International Tax Guide Real Estate Investment

March 2025

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 guide, which provides a high-level overview of the key tax consequences of acquiring and holding real estate investment assets in key investment jurisdictions.

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.

To better understand the nature and scope of the real estate taxes charged in each country, we have therefore answered the following 17 questions for each jurisdiction:

1. Is stamp duty, transfer tax or a similar tax payable on the direct 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 stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction?

   If so, what are the rates and who is required to pay the duty or tax?

3. 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?

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

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

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

   If so (i) are there any restrictions, such as thin capitalisation, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

7. Are deductions for capital expenditure available against rental income for tax purposes e.g. capital allowances or deductions for depreciation?

   If so, are deductions available for expenditure on both land and buildings, or on buildings only?

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income e.g. transfer pricing or anti-hybrid rules?

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

10. Are capital gains arising on the direct sale of real estate taxable?

    If so, what are the rates and are there any exemptions?

11. Are capital gains arising on the indirect sale of real estate taxable e.g. by means of the sale of an SPV which holds real estate in the jurisdiction?

    If so, what are the rates and are there any exemptions?

12. Is there a withholding tax on rental income?

13. Is there a withholding tax on capital gains derived from real estate?

    If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

14. Does the jurisdiction have a REIT regime?

    If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

15. Apart from REITs, are there any tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?
16. Are there any structures commonly used to mitigate real estate tax liabilities on acquiring and/or disposing of real estate?
17. 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, taxes associated with real estate investments 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 landscape and assist you in achieving your real estate investment goals and maximising your after-tax returns.

This guide only deals with certain key investment jurisdictions for real estate. Should you be interested in investing in real estate outside these jurisdictions, please do reach out, as we can provide similar high-level advice in all the jurisdictions around the globe where we have offices.

This guide 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.

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

Yours sincerely,

Alex Thomas
Head of Tax UKME

Australia

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

All Australian states and territories impose a form of stamp duty or transfer duty on the direct sale or purchase of land situated in that jurisdiction.

In New South Wales (**NSW**), Victoria (**Vic**), Queensland (**Qld**), Western Australia (**WA**), Tasmania (**Tas**) and the Australian Capital Territory (**ACT**), the duties legislation has been rewritten with a focus on transactions, rather than a stamp duty imposed on instruments. However, the legislation differs significantly among each of those jurisdictions. The Northern Territory **(NT**) and South Australia (**SA**) have both retained stamp duty legislation that focus on dutiable instruments (although the NT legislation includes references to "dutiable transactions").

All of the transfer duty jurisdictions (NSW, Vic, Qld, WA, Tas and ACT) treat real estate as dutiable property, although some jurisdictions impose different rules for certain types of property (such as residential land) and the timing of liability rules vary from one jurisdiction to another, with some jurisdictions imposing a liability upon agreements for sale whereas other jurisdictions impose duty on a "transfer".

The stamp duty jurisdictions (SA and NT) charge stamp duty on conveyances of real estate, although SA allows exemption for commercial land (excluding residential and primary production land).

The rate of tax on land sales or transfers differs in each State and Territory, with each jurisdiction imposing tax at rates that increase depending on the value or consideration. The maximum general rate in each jurisdiction is as follows:

NSW	5.5% (but a premium rate of 7% applies to residential land if the value exceeds A$3,505,00) and an additional 8% surcharge may apply to foreign purchasers of residential land
Vic	4.5% and an additional 8% surcharge may apply to foreign purchasers of residential land
Qld	5.75% and an additional 7% surcharge may apply to foreign purchasers of residential land
WA	5.15% and an additional 7% surcharge may apply to foreign purchasers of residential land
SA	5.5% and an additional 7% surcharge may apply to foreign purchasers of residential land
Tas	4.5% and an additional 8% surcharge may apply to foreign purchasers of residential land
ACT	5% for commercial land but different rates apply to non-commercial land
NT	5.95%

Some jurisdictions (e.g., SA) may also charge an ad valorem transfer registration fee.

Transfer duty or stamp duty may be payable on the grant of a lease of real property if there is consideration for the grant of the lease. However, that consideration must generally be additional to, or instead of, the rent payable for the lease (e.g., a lease premium). Transfer duty or stamp duty is then calculated on the amount or value of the consideration at the normal land transfer rates for that State or Territory. There is generally no duty payable on a lease of real property if the only consideration is the obligation to pay market rent during the term of the lease.

The transfer or surrender of an existing lease of real estate may be subject to duty.

If goods and services tax (**GST**) is payable on the acquisition of the property or lease, duty is calculated on the GST inclusive price.

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

Landholder duty is generally payable on acquisitions of shares or units in a land holding company or unit trust. Qld has separate rules for trust acquisitions (which WA has adopted for discretionary trusts only) and acquisitions of certain trustee companies. Some jurisdictions also have special rules or concessions for acquisitions or takeovers of listed entities.

The landholder duty rates (and foreign purchaser surcharge) generally correspond to the duty payable on a direct transfer of real estate. The land holder threshold in each jurisdiction is as follows:

NSW	A$2,000,000
Vic	A$1,000,000
Qld	A$2,000,000
WA	A$2,000,000
SA	no threshold (i.e, any interest in land)
Tas	A$500,000
ACT	A$1,800,000
NT	A$500,000

3. Is value added tax, goods and services 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?

Australia imposes a broad-based GST on supplies made by registered entities. GST is imposed at a flat rate of 10%.

A business entity must register if it has a GST turnover of A$75,000 or more. A not-for-profit organisation is required to register if it has a GST turnover of A$150,000 or more.

The sale of real estate may be subject to GST if the supply is made by an entity that makes the supply in the course or furtherance of an enterprise, unless a specific exemption applies. There are exemptions for (among other things):

- sales of residential premises that have previously been transacted and are no longer "new residential premises";
- the supply of a going concern; and
- the supply of farm land used to carry on a farming business.

Residential rents are generally input taxed, which means the landlord is not liable for GST (or required to charge GST to the tenant) but the landlord is unable to recoup GST from its inputs (such as acquisitions relating to its purchase and continued ownership of the land). Accommodation provided by hotels and boarding houses are generally subject to GST, although concessions may be available for accommodation supplied to long-term guests.

GST is generally payable on the supply by way of lease of commercial premises, provided the landlord is registered (or required to be registered). Lessees who rent commercial premises for their businesses may be able to claim GST input credits for the GST included in the rent.

4. Are there any annual taxes that may be payable on the ownership of real estate?

Land tax is an annual tax levied on the ownership of real property, payable by owners. "Land" generally includes vacant land, land that is built on, and lots in building unit plans.

Land tax is levied by state and territory governments and is generally assessed on the taxable value of an owner's total land holdings, based on the unimproved land values (i.e., ignoring any buildings or other improvements on the land). The taxable value is the aggregate of the relevant values of all land owned by that person (excluding any exempt land). The tax is generally imposed on the component of taxable value above a tax-free threshold.

Since land tax is levied by state and territory governments, the rates of land tax vary. The maximum rate in each jurisdiction is as follows:

NSW	1.6% above the general threshold of A$1,075,000 and up to the premium threshold of A$6,571,000 2% for land above the premium threshold of A$6,571,000. An additional 4% surcharge may apply for residential land owned by foreign persons
Vic	2.65% An additional 4% surcharge may apply for residential land owned by foreign persons In addition, Vic imposes a vacant residential land tax on land that has been vacant for more than six months in the preceding calendar year. From January 1, 2025, the rate is 1% for the first year, 2% for the second consecutive year and 3% for the third consecutive year. For January 1, 2026, the vacant residential land tax will apply to all unimproved residential land in metropolitan Melbourne that has remained undeveloped for at least 5 years and is capable of residential development
Qld	2.75% and an additional 2% surcharge may apply for land owned by foreign or absent persons
WA	2.67% plus an additional 0.14% land tax for property located in the metropolitan area
SA	2.4% and an additional 2.4% surcharge on land owned in trusts (excluding listed and widely held trusts) where the interests of the trust beneficiaries are not disclosed or cannot be identified
Tas	1.5% and an additional 2% surcharge may apply for residential land owned by foreign persons
ACT	A fixed charge of A$1,535 plus an ad valorem valuation charge of up to 1.14% An additional 0.75% surcharge may apply for residential land owned by foreign persons
NT	Not applicable

In addition to the above state and territory taxes, the Australian federal government has introduced a vacancy fee for residential land that is left vacant for at least six months during a year.

Local government or council rates also apply to real estate across all jurisdictions.

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

Australian residents are subject to income tax on "taxable income" of their worldwide real estate rental businesses. Taxable income is an entity's total assessable income less allowable deductions.

Entities receiving rental income are required to declare the monetary value of all income received on rental properties in Australia and overseas, and their legal ownership of the property.

The corporate tax rate for companies is 30%, although a lower rate of 25% may apply to eligible businesses that:

- has an aggregated turnover for that income year of less than A$50 million; and
- 80% or less of the assessable income is base rate entity passive income.

Individuals are subject to income tax on rental profits charged on a progressive scale as set out in the tables below for the 2024-2025 tax year.

Resident tax rates 2024/25 (not including Medicare levy of 2%)

Taxable income	Tax on this income
0 - $18,200	Nil
$18,201 - $45,000	16c for each $1 over $18,200
$45,001 - $135,000	$4,288 plus 30c for each $1 over $45,000
$135,001- $190,000	$31,288 plus 37c for each $1 over $120,000
$190,001 and over	$51, 638 plus 45c for each $1 over $180,000

Foreign residents tax rates 2023-24

Taxable income	Tax on this income
0 - $135,000	$30c for each $1
$135,001 - $190,000	$40,500 plus 37c for each $1 over $120,000
$190,001 and over	$60,850 plus 45c for each $1 over $180,000

Non-residents who are subject to tax on Australian rental income in their country of residence may be able to claim tax credit relief under the terms of any applicable double taxation treaty (**DTT**) with Australia (if applicable).

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so (i) are there any restrictions, such as thin capitalisation, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

Interest on borrowings used to acquire an investment property is generally an allowable deduction on the basis that the interest is incurred in gaining or producing assessable income or is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income (i.e., rental income). However, there has been parliamentary discussion from time to time about whether interest should continue to be deductible where the taxpayer is negatively geared.

Australian companies and non-resident corporate entities are subject to restrictions including hybrid mismatch rules, transfer pricing rules and Australia's thin capitalisation rules.

The hybrid mismatch rules are intended to implement the OECD's final recommendations on BEPS Action 2. The rules apply to payments that give rise to hybrid mismatch outcomes where:

- a payment is deductible in one jurisdiction and non-assessable in the other jurisdiction; and
- the one payment qualifies for a tax deduction in two jurisdictions; and
- receipts are sheltered from tax directly or indirectly by hybrid outcomes in a group of entities or a chain of transactions.

Transfer pricing

Australia's transfer pricing rules can limit the deductibility of interest on a loan, particularly where interest rate margin is excessive or the related party transaction is not on arm's length terms.

Thin capitalisation rules

Australia's thin capitalisation rules apply to:

- Australian entities investing overseas and their associate entities; and
- foreign entities investing in Australia.

Broadly, where the thin capitalisation rules apply for non-financial entities (including where entities have at least A$2 million in debt deductions on an associate inclusive basis), interest deductions are based on one of the three tests:

- A default fixed ratio test based on 30% of "tax EBITDA"
- A group ratio test (rather than the worldwide gearing test), by election
- A third-party debt test for general class investors and also financial entities that are not ADIs, by election

The fixed ratio test is the default if no choice is made.

A key feature of the fixed ratio test is the carry-forward of denied deductions for up to 15 years, where a modified continuity of ownership test or business continuity test is met for companies or modified trust loss rules for trusts.

