to individuals (but does not apply to foreign persons).

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