Different rules apply for financial entities and authorized deposit-taking institutions.

Subject to any applicable DTT, Australia imposes interest withholding tax of 10% on interest paid by Australian resident borrowers not acting at or through a permanent establishment outside Australia; or non-resident borrowers carrying on business in Australia at or through a permanent establishment in Australia.

A non-resident who is carrying on a business of leasing real estate in Australia through a permanent establishment in Australia may be liable for interest withholding tax on interest paid to a non-resident lender if money is borrowed to purchase the real property in Australia.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example, capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

General depreciation rules allow a deduction for the decline in value of depreciating assets (such as an oven or dishwasher) based on the asset's effective life.

Special depreciation rules apply to capital works such as buildings and structural improvements, which may be claimed at a statutory rate of either 2.5% or 4% (i.e., spread over 25 years or 40 years), whichever is applicable. Capital allowances may be claimed on qualifying capital expenditure incurred on assets to be used wholly or partly for the purposes of a taxable business. Capital works deductions must be taken into account when working out any capital gain or loss on a future sale of the property.

Deductions may be available for capital works used to produce income, including:

- buildings or extensions, alterations, or improvements to a building;
- alterations and improvements to a leased building, including shop fitouts and leasehold improvements;
- structural improvements such as sealed driveways, fences and retaining walls; and
- earthworks for environmental protection, such as embankments.

Deductions for leasehold improvements

Deductions on leasehold improvements (including shop fitouts) can generally only be claimed at the statutory rate of either 2.5% or 4%, whichever is applicable.

The availability of capital allowances on fixed plant and machinery may be restricted by reference to the allowances claimed and disposal values brought into account by previous owners of the real estate.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

Expenses incurred in establishing a loan, such as loan application fees and lender's mortgage insurance are not immediately deductible but may be claimed as a deduction over five years or the term of the loan, whichever is shorter.

Repairs made to an investment property during the period it is leased are generally deductible, but repairs carried out within the initial 12 months of acquiring the property may not be deductible. Where a deduction is not allowed, these expenses may be used to reduce a capital gain on a future sale.

Tax deductions may be denied for expenses related to the holding of vacant land (i.e., without any substantial and permanent structures) unless the land is used in carrying on a business for the purpose of producing assessable income (such as a property development business). Companies and managed investment trusts are not affected.

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

Tax losses and capital losses can generally be carried forward indefinitely, but companies may be unable to recoup losses if they have not maintained the same majority ownership and control. Trusts are also subject to complex loss recoupment rules.

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

Entities may be subject to capital gains tax (**CGT**) imposed on the sale of real estate if the property is held on capital account.

Property developers or speculators may be taxed under the trading stock rules or their sale proceeds may be taxed as ordinary income. However, the mere realisation of a capital asset will generally be taxed under the CGT rules (even if the taxpayer goes about the realisation in an enterprising way).

CGT is generally payable by the taxpayer who sells the asset.

Australian resident individuals and trusts may be able to reduce the amount of capital gain by 50% (or 33.33% for complying superannuation funds) when selling real estate that has been owned for at least 12 months before it is sold. Where the discount capital gain is made by a trust, the gain is grossed up and flows through to Australian resident beneficiaries who may then be able to utilise their own capital losses and apply the discount percentage (50% or 33.33%), if eligible.

If the beneficiary of a trust is a non-resident, the trustee may be required to pay tax on the beneficiary's share of the trust's net income (including capital gains), although that is generally not a final tax and the foreign resident beneficiary may be able to claim a credit for tax paid by the trustee. However, this does not apply to certain types of trusts such as managed investment trusts, which are subject to final withholding rules.

Exemptions or concessions may be available in certain circumstances (such as the CGT main residence exemption or small business CGT concessions).

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

Capital gains arising from the indirect sale of Australian real estate may be taxable in Australia.

Foreign and temporary Australian residents are subject to CGT on any indirect interest in Australian real property. A foreign or temporary resident will be taken to have an indirect interest in Australian real property if the taxpayer and associates own 10% of more of another entity, whether Australian or foreign, and the market value of the assets of that entity is mainly attributable to taxable Australian property (i.e., more than 50% of the value of its total assets are taxable Australian property).

Taxable Australian property includes:

- Australian real property (e.g., a house, apartment, commercial building or land;
- an indirect interest in Australian real property;
- a mining, quarrying or prospecting right in Australia;

- a CGT asset that you have used to carry on a business through a permanent establishment in Australia; or
- an option or right over one of the above.

12. Is there a withholding tax on rental income?

Rents are not specifically subject to withholding tax but the repatriation of rental income to a foreign resident shareholder may be subject to dividend withholding tax.

Fund payments made from a managed investment trust (**MIT**) or corporate collective investment vehicle (**CCIV**) may also be subject to withholding tax if the payment is authorised to be made to a place outside Australia or the recipient has an address outside Australia.

If the beneficiary of a trust (other than a MIT) is a non-resident, the trustee may be required to pay tax on the beneficiary's share of the trust's net income, but that is generally not a final tax and the foreign resident beneficiary may be able to claim a credit for tax paid by the trustee.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

Foreign residents selling Australian real estate are subject to foreign resident capital gains withholding (**FRCGW**), which is payable by the purchaser to the Australian Taxation Office (**ATO**) at settlement of the sale contract.

FRCGW applies to the direct sale of property, where the sale of real property with the market value of A$750,000 or more will be subject to withholding, or indirectly, where a membership interest of 10% or more in an entity whose underlying value is principally derived from Australian real property.

FRCGW requires the purchaser to withhold 12.5% of the purchase price. The foreign resident must lodge a tax return at the end of the financial year and can claim a credit for the amount withheld.

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

There are no specific REIT rules in Australia. From an Australian income tax perspective, most REITs are classified as Managed Investment Trusts (**MITs**). The MIT regime governs investment vehicles, such as REITs.

REITs do not generally pay corporate income tax on passive rental income but distribute this to investors who pay tax at their own individual tax rate. The beneficiaries of the trust, or the trustee on their behalf, are subject to taxes on the share of the net income generated by the MIT.

A MIT is a publicly-held and commercially-operated collective investment trust that invests in primarily passive income activities. A trust qualifies as a MIT by meeting the following criteria for the income year in which it operates:

- the trustee is an Australian resident, or the central management and control of the trust is in Australia;
- the trust does not carry on or control an active trading business;
- the trust is a managed investment scheme;
- the trust meets the widely held requirement;
- the trust meets the closely held restriction; and
- the trust is operated or managed by an appropriately regulated entity.

The "widely held" requirement is based on the type of management investment scheme, and whether it is registered or unregistered, and retail or wholesale.

The "closely held" restriction differs depending on whether the MIT is a registered management investment scheme that is a retail trust, or a wholesale trust.

Under the MIT regime, fund payments (i.e., distributions of the MIT's net income excluding dividends, interest, royalties and certain capital gains or losses) made to foreign residents are generally subject to a special withholding tax rules. Under those rules, the rate of withholding is 30% if foreign investor is a tax resident of a jurisdiction without an information exchange agreement with Australia. However, the rate of withholding is generally 15% where Australia has an information exchange agreement with the foreign investor's jurisdiction, unless:

- the fund payments are attributable to a "clean building MIT", in which case a 10% withholding rate applies;
- the fund payments are attributable to "non-concessional MIT income", in which case a 30% rate applies.

After July 1, 2024, the withholding tax rate for MITs was reduced from 30% to 15% in respect of certain "new" build-to-rent investments. It is also proposed that from July 1, 2025 the clean building MIT withholding tax concession will extend to data centres and warehouses that meet a relevant energy efficiency standard, where construction commences after May 9, 2023.

An eligible MIT may elect into a new attribution regime for the taxation of MITs – such entities are referred to as attribution MITs (**AMITs**) – which (among other things):

- allows AMITs to use an attribution method of tax (investors are taxed on the parts of the AMIT's trust components that are attributed to them as if they derived those amounts in their own right and in the same circumstances as the AMIT);
- allows AMITs to carry forward under- and over-estimates of tax amounts into the discovery income year (generally without adverse tax consequences); and

allows investors to make, in certain circumstances, both upward and downward adjustments to the cost base of their unit holdings to eliminate double taxation that might otherwise arise.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

Australia offers tax-efficient real estate investment schemes including companies, unit trusts and cross-stapled structure involving a MIT. On July 1, 2022, Australia also introduced the framework for a new type of corporate entity called a corporate collective investment vehicle (**CCIV**), which is subject to tax treatment that aligns with the taxation of AMITs.

Unit Trusts are often used to hold Australian real estate and can also be a tax-efficient investment vehicle for unit holders as they benefit from tax rates and thresholds on their share of the capital gain. If the unit holder is an Australian resident individual, they may benefit from the capital gains discount of 50% on assets held in the trust for 12 months or longer.

Discretionary trusts and self-managed superannuation funds are frequently used to acquire and hold real estate for a single Australian resident investor or family group, but these structures are not usually suitable where multiple investors are involved.

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

It is common in Australia to purchase and hold real estate through a trust structure due to the ability to the pass through capital gains to Australian resident beneficiaries who may then be able to utilise their own capital losses and apply the CGT discount percentage (50% or 33.33%) if eligible.

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

Companies are taxed at the corporate tax rate or 30%, or at a lower rate of 25% for base rate entities (mentioned at question 5 above) whereas individuals are taxed at the individual tax rate which is charged on a progressive scale and can range from A$0 if taxable income is between A$0 and A$18,200 to A$51,667 plus 45c for each A$1 over A$180,000, if the individual's taxable income is A$180,0001 and over. Companies are also subject to loss recoupment rules.

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Canada

1. **Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?**

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. Some Canadian municipalities, such as the City of Toronto, also impose a property transfer tax.

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 a sum as follows:

- 1% of the fair market value up to and including $200,000
- 2% of the fair market value greater than $200,000 and up to and including $2,000,000
- 3% of the fair market value greater than $2,000,000
- If the property has residential property worth over $3,000,000, a further 2% tax will be applied to the residential property value greater than $3,000,000 (subject to exemptions)
- Additional 20% on foreign entities purchasing residential property in the Metro Vancouver Regional District and other prescribed areas of British Columbia

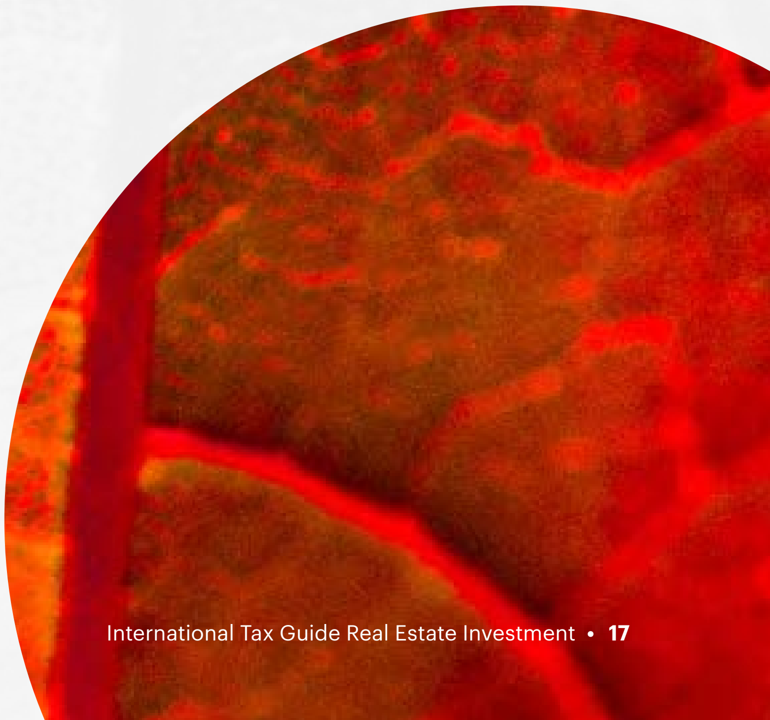
Conversely, in Alberta, there is a land titles registration levy on the purchase of property, the rate of which, as of October 2024, is:

- CA$50 base + CA$5.00 for every CA$5,000 of the property fair market value; and
- CA$50 base + CA$5.00 for every CA$5,000 of the principal mortgage amount, if applicable.

The *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (Canada) came into effect on January 1, 2023 and prohibits non-Canadians from purchasing Canadian residential property, subject to certain exceptions. Excepted non-Canadians who purchase property in Ontario or British Columbia are subject to special provincial tax rules. Under the *Land Transfer Tax Act* (Ontario) and the *Property Transfer Tax Act* (British Columbia), an additional tax (often referred to as a foreign buyer's tax) is imposed on qualifying foreign entities and trustees who purchase property within Ontario, or in designated regions of British Columbia, respectively. In Ontario for example, this additional tax is set at 25% for properties purchased after October 24, 2022 and is applied in addition to the general land transfer tax.

2. **Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?**

Generally, a disposition of beneficial ownership of Canadian real estate will be subject to land transfer tax. As noted above, the applicable land transfer tax rate will depend on the part of Canada in which the property is located. In Ontario, transfer tax is payable on a disposition of beneficial interest in land which occurs on the sale, transfer, assignment or any other change in entitlement to the beneficial ownership of such land. The purchaser or transferee of a beneficial interest of land will be responsible for any transfer tax payable in Ontario.



3. Is value added tax, goods and services 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?

In Canada, there are five (5) different indirect tax regimes: the goods and services/harmonized sales tax (**GST/HST**), the Québec Sales Tax (**QST**), the British Columbia Provincial Sales Tax (**BC-PST**), the Manitoba Retail Sales Tax (**MB-RST**), and the Saskatchewan Provincial Sales Tax (**SK-PST**). Among these, GST/HST and QST operate as value-added tax regimes, while BC-PST, MB-RST, and SK-PST function as retail sales tax regimes.

GST is uniformly applied at a rate of 5% across all provinces and territories. Additionally, HST is applicable in Ontario at 8%, and at a rate of 10% in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. QST is levied in Québec at a rate of 9.975%, BC-PST in British Columbia at 7%, MB-RST in Manitoba at 7%, and SK-PST in Saskatchewan at 6%.

Generally, under both the GST/HST and QST regimes, the supply by way of sale or by way of lease, licence or similar arrangement of real property is a taxable supply, unless it qualifies as an exempt supply. Most supplies of commercial and industrial real property as well as short-term rentals such as hotels and Airbnb are taxable supplies subject to GST/HST and/or QST.

Exempt supplies are those for which GST/HST and/or QST are not payable. Several exempting provisions apply to supplies of real property involving residential real property, such as the sale of used residential properties, long-term rentals, and certain supplies made by individuals.

Normally, GST/HST and QST are payable by the recipient (i.e. purchaser) of the supply to the supplier (i.e. vendor). However, an exception exists where the recipient is registered for GST/HST and/or QST purposes, obligating the recipient to self-assess the applicable GST/HST and/or QST with respect to a taxable supply by way of sale of a real property and remit them directly to the relevant tax authority (Canada Revenue Agency or Revenu Québec). It is important to note that a supplier might have an obligation to register for GST/HST and/or QST purposes, even if it is a non-resident of Canada and/or Québec.

Specific rules also apply for real estate developers who construct residential properties.

Unlike the GST/HST and QST, the supply of real property, whether made through sale or lease, is generally not subject to the BC-PST, MB-RST, and SK-PST.

4. 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 City of Toronto for example, property tax rates comprise a city tax rate, education tax rate and a city building fund rate.

At the time of publication, the total aggregate tax rate is:

- City of Toronto: 0.715289% for residential properties and 2.228677% for commercial properties; and
- City of Calgary: 0.64861% for residential properties and 2.19922% for non-residential.

The federal government has also introduced the Underused Housing Tax (**UHT**) effective January 1, 2022. The UHT is an annual federal 1% tax on the ownership of vacant or underused housing in Canada, and the tax generally applies to foreign owners of housing in Canada (although some Canadian owners may also be affected). Similar taxes have been introduced at various provincial and/or municipal levels, such as in British Columbia and the City of Toronto. The rules for each jurisdiction vary and property owners must determine if they are affected by each of these taxes separately. Property owners may have to comply with annual filing requirements even if exempt from the UHT or similar tax.

5. 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 Canadian residency status and nature of the taxpayer (i.e., whether it is an individual, trust, corporation, etc., the nature of the income earned (as discussed below) and the taxpayer's income tax bracket and province of residence. For example, the combined federal and provincial graduated income tax rate for individuals ranges between 20.05% and 53.53% for residents of Ontario (for example). The basic federal tax rate for corporate taxable income is 38%, which can be reduced subject to certain requirements.

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 the first CA$500,000 of income.

Non-residents that receive Canadian rental income can elect to be taxed on their net rental income instead of paying a 25 percent withholding tax (subject to reduction under an applicable double tax treaty) under Part XIII of the *Income Tax Act* (Canada) (the **ITA**) on their gross rental income. This is referred to as a section 216 election (in reference to section 216 of the ITA). This will allow non-residents to benefit from allowable deductions from their gross rental income, such as capital cost allowances and interest deductions.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so: (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

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.

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. The denied interest amount is deemed to have been paid or credited to the applicable "specified non-resident shareholder" immediately prior to the end of the taxation year of the debtor whether or not it is actually paid. Such amount is then deemed to have been paid as a dividend and not as interest to the "specified non-resident shareholder" and accordingly subject to withholding tax. A "specified non-resident shareholder" is generally (i) a non-resident person who (alone or together with non-arm's length persons) owns shares of the debtor that represent 25% or more of the voting shares or of the fair market value of all of the shares of the debtor, or (ii) a non-resident person that does not deal at arm's length with such a person. The thin capitalization rules essentially require a Canadian subsidiary to be financed with at least 40% equity rather than solely debt.

Transfer pricing rules, discussed further below, can also apply to limit interest deductibility.

There is generally no withholding tax on the payment of interest to arm's length foreign entities, unless such interest is "participating debt interest". However, where the parties are not arm's length, there is a 25% withholding tax on interest (subject to reduction under an applicable double tax treaty).

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are there separate allocations between land and building?

Capital cost allowance (**CCA**) amortizes the cost of capital property over time. CCA is a permissive deduction that, based on the maximum rate allowed depending on the type of property, allows a taxpayer with a deduction from taxable income.

Land is non-depreciable property that is not subject to CCA. Buildings are generally subject to CCA in the amount of 4% to 10%.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

Canada's Transfer Pricing Regime

Transfer pricing rules may impose restrictions on rental income charged and expenses deducted. The Canadian transfer pricing regime generally conforms to the Organisation for Economic Co-operation and Development standards, requiring that transactions between non-arm's length entities should occur under arm's length terms and conditions. Where a transaction is not made on arm's length terms or conditions, the ITA permits the CRA to impose a transfer pricing adjustment. A transfer pricing adjustment can also be made in respect of a transaction that would not have been entered into at all by arm's length parties if it can reasonably be considered that the transaction was not entered into primarily for non-tax purposes.

Canadian taxpayers are required to maintain contemporaneous documentation in respect of transactions subject to the transfer pricing rules.

Excessive interest and financing expenses limitation (EIFEL) Rules

The EIFEL rules, first announced in the 2021 Federal Budget and which have yet to be enacted into law, are proposed legislation which will generally operate to limit a taxpayer's deductions for "interest and financing expenses" (**IFEs**) to 30% of "adjusted taxable income" for taxation years beginning on or after January 1, 2024 (40% for taxation years beginning on or after October 1, 2023 and before 2024). Where certain conditions are met, a Canadian group member that is a member of an accounting consolidated group can elect for a "group ratio" to apply instead of the 30% fixed ratio (or 40% for the transitional year). "Adjusted taxable income" is calculated on a basis similar to earnings before interest, taxes, depreciation and amortization, also known as EBITDA. IFEs that are denied under these rules can be carried forward and deducted in a future taxation year indefinitely. IFEs can be offset by interest and financing revenues (**IFRs**), which generally include amounts received as payments of interest, and other sources of deemed interest income. Generally, the EIFEL rules will not apply to a Canadian resident corporation in a taxation year if its total net IFEs (i.e., IFEs less IFRs) is less than CA$1 million in the particular year.

Hybrid Mismatch Rules

The hybrid mismatch rules were first announced in the 2021 Federal Budget, with draft legislation released on April 29, 2022. The hybrid mismatch rules applies retroactively to payments arising on or after July 1, 2022.

These rules are intended to implement the recommendations in, and be generally consistent with, the report under Action 2 of the Group of 20 and Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting Project (the BEPS Action 2 Report), titled Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements.

"Hybrid mismatch arrangements" are cross-border arrangements that exploit differences in the income tax treatment of business entities or financial instruments under the laws of two or more countries to produce mismatches in tax results (referred to as 'hybrid mismatches').

Consistent with the recommendations in the BEPS Action 2 Report, the Canadian hybrid mismatch rules eliminate hybrid mismatches and align the tax results in Canada and the other relevant country in respect of a mismatch, by restricting the amount deductible by a taxpayer in respect of a payment under a hybrid mismatch arrangement, or including an amount in the income of a taxpayer who receives such a payment, as applicable.

The proposed legislation addresses deduction/non-inclusion mismatches that arise from payments where the mismatch is attributable to the terms of the instrument.

Denial of Non-Compliant Short-Term Rental Expense Deductions

On June 20, 2024 new legislation was passed, effective January 1, 2024, that denies income tax deductions for expenses incurred to earn short-term rental income, including interest expenses, in provinces and municipalities that have prohibited short-term rentals and for short-term rentals where operators are not compliant with the applicable provincial or municipal licensing, permitting, or registration requirements. Short-term rental is defined in the new rules to refer to a residential property that is offered for rent for a period of less than 90 consecutive days.

9. 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 a taxpayer can carry forward 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 a taxpayer can carry those back three years and forward indefinitely.

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

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

Yes, gains arising on the sale of real property in Canada are generally taxable. Where the property is held as capital property, 50% to 66 2/3% of the gain is a taxable capital gain and is included in income. Specifically, as of June 25, 2024, the capital gains inclusion rate increased from one half (50%) to two thirds (66 2/3%) for corporations and trusts. The rate for individuals (including capital gains realized indirectly through a partnership or trust) remains 50% for the first $250,000 of capital gains in a taxation year. Capital gains realized by individuals in excess of $250,000, net of the amounts listed above, will be subject to the 66 2/3% inclusion rate. Some of Canada's tax treaties have a "business property exemption" exempting the taxation of the sale of real estate in Canada that is considered to be property in which the business of the company, partnership or trust, as applicable, was carried on.

The rate of tax imposed on the portion of a capital gain arising from the sale of the real property that is included in the vendor's income 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. This exemption is available to non-residents of Canada in certain circumstances.

In 2023, a new deeming rule for residential real estate (including rental property) came into force. Subject to certain exceptions, a housing unit that was owned by a taxpayer for less than 365 consecutive days prior to the disposition is deemed to be a "flipped property". The profit from the disposition of a flipped property is fully taxable as business income and does not qualify for the 50% capital gains inclusion rate or the principal residence exemption. Any losses resulting from the sale of a flipped property is deemed to be nil.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

Generally, under Canada's tax treaties, non-residents are not subject to Canadian income tax on capital gains when they dispose of property, unless the capital gains are realized on a disposition of "taxable Canadian property" (**TCP**).

Taxable capital gains arising on the disposition of any TCP by a non-resident of Canada are taxable. TCP includes, among other things, both real or immovable property situated in Canada as well as shares of a corporation (other than shares listed on a designated stock exchange), partnership units or interests in a trust (other than a mutual fund trust) if, at any time during the 60-month period preceding the disposition, the shares, units, or interests, as applicable, derived more than 50% of their fair market value from Canadian real property, Canadian resource property or timber resource property (including options, interests or rights therein).

For shares listed on a designated stock exchange and mutual fund trusts, in addition to the foregoing test, the non-resident (together with certain non-arm's length parties) must own 25% or more of the issued shares of any class of the corporation or units of the mutual fund trust, as the case may be.

Accordingly, as with direct sales of real estate, generally 50% (based on the current rules) of the gain arising from the sale of shares of a corporation will be taxable. Where the shares are held as capital property, 50% (based on the current rules) of the gain is a taxable capital gain and is included in income though the rate of tax will depend on the nature of the taxpayer (individual, trust, corporation or partnership). The "principal residence" exemption is not accessible to a taxpayer indirectly disposing of real property where there is no disposition of beneficial interest in the real property.

12. Is there a withholding tax on rental income?

For non-residents, there is a 25% withholding tax rate on rental income, subject to reduction under an applicable double tax treaty.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

For non-residents, there is a 25% withholding tax rate on any taxable capital gains derived from the disposition of TCP. Under section 116 of the ITA non-resident vendors of TCP generally must notify the CRA (subject to certain exemptions) in respect of the disposition and to pay security for the withholding tax as prescribed in order to receive a compliance certificate for the disposition. The purchaser is obligated to withhold 25% of the purchase price where a compliance certificate has not been obtained by the non-resident vendor. The section 116 regime of the ITA is complex and you should consult a Canadian tax advisor if you are a non-resident disposing of TCP in Canada.

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

Yes, Canada has a REIT regime. 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. If properly structured and operated, a REIT generally flows 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.

A trust is a REIT in a taxation year if it is a publicly-traded unit trust resident in Canada throughout the year that meets a number of other conditions set out in the ITA relating to the types of properties held and revenue earned by the trust, including a requirement that 90% of the REIT's non-portfolio properties must be, at all times in a taxation year, qualified REIT properties. REITs are usually structured as mutual fund trusts under Canadian tax law (i.e. a qualifying publicly-traded unit trust resident in Canada that holds certain property). There are also certain anti-avoidance rules that a REIT in Canada must be mindful of in order to preserve its tax treatment, such as the specified investment flowthrough tax (**SIFT**) rules.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

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
- Mortgage investment corporations (MICs)
- Pension investment corporations
- Any combination of the above

The choice of investment vehicle will depend on a number of factors. A prospective investor should consult a Canadian tax advisor with respect to the Canadian tax implications relevant to their particular circumstances before investing in Canadian real property.

16. Are there any structures commonly used to mitigate real estate tax liabilities on acquiring and/or disposing of real estate?

Canadian corporation

For Canadian real estate acquired and sold, it may be advisable for a non-resident to utilize a Canadian corporation in order to avoid the requirement to obtain a Section 116 compliance certificate on a future disposition of the property by the Canadian corporation.

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. New rules regarding additional reporting obligations for trusts came into effect for 2023 onwards. Among the new statutory rules, bare trusts are now required to file annual tax returns and disclose beneficial ownership information to the CRA. For the 2023 and 2024 taxation years, however, the CRA announced that bare trusts will not be required to file the annual return unless CRA makes a direct request for these filings.

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

A number of factors will have tax implications for a non-resident acquiring, holding or disposing of real estate in Canada including whether the non-resident is an individual or corporation, whether the non-resident is a taxable or tax-exempt entity in its jurisdiction of residence, and whether the non-resident investor is eligible for benefits under a tax treaty between Canada and its country of residence. A prospective investor should consult a Canadian tax advisor with respect to the Canadian tax implications relevant to their particular circumstances before investing in real estate in Canada.

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France

The law stated in this chapter is accurate as at the time of publication and does not reflect any changes introduced by the French 2025 Finance Bill published on October 10, 2024. This chapter will be updated once this Bill is enacted.

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?

Under a standard asset deal, transfer duties will be due by the purchaser on the acquisition price of properties in France. The applicable rate is 5.80665%. In addition, a 0.1% real estate security contribution applies as well as a special surtax of 0.6% for the acquisition of commercial properties in the Ile-de-France area (Paris and its suburbs). Notary fees should be added to this amount; on average, this is approximately 1% of the acquisition price (including VAT).

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

The purchase of shares in a French real estate company (i.e., whose assets consist of more than 50% French real estate assets) gives rise to a 5% transfer duty, assessed on the purchase price of such shares.

3. 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 new (less than five years since construction or reconstruction). No VAT is due where the sale of the relevant property qualifies as a transfer of going concern. 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.

4. 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, the following annual taxes may be payable:

i. **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 rarely applies in practice. Its purpose is to identify end-owners of French-based real estate in order to subject them to IFI (property wealth tax). The structure to be set up will be subject to certain compliance obligations in order to avoid paying this tax.

ii. Local property tax (taxe foncière)

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 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.

iii. 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.

The tax is assessed on the constructed surface. The applicable rates (per sqm) as at the date of publication are as follows:

Nature of premises	Location of the premises [1]			
	1st district	2nd district	3rd district	4th district
Office spaces	455.75 €	102.57 €	57.00 €	0 €
Commercial spaces	147.02 €	91.19 €	36.50 €	0 €
Storage	15.99 €	15.99 €	15.99 €	15.99 €

[1] 1st district: Paris (75) and Hauts-de-Seine (92).

2nd district: cities of the Greater Paris metropolitan area, excluding Paris and Hauts-de-Seine.

3rd district: cities forming part of the Paris urban unit, excluding Greater Paris (IMMO-V-60450).

4th district: other cities in the Île-de-France region.

The total amount of the tax may however not exceed 30% of the portion of the transaction cost attributable to the acquisition and development of the building area.

iv. Annual tax on office space

Owners of office or business storage premises in the Île-de-France area (as well as since 2023, in the departments of Bouches du Rhône, Var and Alpes-Maritimes departments) 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.

The applicable rates (per sqm) in the Île-de-France arear as at the date of publication are as follows:

Nature of premises	Location of premises			
	1st district	2nd district	3rd district	4th district
Office spaces:				
- standard rate	25.31 €	21.31 €	11.66 €	5.63 €
- reduced rate	12.58 €	10.59 €	7.02 €	5.09 €
Commercial spaces	8.68 €	8.68 €	4.51 €	2.30 €
Storage spaces	4.53 €	4.53 €	2.30 €	1.18 €
Parking spaces	2.86 €	2.86 €	1.55 €	0.81 €

- the 1st district comprises the 1st, 2nd, 7th, 8th, 9th, 10th, 15th, 16th and 17th arrondissements of Paris and the cities of Boulogne-Billancourt, Courbevoie, Issy-les-Moulineaux, Levallois-Perret, Neuilly-sur-Seine and Puteaux;
- the 2nd district comprises the arrondissements of Paris and the cities of Hauts-de-Seine other than those of the 1st district;
- the 3rd district comprises the cities of the urban unit of Paris, delimited by decree, other than Paris and the cities of the Hauts-de-Seine department;
- the 4th district comprises the other cities of the Île-de-France region

v. Annual additional tax on parking space

Owners of parking space located in the Île-de-France area (as well as since 2023, in the departments of Bouches du Rhône, Var and Alpes-Maritimes departments) 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 rates (per sqm) in the Île-de-France area as at the date of publication are as follows:

Nature of premises	Location of premises			
	1st district	2nd district	3rd district	4th district
Parking spaces	2.86 €	2.86 €	1.55 €	0.81 €

vi. 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 2025 CFE would take into account the property used during fiscal year 2023).
The applicable rate of the CFE may vary depending on the location of the property.

5. 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 25%. French or foreign companies (partnerships or corporations) owning property in France are typically taxed in France at 25% 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.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so, (i) are there any restrictions (e.g. thin capitalization, transfer pricing etc.)? and (ii) is there any withholding tax on interest?

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.

The main limitations to the deduction of interest are as follows:

- Prohibition of interest deduction on loans and advances from direct shareholders unless the borrowing company's share capital has been fully paid up (Article 39-1-3°al. 2 of the FTC);
- Limitation set out under Article 39-1-3° of the FTC (the "Maximum Tax Rate Limitation") applicable to interest paid or accrued to a direct shareholder that does not qualify as a "related party" to the borrower;
- Limitation pursuant to Article 212. I-a of the FTC (the "Market Rate Test") providing for an adjusted application of the Maximum Tax Rate to interest paid or accrued in respect of loans granted by a "related party";
- Limitation in respect of hybrid instruments (the "Anti-Hybrid Limitation") applicable to interest paid or accrued to certain related parties;
- General capping mechanism: a French company which does not belong to a tax group may deduct its net financial expenses up to a maximum amount equal to the higher of:
  i. three million euros per fiscal year, reduced to 12 months if necessary; or
  ii. 30% of the company's result before interest, taxes, depreciation, and amortization ("Tax EBITDA").

  The applicable thresholds may be reduced to respectively one million euros and 10% where the company is considered as thin-capitalized.

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.

There is no withholding tax on interest, unless it is paid in a non-cooperative jurisdiction.[1]

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

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.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

The arm's length principle applies to transactions between associated companies. Failure to apply this principle results in readjustment of profits under specific transfer pricing legislation and/or the "irregular management act" principle (*acte anormal de gestion*), unless the company making or deemed to be making the transfer is able to prove that it did so for sound commercial reasons, such as protecting its market position.

1. The current list of non-cooperative jurisdictions includes the following jurisdictions: Anguilla, Seychelles, Bahamas, Turks and Caicos Islands, Vanuatu, Antigua and Barbuda, Belize, Fiji, Guam, US Virgin Islands, Palau, Panama, Russia, Samoa, American Samoa and Trinidad and Tobago.

9. 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.

10. 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 would be taxed at the rate of 25% 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 French government to tax such capital gains when the underlying property is located in France (see question 11).

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

Capital gains resulting from the sale of shares in a French real estate company (i.e., whose assets consist, directly or indirectly, of more than 50% French real estate assets) are taxed at the rate of 25% 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 French government to also tax such capital gains when the underlying property is located in France.

As an exception, a company owning French real estate will not be considered as a "French real estate company" if the relevant property is allocated to a commercial or industrial use. In this case, and subject to any double tax treaty, any capital gain is taxed as ordinary income (ie, at 25%), unless the relevant shares are qualifying participation shares that have been held for at least 2 years at the time of their disposal, in which case the capital gain is exempt from CIT except for a 12% recapture of the gross gain deemed to represent non-deductible expenses.

12. Is there a withholding tax on rental income?

French real-estate-sourced income of non-resident companies is subject to corporate income tax in France and taxed at a rate of 25%, 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. However, rents are not subject to withholding tax.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

Capital gains arising from the sale of real estate property or shares held in a real-estate-predominant company (see questions 11 and 12 above) are subject to a withholding tax set at the standard corporate income tax rate of 25%. Please note, however, that a reduced rate applies to the transfer of shares held by certain real estate investment vehicles (more information at question 4).

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

France introduced a REIT regime in 2003 (the "SIIC regime"), which provides for a full exemption from French corporation tax on real estate revenues and capital gains, subject to satisfying certain distribution obligations. The main conditions to elect for the SIIC regime are as follows:

a. being mainly, though not exclusively, involved (directly or indirectly) in property business (purchase and/or construction of buildings with a view to renting them out);

b. being listed on a regulated stock market;

c. having a share capital of at least €15 million;

d. the holding of any majority shareholder, whether acting alone or in unison, must be less than 60% of the company's share capital; and

e. at the time of the election for the SIIC regime, 15% of the company's share capital must be held by shareholders who each own less than 2%.

Under the SIIC regime, corporations (i.e., companies subject to French CIT) may also opt for the SIIC regime if they are owned, directly or indirectly, at 95% or more by one or more SIICs or SPPICAVs.

15. Apart from REITs, are there any tax-efficient real estate investment vehicles to acquire, hold and exploit real estate in the jurisdiction?

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.

16. Are there any structures commonly used to mitigate real estate tax liabilities on the acquiring and/or disposing 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.

17. 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 17.2%, 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 36.2% (19% tax plus 17.2% 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.

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Germany

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

In the case of an asset deal, Germany does not levy stamp duty. It does, however, levy a German real estate transfer tax (**RETT**), among other taxes *interalia*, on the direct transfer of real estate, in particular the transfer of buildings and / or land.

However, the sale of fixtures (*Betriebsvorrichtungen*), even if connected with the building or land, and / or moveable assets, is not subject to RETT.

The RETT rate ranges currently from 3.5% to 6.5% depending on the German Federal State in which 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 sale and purchase agreement that the RETT is borne by the buyer.

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

In the case of a share deal, Germany does not levy stamp duty. It does, however, levy RETT, among other taxes *interalia*, on the sale of an SPV which holds German real estate (i.e.: the indirect transfer of real estate) if 90% or more of the interests in a partnership or shares in a corporation which owns German real estate:

- are acquired by new partners / shareholders within a period of ten years; or
- are unified directly or indirectly in the hands of the same person or entity (and / or entities related to each other, or being part of a tax group).

The RETT rate is currently between 3.5% and 6.5% depending on the federal state in which the German real estate is located. With regard to the liability for the RETT:

- In the case of an acquisition of interests or shares: liability for RETT is borne by the partnership or corporation; and
- In the case of a unification of interests or shares in the hands of the same person or entity: liability for RETT is borne by the person or entity.

3. 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 transfer (i.e. sale and purchase) of real estate is in general exempt from VAT. A seller can, in principle, opt for VAT in a sale and purchase agreement regarding real estate. However, if a transfer of real estate is regarded as a so-called transfer of a going concern (TOGC; *Geschäftsveräußerung im Ganzen*), the sale is not subject to VAT and the buyer will step into the seller's position with respect to VAT. This applies in particular to any actual or latent correction obligations regarding input VAT.

The letting of German real estate is only subject to VAT if the landlord validly opts for VAT and waives the respective exemption from VAT. An option is not available to the extent real estate is used or intended to be used for residential purposes or for rendering services by the tenant which are not subject to VAT.

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

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

VAT payable on the transfer of real estate 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 supplies or services not exempt from VAT.

VAT payable within the letting of real estate can be deducted if and to the extent the option is validly executed. In principle, a seller can deduct input VAT with respect to any services it receives in connection with the leases from other entrepreneurs (*Unternehmer*).

4. Are there any annual taxes that may be payable on the ownership of real estate?

Germany levies land tax (**LT**) on the holding of real estate. LT must be paid by the owner of the real estate but is typically borne by the tenant as ancillary costs to the rent.

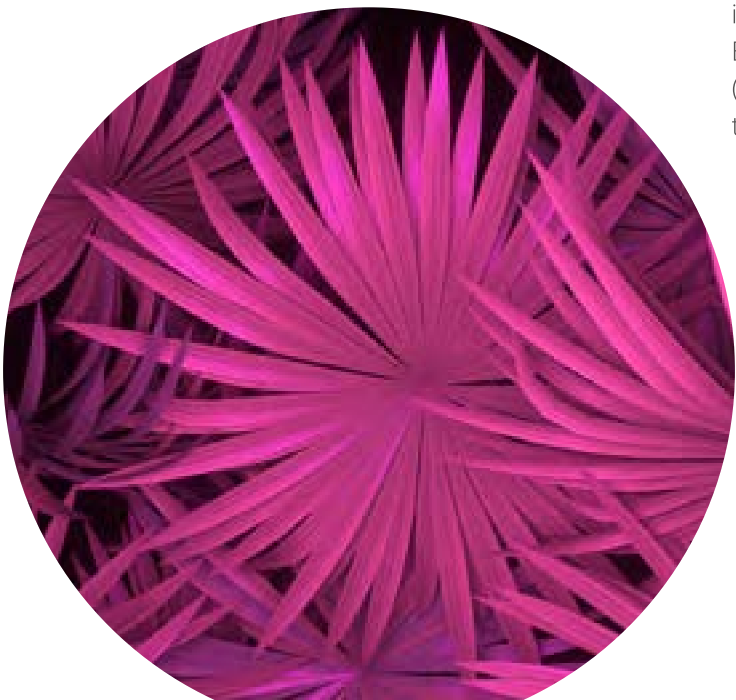
Until the end of 2024, German LT was based on the assessed "uniform tax value" (*Einheitswert*) of real estate (generally based on capitalised earnings). However, the German Federal Constitutional Court (*Bundesverfassungsgericht*) decided that the uniform tax values does not correspond to the economic reality. A LT reform was therefore introduced as of January 1, 2020. From 2025, the new LT will be levied.

The new regulations stipulate that undeveloped land will be valued according to the standard land value, while (predominantly) commercially used land will be valued according to the "asset value method". It should be noted, however, that the LT Act reform allows the "Länder" (German federal states), within the framework of a so-called opening clause, to apply their own procedure for the valuation of land.

LT is calculated as follows:

- Assessed LT value (*Grundsteuerwert*) x tax measurement figure (*Steuermesszahl*) = LT base value (*Grundsteuermessbetrag*);
- LT base value x LT levy rate (*Grundsteuerhebesatz*) = LT.

The tax measurement figure varies and the LT levy rate depends on the type and location of the real estate.



5. 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 13% and about 18%, depending on where the relevant corporation maintains its German permanent establishment(s). The overall tax rate for corporations, which is also applicable to rental income, is therefore between 28% and about 34%.

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.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so, (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

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

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 (*verrechenbares EBITDA*) of such business (being defined as 30% of the EBITDA calculated for tax purposes).

However, there are three exemptions to the IBR. The IBR shall therefore not apply if:

- The total net interest expense of a given business is less than €3 million (in a given fiscal year);
- The given business is not a related party to any other person (within the meaning of the German Foreign Taxes Act) and does not have a permanent establishment outside the country in which its residence, habitual abode, registered office or business management is located ("stand-alone clause");
- The given business belongs to a consolidated group and the equity ratio of the given business is either higher than / equal to or not more than 2% lower than the equity ratio of the whole consolidated group at the end of the preceding financial statement reporting date ("equity comparison").

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.

In general, there is no withholding tax on interest, assuming a fixed interest rate applies (unless the German real estate serves as collateral for the loan). In case of variable interest rates a withholding tax on interest may apply.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

For buildings, a tax-deductible straight-line depreciation is available at a rate of either 2%, 2,5% or 3% per year, depending 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.

For residential buildings, a temporary degressive depreciation at a rate of 5% of the respective book value is available if the start of construction or the acquisition by a legally binding contract occurred after September 30, 2023 and before October 1, 2029.

For the construction or acquisition of new apartments (*Mietwohnungsneubau*), a special depreciation at a rate of up to 5% per year in the year of construction or acquisition and the following three years is available in addition to the straight-line or degressive depreciation.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

The deductibility of intragroup interest payments for tax purposes may be limited by transfer pricing. The recognition of an interest agreement for tax purposes depends on its arm's length compliance (*Fremdvergleichsgrundsatz*). As part of the new Growth Opportunities Act, a new transfer pricing rule on cross-border intragroup financings into Germany has been introduced. Accordingly, the arm's length principle is not complied with if:

- Credible demonstration is not possible with regard to: (1) the probability of the repayment from an ex-ante perspective (*cash flow test*) and (2) the economic necessity of the financing and its use for the business purpose (*business purpose test*) or;
- Interest rate for a cross-border financing relationship with a related party exceeds the interest rate at which the company could obtain financing from unrelated third parties on the basis of the group rating. Only the interest rate determined on the basis of the group rating is deemed to be at arm's length.

In addition, there are anti-hybrid rules according to which a deduction of business expenses is denied if e.g. the tax qualification or attribution of a capital investment is different and does not lead to taxation of the interest or to a lower taxation of the interest than under German law (tax mismatch, *Besteuerungsinkongruenz*). Further rules exist.

9. 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 temporary by 70% (from 2028 again by 60%) of the amount by which the income exceeds €1 million.

As a rule, a transfer of more than 50% of the share capital or voting rights in a corporation results in the entire forfeiture of the tax losses this corporation is carrying forward. 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 losses carried-forward are forfeited (e.g., a transfer of 25% of the share capital in 2020 followed by a subsequent transfer of 30% in 2021 will result in the entire forfeiture of all tax loss carry-forwards in 2021). 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 losses carried-forward 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.

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

Capital gains arising on the direct sale of real estate (asset deal) are taxable for corporations at the regular overall tax rate of 15.825% CIT and (if applicable) between 13% and about 18% TT. There is an exemption with regard to TT if the corporation exclusively leases and manages real estate.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

Capital gains arising on the sale of shares in a corporation holding real estate should be 95% tax-exempt, so that only 5% of such capital gains are subject to CIT and (if applicable) TT, if the corporate seller is tax resident in Germany. 100% of the capital gains should be tax-exempt if a non-German corporate seller does not have a business in Germany.

12. Is there a withholding tax on rental income?

No, Germany does not impose withholding tax on rental income.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

Withholding tax on capital gains derived from real estate can be imposed by the German tax authorities (at their discretion). The tax authorities can oblige the buyer to withhold and pay 15.825% of the purchase price as a lump sum to secure the corporate income tax due on the purchase price for the account of the seller if German real estate is sold by non-German corporations. This applies to direct sales of German real estate sold by non-German corporations. In general, there is no withholding tax in case of an indirect sale.

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

Yes. Germany does have a REIT regime. REITs have been permitted in Germany since 2007.

A stock corporation may fall under the REIT regime if (in particular) the following conditions are met:

- submission of the company name to the relevant court for entry in the commercial register;
- registered office and business management in Germany;
- shares of the REIT stock corporation to be admitted to trade on the stock exchange; request for stock exchange admission within three years of registration of the stock corporation as pre-REIT;
- at least 15% of the shares in free float (25% at the time of admission to the stock exchange);
- mandatory dividend distributions to investors;
- no real estate trade; and
- minimum equity capital: not less than 45% of the value of immovable assets (in the individual or group financial statements).

If the conditions are met, a REIT stock corporation is exempt from CIT and TT.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

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. There is therefore no tax benefit to using 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 the case of a domestic company which holds the real estate.

16. Are there any structures commonly used to mitigate real estate transfer tax liabilities on 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 interests in a real estate holding partnership, or the shares in a real estate holding corporation, one may make use of the 90% threshold rule in respect of the interests or shares that need to be sold, transferred or unified in order for RETT to be triggered.

RETT also falls due on any act or transaction in which either:

i. 90% or more of the interests in a real estate holding partnership or of the shares in a real estate holding corporation are (directly or indirectly) transferred within a period of ten years to new partners / shareholders, or

ii. 90% of the interests in such partnership or 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.

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.

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 90% or more of the direct or indirect economic interest). These need to be taken into account when structuring a real estate transaction in Germany.

Notification periods and other formal aspects also need to be complied with to avoid additional tax burdens, e.g. a double RETT.

17. 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".

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Ireland

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

Yes, stamp duty is payable on the direct purchase and direct leasing of real estate situated in Ireland.

Stamp duty on the purchase of real estate is payable by the purchaser on the higher of the consideration paid or the market value of the property transferring.

The purchase of commercial real estate is subject to stamp duty at a rate of 7.5%. There is a scheme that may allow a refund of a portion of the stamp duty if the property is later developed for residential use. This scheme is due to end on December 31, 2025.

The purchase of residential real estate is subject to stamp duty at a rate of 1% up to a value of €1m,2% on the consideration between €1m to €1.5m and 6% on the consideration in excess of €1.5m (for instruments executed on or after October 2, 2024). A higher rate of 15% applies to the purchase of 10 or more residential houses or duplexes at a time, or cumulatively in a twelve-month period, but a partial refund is available where the properties are leased to a local authority or approved housing body for social housing. The refund is based on the difference between the standard rate and the increased rate.

The lessee may be liable to stamp duty on the rent and/or premium on leases of both residential and non-residential real estate.

A lease for residential real estate is exempt from stamp duty if:

i. the period of the lease is 35 years or less or an indefinite period; and

ii. the annual rent is €50,000 or less.

For leases that are not exempt, stamp duty is due on the average annual rent. The rate depends on the term of the lease.

Period of the lease	Stamp Duty rate on average annual rent
Not exceeding 35 years or indefinite	1%
Exceeding 35 years but not exceeding 100 years	6%
More than 100 years	12%

Stamp duty is also payable on any premium. The rate payable on the premium depends on the type of real estate covered by the lease. If the real estate is residential, the same rate is payable as on the transfer of residential real estate. If non-residential, the rate is the same as on the transfer of non-residential real estate.

Type of real estate	Premium	Stamp Duty Rate
Residential	First €1 million	1%
Residential	€1 - €1.5 million	2%
Residential	Excess over €1.5 million	6%
Non-residential	-	7.5%

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

The purchase of shares in an Irish incorporated company is generally subject to stamp duty at a rate of 1% but a higher rate of 7.5% can apply in certain cases.

Stamp duty at the 7.5% rate is payable on written agreements or contracts to buy:

- shares (whether in an Irish or non-Irish company);
- units in an Irish Real Estate Fund (IREF) (“units”); or
- interests in partnerships (“interests”)

where certain conditions are met.

The 7.5% rate applies where the following conditions are satisfied:

- the shares, units or interests derive their value or the greater part of their value (50%) from non-residential real estate;
- the purchase results in a change in control over the company, IREF or partnership;
- the purchase results in a change in control over the real estate owned by the company, IREF or partnership; and
- the company, IREF or partnership deals in land or develops land for non-residential purposes.

3. Is value added tax, goods and services 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 VAT treatment of real estate transactions is fact specific but where VAT applies to a sale, the applicable rate is 13.5%.

The supply of freehold / freehold equivalent "new" property is subject to VAT at 13.5%. The supply of freehold / freehold equivalent "old" property is exempt from VAT, unless the vendor and purchaser exercise a joint option to tax. "New" properties include:

- the first supply of a completed property within 5 years of completion;
- the second and subsequent supply of a new property within 5 years of completion, unless it has been occupied for at least 2 years;
- old property which has been significantly re-developed.

Generally, lease interests in property are VAT exempt but there is a landlord's option to tax the rental subject to certain restrictions.

Transfer of business relief (**TOBR**) may apply where the real estate being transferred is subject to an existing letting agreement, an agreement for lease or a licence to occupy as together those assets are capable of constituting an independent business or undertaking.

4. Are there any annual taxes that may be payable on the ownership of real estate?

Local Property Tax (LPT)

LPT is generally payable by owners of Irish residential real estate subject to some exceptions. LPT is based on the market value of the residential real estate on the valuation date every year (1 November).

In some cases, LPT is payable by a person other than the owner:

- by a tenant with a long-term lease of more than 20 years; or
- by a person who has a right to live in the property for life or for more than 20 years or a right to live there "to the exclusion of all others".

If a property is rented on a standard short-term lease (less than 20 years), the landlord pays the LPT.

Property values are arranged into a number of bands up to €1,750,000. The LPT liability is calculated by applying a charge for the relevant band. Residential properties valued over €1,750,000 are assessed on the actual value at 0.1029% on the first €1,050,000, at 0.25% on the portion of the value between €1,050,000 and €1,750,000 and 0.3% of the portion of the value above €1,750,000.

The rates of LPT may be adjusted upwards or downwards by local authorities by an adjustment factor that must not exceed 15% of the existing rate.

Vacant Homes Tax (VHT)

VHT is an annual tax that applies to residential properties in use as a dwelling for less than 30 days in a 12-month chargeable period. An exemption may be available in certain circumstances. Any liability to VHT is in addition to a liability to LPT. Generally the chargeable person is the owner of the property.

The rate of VHT for the chargeable period November 1, 2024 to October 31, 2025 is seven times the basic rate of LPT for 2025. The basic rate of LPT can be increased or decreased by the Local Authority.

Residential Zoned Land Tax (RZLT)

RZLT is an annual tax calculated at 3% of the market value of land within its scope. It has applied since 2024 with the first liability due date deferred until February 1, 2025. The obligation to register for RZLT arises in respect of a relevant site which is land that appears on revised RZLT maps published by the relevant local authorities no later than 31 January each year (commencing from 2025). Certain properties are excluded from the tax such as existing residential properties liable for LPT.

RZLT will apply to land that is:

- zoned for residential use; and
- serviced.

The liable person for the purposes of RZLT is the "owner" of the relevant site. Recent legislative changes permit landowners to seek to have their land re-zoned to reflect the economic activity undertaken on the land to potentially bring them outside the scope of the RZLT, in addition to introduction for an exemption in respect of land subject to judicial review proceedings brought by a third party.

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

The tax rate on rental income depends on whether the owner is an individual or corporate and on the owner's tax residency.

An Irish company is subject to tax at a rate of 25% on rental income where it is taxed under Case V. A close company surcharge of 20% applies to rental income of a close company (broadly a company which is controlled by 5 or fewer persons) that is not distributed within 18 months of the end of the accounting period.

A non-resident company is subject to Irish tax at a rate of 25% on rental income.

In some cases, income from property rental can be taxed as trading income at a rate of 12.5% for companies.

Both resident and non-resident individual landlords are subject to income tax, the universal social charge (**USC**) and, in the case of resident individuals, PRSI (social security) on rental income at a combined marginal rate of up to 55%.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so: (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

Interest payable on a loan to purchase, improve or repair a rental property is deductible against rental income subject to certain conditions. If the income is taxed as part of a trade, a deduction is available for interest which is incurred "wholly and exclusively" for the purposes of the trade.

In the case of residential properties, the tenancy must be registered with the Residential Tenancy Board (**RTB**) and ongoing compliance in relation to the registration requirements must be maintained in order to be eligible for a deduction for interest on rental income. Interest payable on any rental property prior to its first letting and occupation is not deductible. Interest payable on a property after it ceases to be available for letting is not deductible. Interest on loans drawn down to acquire a residential property from a spouse or civil partner that is then rented is also not deductible.

A refinancing of a loan or loans used to acquire, improve or repair a rental property could technically not be deductible on the basis that the new loan is to replace existing borrowings and not directly used to acquire, improve or repair a rental property.

However, Revenue guidance provides that a deduction is allowed for the interest on the "replacement loan", subject to the rules for the interest deductibility detailed above, if in relation to a residential property loan:

- the original loan is replaced for genuine commercial reasons;
- the replacement loan is at arm's length; and
- the purpose of the replacement is not the avoidance of tax.

In relation to a commercial property loan, the replacement loan must be:

- for genuine commercial reasons; and
- not part of a scheme or arrangement the main purpose of which is the avoidance of tax.

Transfer pricing rules in line with OECD principles may apply in certain cases. However, SMEs are currently exempt from transfer pricing rules.

Ireland has also implemented anti-hybrid rules and an interest limitation rule in line with the relevant EU Directives. The ILR limits the maximum tax deduction for net borrowing costs to 30% of EBITDA. There are a number of exceptions to the ILR including:

- a €3 million de minims (i.e. where the Irish taxpayer's net borrowing costs are less than €3 million);
- where a company is a standalone company, being a company that has no associated enterprises or permanent establishments;
- Long-Term Public Infrastructure Projects i.e. a project to provide, upgrade, operate or maintain a large-scale asset in the general public interest.

A withholding tax at 20% applies to payments of interest other than "short" interest (interest on loans with a term of less than a year). However, there are a number of exemptions under domestic law, including for the following payments:

- payments by a company to a company which is resident in the EU or a country with which Ireland has entered into a double tax agreement ("DTA") and not acting through a branch or agency in Ireland where a) the other country imposes a tax that generally applies to interest receivable from foreign sources; or) the company would be exempt under the terms of the DTA.
- payments to Irish banks and certain other Irish entities such as regulated funds or Section 110 companies.

Where a domestic law exemption does not apply (e.g. because the payor is an individual), there may be relief under the terms of a DTA. Ireland has signed 76 tax treaties with 74 currently in effect.

7. Are there deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

Plant and machinery allowances may be available for qualifying expenditure which allows the expense to be written off over an 8-year period on a straight-line basis (12.5% per annum). Allowances are also available for certain industrial buildings (4% per annum).

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

Where the income is taxable as rental income (which is usually the case) the expenses incurred must meet the following conditions:

- wholly and exclusively relate to the rental property;
- the expense must be of a revenue nature; and
- the deductible expenses must generally be incurred during the currency of the lease. However, expenses incurred between leases can still be regarded as deductible as long as the landlord takes possession of the property between leases but does not occupy the rental property. However, certain pre-letting expenses are deductible and recent legislative amendments have extended the application of this relief until the end of 2027.

Where the rental activity is a trade, expenses are only deductible where certain criteria are satisfied- the expense must be wholly and exclusively incurred for the purposes of the trade and be revenue rather than capital in nature. Excessive expenses would not satisfy the "wholly and exclusively" test.

Transfer pricing rules apply to some taxpayers but there is currently an exemption for companies which are SMEs. Ireland has also implemented EU anti-hybrid rules and the ILR as outlined above.

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

Rental losses are available to be carried forward (indefinitely). The losses cannot be carried back to a prior year or offset against other forms of income. The rental loss must be used to the maximum extent possible in the earliest tax year. Rental capital allowances must be claimed in priority to rental losses forward.

If the income forms part of a trade, such losses may be carried forward but there is greater flexibility to use them against other income in the same year.

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

Yes. Capital gains tax (**CGT**) at a rate of 33% generally applies to the gain on the sale of Irish real estate. Limited exemptions apply e.g. on the sale of an individual's principal residence. An Irish regulated investment fund is exempt from tax on gains arising on the disposal but has a liability to account for tax on distributions to certain investors.

If the sale forms part of a trade, a rate of 12.5% or 25% may apply to the gain depending on the facts.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

An Irish tax resident is chargeable to tax on the capital gain arising on the sale of an SPV. The rate is 33%. If the value of the real estate is less than 50% of the value of the shares, an Irish corporate seller could avail of the participation exemption where conditions are satisfied.

An Irish tax non-resident is within the charge to CGT at a rate of 33% on the sale of an SPV whose shares derive more than 50% of their value from Irish land, buildings, mineral rights and exploration rights (known as "specified assets"). If the shares do not derive 50% of their value from such assets, a non-resident is exempt from Irish CGT.

12. there a withholding tax on rental income?

Where rents are paid to a non-resident landlord, the tenant is obliged to withhold Is tax at the standard rate of 20% from the rents payable unless the landlord appoints an Irish agent to collect the rents on its behalf.

From July 1, 2023, there is a new Non-Resident Landlord Withholding Tax (**NRWT**) system. Collecting agents or tenants will make a notification when rent is paid to a non-resident landlord. Collection agents or tenants will withhold and remit 20% of the rent payment to Revenue. This withholding tax may be offset against the landlord's Irish income tax liability.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

The purchaser of interests in Irish real estate and shares or loans that derive, directly or indirectly, at least 50% of their value from "specified assets" must withhold 15% from the purchase consideration unless the seller has provided a clearance certificate issued by Irish Revenue. An Irish resident taxpayer making a disposal is automatically entitled to a clearance certificate. A non-resident person will only receive a certificate where they have satisfied Irish Revenue that no CGT liability arises on the sale or that the CGT liability will be paid.

The 15% withholding applies to in scope assets worth more than €500,000 or assets that are houses or apartments worth more than €1m.

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

Yes, Ireland has a REIT regime.

The REIT regime provides a tax exemption on the income and chargeable gains of a real estate rental business held within a company which satisfies the REIT conditions. The property rental business must consist of at least three properties (there is a three-year build-up period allowed), and no one property should make up more than 40% of the total market value of properties in the business.

Distributions out of the REIT to shareholders are liable to dividend withholding tax at the rate of 25% subject to a number of exceptions. For example, shareholders who are tax resident in countries that have a DTA with Ireland can benefit from a lower dividend withholding tax rate if that is allowed under the relevant DTA.

The REIT must:

- be Irish tax resident and Irish incorporated;
- distribute 85% of the income from its property rental business by way of property income dividend;
- derive 75% of its aggregate income from the property rental business. It may carry on other "residual" business, but the tax exemption applies only to the income and chargeable gains of the property rental business;
- not be a close company;
- maintain a property financing costs ratio (the ratio of the sum of the property rental income and finance costs of the property business to the finance costs of the property business) of at least 1.25:1;
- use at least 75% of the market value of the assets of the REIT for the property rental business;
- not incur debts which exceed 50% of the market value of the assets of the REIT; and
- have its shares traded on the main market of a recognised stock exchange in the EU.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

Regulated investment funds are commonly used to hold Irish real estate. A fund which derives 25% or more of the market value of its assets from Irish real estate is an Irish Real Estate Fund (**IREF**).

Such a fund is generally exempt from Irish tax on income and gains (with some exceptions where certain debt and financing cost deduction limits are breached).

Where a fund is categorised as an IREF, 20% withholding tax must be operated by the fund on distributions of income subject to exceptions. Certain categories of investors are exempt from the withholding tax, including Irish pension funds, Irish regulated funds, life assurance companies and their EEA counterparts which are subject to equivalent supervision and regulation.

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

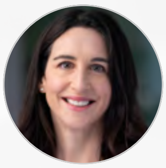
The IREF regime can mitigate liabilities, particularly where the investors fall into an exempt category.

It is common for non-resident companies to acquire Irish real estate. Due to the difference in stamp duty rates, a purchaser will often have a preference for acquiring the shares in a real estate owning company.

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

As outlined above, the rates of tax on rental income are different for individuals and companies. On disposal, a tax rate of 33% generally applies to the gain regardless of the status of the investor.

Your Dentons contacts in Ireland:



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Luxembourg

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

Sale of real estate / properties under construction

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

i. A 6% registration duty

ii. A municipal surcharge of 50% of the above registration duties for real estate located in Luxembourg city and affected to commercial use (i.e., 3%) and

iii. 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).

The registration duties are in principle due by the buyer.

However certain registration duties abatements are available:

- The law of December 20, 2020 on state revenue and expenditure budget for 2025 introduced a 50% tax abatement (applicable on the tax basis) for the acquisition of a property to be used as personal housing or as a housing for a tenant. This tax measure is limited in time and applies retroactively to notarized deeds of acquisition passed between October 1, 2024 and June 30, 2025;
- A tax credit of €30.000 per person (€60.000 for couples) is available for the acquisition of a property to be used as personal housing (so-called «*Bëllegen Akt*»). The abatement was increased to €40.000 per person (€80.000 for couples) during the year 2024 and it is expected that this increased €40.000 credit will be extended for notarized deeds of acquisition passed until June 30, 2025 (even if not yet enacted);
- A tax credit of €20.000 per person (€40.000 for couples) was introduced for investments in newly built properties to be used as rental housing with a rental period of more than 2 years. This tax credit is available for the year 2024 only but it is expected that this credit will be extended for acquisitions realized by way of notarial deed passed until June 30, 2025 2025 (even if not yet enacted).

Letting / lease of real estate

As of January 1, 2017, there is no longer a requirement to register leases, subleases and subrogation of leases within 3 months of their signature.

However, leases with a term of more than 9 years are still subject to a transcription formality, which requires the lease to be registered. They are hence subject to registration duties at a rate of 0.6% on the cumulative amount of rent on the total duration of the lease, except for leases subject to value added tax (**VAT**) for which registration duties are fixed at €12 (see below).

For the purposes of payment and the assessment of the duties, leases concluded for three, six or nine years will be deemed to be nine-year leases.

Leases not subject to the registration/transcription formality may still be registered on a voluntary basis, in which case the same 0.6% registration duties per annum would be due.

Leases concluded for an unlimited duration are assimilated to a sale and subject to registration duties at an aggregate 7% rate (split between a 6% registration duty and a 1% transcription duty). The municipal surcharge of 3% described at question 1 may also apply. The taxable basis is based on the equivalent of 20 years' rent and charges.

If the lease is subject to VAT (see question 3 below), by an option granted beforehand, only a fixed registration duty of €12 is due (i.e., the above ad valorem registration duties do not apply). In application of the *non bis in idem* principle, if VAT applies, there is no registration duty, regardless of whether or not the lease is for more than 9 years.

Property leasing contracts (*crédit-bail immobilier*) are only subject to the €12 fixed registration duty (and not the ad *valorem registration duties*) provided certain conditions are met. Where the lessee acquires the property at the end of the contract, registration duty at the proportional rate of 7%/10% should be payable on all payments representing the sale price made both during the lease and at the time of transfer.

In practice, the registration duty is due by the tenant in the absence of any other agreement providing for joint and several liability.

2. Is stamp duty, transfer tax or similar tax payable on the indirect sale or purchase of real estate, e.g., by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

There are no transfer taxes (stamp duty or similar duties/taxes) payable on the sale of shares in a Luxembourg tax opaque company (such as, notably, SA, Sàrl., SAS, SCA).

Registration duties apply in the case of a sale of the shares/units of a Luxembourg tax transparent entity (such as, notably, a SCI, SCS, or SCSp) holding Luxembourg real estate (which are assimilated to a direct sale of the real estate).

The same registration duties as for a direct sale of an asset apply, except the 1% subscription tax is not applicable.

3. Is value added tax, goods and services 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?

Real estate transactions are generally VAT exempt.

However, under certain conditions, the owner of real estate property has the option to waive the VAT exemption and to apply VAT on lease or sale of real estate. This may entitle the lessor/seller to deduct, to a certain extent, the value of any input VAT incurred.

In addition, the sale of buildings under construction or to be constructed at the time of signature of the agreement in principle subject to VAT at standard 17% (or at the reduced 3% rate if the building is used as main residence by the buyer).

VAT exemptions and VAT application for non-exempted transactions

Transactions exempt from VAT include:

i. The supply (*livraison*) of a building (and of the land on which it stands) and the transfer or real estate property rights, other than the sale of buildings under construction or to be constructed at the time of signature of the sales agreement.

ii. The leasing or letting of immovable property. However, the exemption does not cover:

   a. The provision of accommodation in hotels or similar establishments

   b. The letting of premises and sites for the parking of vehicles

   c. The letting of permanently installed equipment and machinery

   d. The renting of safety deposit boxes and

   e. Additional services provided in addition to a furnished lease, such as common reception, concierge services etc. are considered supplies of services and are fully taxable at 17% VAT standard rate.

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

i. **The object of the sale is classified as a going concern:** if so, the sale falls outside the scope of VAT

ii. **The plot of land subject to the sale is developed or not: i**f a plot of land is developed, the VAT treatment of land follows the VAT treatment of buildings or constructions (or their parts) developed thereon,

iii. **The undeveloped land is designated for other purposes than development:** if so, such supply is generally exempt from VAT.

VAT option for the sale / lease of real estate

An option for the sale/lease of real estate can be subject to VAT, provided the following conditions are met:

i. The sale/lease must take place between VAT taxable persons (the seller and the purchaser/ the landlord and the tenant must be registered for VAT and carry out transactions subject to VAT)

ii. The property must be used by the purchaser/ tenant, wholly or, in the case of mixed use, at least predominantly (more than 50%), in connection with an economic activity that gives entitlement to input VAT recovery

iii. A declaration of option for approval must be submitted to the Administration de *l'Enregistrement*, des *Domaines et de la TVA*.

Provided the above conditions are met, the sale/ lease will be subject to VAT at the standard 17% rate on the net price.

Hence, no VAT option is possible for the lease of residential units for housing purposes.

4. 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 (*impôt foncier*)

Property tax is charged annually by municipalities at varying rates, depending on the location and nature of the property.

The property tax due corresponds to the tax base (*base d'assiette*) multiplied by the communal rate (*taux communal)*. The tax base is itself obtained by multiplying the unitary value of the property (*valeur unitaire*) by the base rate (*taux d'assiette*).

The unitary value of the properties reflects the theoretical value of the property as of January 1, 1941. Therefore, the amount of property tax due is currently minimal.

In October 2022, the Luxembourg Government submitted the bill of law 8082 to the Luxembourg Parliament to introduce a reform of the property tax regime. The bill of law contains many modifications including that the unitary value should reflect the building potential of the property and that communal rates would range between 9% to 11%. The bill of law has not yet been adopted.

Net wealth tax for companies (impôt sur la fortune)

There is no net wealth tax for individuals, but there is a wealth tax for corporations.

Real estate properties located in Luxembourg held by a Luxembourg company or by a non-resident through a Luxembourg permanent establishment (**PE**) are subject to annual net wealth tax applying on the unitary value of the properties as determined on January 1 of each year.

Net wealth tax is levied at rate of 0.5% up to net wealth of €500 million and at 0.05% for net wealth of more than €500 million.

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**).

Specific tax on vacant housing

A few municipalities in Luxembourg currently have regulations introducing a specific tax on vacant buildings and unallocated building land. These are Beckerich, Diekirch, Esch-sur-Alzette, Esch-sur-Sûre and Redange-sur-Attert.

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

Resident individual taxpayers

For individuals acting in the course of the management of their private wealth, net rental income (income after all deductions and amortization) is subject to progressive personal income tax from ranging 0% to a maximum effective marginal tax rate of 42% for income over €220,788 (€441,576 for spouses assessed jointly), increased by a 7"% solidarity surcharge applied on the tax amount for income below €150,000 and 9"% above (the threshold is set at €300,000 for couples assessed jointly). There is an additional long-term care contribution (*assurance dépendance*) of 1.4% on income.

For individuals, acting in the course of a professional activity, the rental income is a business income subject to the above progressive personal income tax rates (including the solidarity surcharge). In addition, those individuals will, in principle, also be subject to municipal business tax (MBT) the rate of which varies between municipalities (6.75% per year in Luxembourg City).

Resident corporate taxpayers

Luxembourg resident fully taxable companies (such as notably SA, Sàrl, SAS, SCA). or non-residents companies acting through a Luxembourg PE are subject to Luxembourg corporate income tax (**CIT**) at a rate of 17% and MBT until 2024 (reduced to 16% as of 2025). In Luxembourg City, the aggregate standard rate is of 24.94% (including the solidarity surcharge) until 2024 (reduced to 23.87% as of 2025). These taxes are due on net rental income (i.e., income minus deductible expenses) derived from real estate properties located in Luxembourg.

Non-resident corporate taxpayers

For non-resident corporate taxpayers, in the absence of a Luxembourg PE, rental income is only subject to CIT at 17% (income exceeding €200,000) until 2024 (reduced to 16% as of 2025). No MBT applies unless the property is held through a PE in Luxembourg).

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so, (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules, and (ii) Is there any withholding tax on the interest?

Corporate taxpayers

For corporate owners of real estate, the funding of the acquisition of real estate will need to comply with general transfer pricing rules. There are no formal thin capitalization rules in Luxembourg.

Interest Deduction Limitation Rules

Luxembourg has implemented the interest deduction limitation rules (**IDLR**) contained in EU directive 2016/1164 dated July 12, 2016 (**ATAD 1**) in its domestic legislation. The IDLR is applicable since January 1, 2019.

According to the IDLR, the deduction of a taxpayer's exceeding borrowing costs is limited to the higher of €3 million or 30% of the taxpayer's EBITDA (i.e., taxable earnings before interest, tax, depreciation and amortization). A taxpayer's borrowing costs are in excess if "interest expenses on all forms of debt and others costs economically equivalent to interest and expenses incurred in connection with the raising of finance" exceed the "interest revenues and other economically equivalent taxable revenues."

The IDLR apply to all entities subject to Luxembourg CIT and to all interest-bearing loans and securities.

Transfer Pricing

The Luxembourg transfer pricing rules are covered by the provisions of the articles 56 and 56bis of the Luxembourg income tax law (**LITL**).

Where the acquisition by a Luxembourg company of a Luxembourg property is financed by way of a loan granted by a related party, the interest rate applied on such loan must comply with the arm's length principle. If this is not the case, excess interest will not be deductible.

Anti-hybrid mismatch rules

Luxembourg has transposed the anti-hybrid rules stemming from EU Directive dated May 29, 2017 (**ATAD 2**) into domestic legislation.

ATAD 2 addresses several categories of hybrid mismatches that exploit differences between tax systems to achieve double non-taxation (or long-term tax deferrals): double deduction, deduction without inclusion, non-taxation without inclusion.

To neutralize these mismatches, Luxembourg is required to: (i) deny the deduction of payments, expenses or losses; (ii) include payments as taxable income, or; (iii) deny relief from double taxation.

ATAD 2 only applies to Luxembourg companies.

Interest payments are, in principle, not subject to withholding tax (**WHT**) in Luxembourg, except in limited cases such as:

i. Where the interest rate does not comply with the arm's length principle (e.g., because the interest rate is excessive): excessive interest on borrowing may be requalified as hidden dividend distribution in principle subject to a 15% WHT;

ii. Interest on certain income sharing type instruments;

iii. Interest paid by Luxembourg paying agents to Luxembourg individual resident (so-called 'Relibi Law') for which a 20% WHT is applicable.

Individual taxpayers

Interest paid by individuals in relation to mortgage loans used to finance the acquisition of their main residence are deductible in amounts varying between €2,000 and €4,000 per person in the household, depending on the number of years the main residence has been occupied.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowance or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

Deductions for depreciation/ amortization are available against income for tax purposes. Only constructions may be amortized but not the land.

Where the property is held in the private wealth of an individual

For an individual acting in the course of her/his private wealth, amortization is a deductible expense (*frais d'obtention*) to be deducted from the rental income in order to obtain the net rental income.

The amortization base (*base de l'amortissement*) depends on whether the property was acquired (i) for consideration or for free and (ii) before January 1, 1941 or thereafter.

A distinction must be made between properties used for rental housing (*logement locatif*) and others.

i. **Properties held for rental housing:** the standard amortization rate is 2%. However, a 4% rate is available for (up to two) properties which are within 5 years of completion (*achèvement*) on 1 January of the tax year.

   On top, a special property allowance (*abattement immobilier special*) is also available for properties acquired after December 31, 2020 used for rental housing and benefitting from the above 4% rate. The amount of the allowance is 1% of the sum of the values used to calculate the 4% rate mentioned above, up to a maximum of €10,000. Such allowance is deductible from the taxpayer's taxable amount (*revenu imposable*) as opposed to a deductible expense.

   In addition, a temporary special construction allowance (*abattement construction spécial*) was introduced for buildings or parts of buildings under construction for which the taxpayer has signed between January 1, 2024 and December, 31 2024 a deed of sale in a future state of completion (*vente en l'état future d'achèvement*) and the completion of which was less than six years prior to 1 January of the tax year. The said building must be used for rental housing. The amount of the allowance is 4% of the sum of the values used to calculate the 2% rate mentioned above, up to a maximum of €250,000. It is expected that this measure will be extended for acquisitions realised until June 30, 2025 2025 *(even if not yet enacted*).

Note that (i) the 6% rate for properties acquired before January 1, 2021, the completion (or renovation) of which is less than 6 years old and (ii) the 4% rate for properties acquired after December 31, 2020 and before January 1, 2023, the completion (or renovation) of which is less than 5 years old, are still in force.

An amortization rate of 6% is available for capital expenditure (*dépenses d'investissement*) on sustainable energy renovation the completion of which is, on January 1 of the tax year, less than 9 years old.

ii. **Properties not held for rental housing:** the amortization rates vary depending on the age of the property. A distinction is made between buildings that are less than 30 years old, buildings that are 30 years old or more but not more than 60 years old, and buildings that are more than 60 years old. Depending on the age of the building, the rate of depreciation is 1.5% to 3%. Increased rates (2% to 4%) are available in the case of greater wear and tear to the extent this is duly justified.

Where the property is held as a business asset by an individual or a company

For an individual acting in the course of a professional activity, amortization is a deductible business expense (*dépenses d'exploitation*) to be deducted from the rental income in order to obtain the net rental income.

The amortization basis consists of the acquisition price minus the residual value:

i. **Properties held for rental housing:** a straight-line amortization rate is in principle applied. However, an accelerated amortization rate of 4% is available for properties the completion (*achèvement*) of which is, on January 1 of the tax year, less than 5 years old. Note that the 6% rate for properties acquired before January 1, 2021, the completion of which is less than 6 years old (the same is also available for renovation works) is still in force.

An amortization rate of 6% is available capital expenditure (*dépenses d'investissement*) on sustainable energy renovation the completion of which is, on 1 January of the tax year, less than 9 years old.

The special property allowance (*abattement immobilier special*) discussed above is also available here (but not the temporary special construction allowance (*abattement construction spécial*)).

ii. **Properties not held for rental housing:** straight-line amortization rate is in principle applied.

For **companies holding property**, the same treatment as the one described above for individuals acting in the framework of a professional activity applies, except that the special property allowance (*abattement immobilier special*) is not available for companies.

For non-residents

For non-residents, amortizations depend on whether the activity is commercial or not, with certain specificities.

8. Are there any other material restrictions on the costs and expenses which may be reduced in calculating a person's taxable rental income, e.g., transfer pricing or anti-hybrid rules?

Generally, costs and expenses (maintenance and repair costs, expenses for acquisition, depreciation/amortization, interest payments) are deductible subject to compliance with the transfer pricing rules, interest deduction limitation rules and anti-hybrid mismatch rules.

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

For all Luxembourg resident taxpayers, as of January 1, 2017, only tax losses incurred during the 17 tax periods preceding the tax period for which the deduction is claimed will be deductible. Tax losses incurred between January 1, 1991, and December 31, 2016, can still be carried forward without any time limitation. The old tax losses are to be deducted first.

For individual Luxembourg resident taxpayers, the carryforward of income tax losses is only possible for losses deriving from professional activities.

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

Capital gains arising on the sale of real estate are taxable.

For resident individual taxpayers

Capital gains on real estate realized by individuals acting in the course of the management of their private wealth, are taxable either as speculative gains if realized within 2 years of the acquisition until 2024 (extended to 5 years since 2025) or as an extraordinary gain on sale.

- Speculative gains (i.e., capital gains realized on a sale less than 2 years after acquisition until 2024 (extended to 5 years since 2025)) are fully taxable at the progressive tax rate increased by the solidarity surcharge.
- Gains realized upon 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 income tax rate. In addition, a deduction up to €75,000 for inherited property (through the direct line of descendance) may apply.

In both cases, capital gains realized upon the sale of the main residence are fully tax exempted.

Capital gains realized by individuals in the course of their profession are taxable at progressive income tax rates and are also subject to MBT at 6.75% (in Luxembourg City).

As a temporary measure to boost the housing market in Luxembourg, in the year 2024 only, the overall capital gains tax rate on the sale of real estate was reduced to 1/4 of the progressive income tax rate. This measure is not applicable to speculative gains. It is expected that this measure will be extended for acquisitions realised until June 30, 2025 2025 (even if not yet enacted).

A roll-over mechanism was temporarily introduced solely for fiscal year 2024 only according to which individual taxpayers could transfer the capital gain realized on the sale of a property to replacement properties used for social rental management or with the highest energy performance classification (A+).

For resident corporate taxpayers

Gains realized upon the sale of real estate are fully taxable at 24.94% CIT and MBT, including the 7% solidarity surcharge, until 2024 (23.87% as of 2025).

However, provided certain conditions are met, the capital gain can be neutralized from a tax perspective by transferring the capital gain to fixed assets acquired or constituted in reinvestment.

For non-residents

Where the capital gain is realized by a non-resident individual (not acting through a Luxembourg PE):

- Speculative gains are fully taxable at the progressive tax rate increased by the solidarity surcharge
- Gains realized upon the sale of real estate (after 2 years until 2024 (extended to 5 years as of 2025)) are taxed at half the progressive income tax rate (subject to a minimum 15% tax rate).

Capital gains realized upon the sale of a real estate property located in Luxembourg by a foreign entity are taxable in Luxembourg and subject to CIT at 17% rate until 2024 (16% as of 2025) plus the solidarity surcharge. If the Luxembourg property is attributable to a Luxembourg PE, MBT will also be due – representing an aggregate CIT and MBT rate of 24.94% (including the solidarity surcharge) if located in Luxembourg City until 2024 (23.87% as of 2025).

11. Are capital gains arising on the indirect sale of real estate taxable, e.g., by means of the sale of an SPV which holds real estate in jurisdiction? If so, what are the rates and are there any exemptions?

Sale of a Luxembourg tax transparent entity

The sale of the shares/units in a tax transparent entity (such as, notably, a SCI, SCS or SCSp) holding Luxembourg real estate held by a:

i. Luxembourg resident individual (regardless of whether that person acts in the course of their private wealth or in the course of a professional activity)

ii. Luxembourg company or

iii. Non-resident,

is in principle assimilated to the direct sale of the property in proportion to the participation held in the transparent entity – please refer to the tax consequences described above.

Sale of a Luxembourg tax opaque entity

i. For an individual acting in the framework of its private wealth, a capital gain realized upon the sale of a Luxembourg capital company holding Luxembourg real estate will only be taxable if:

    a. It constitutes a speculative gain (i.e., the sale occurs 6 months or less after acquisition): in which case the capital gain will be fully taxable at the progressive tax rate increased by the solidarity surcharge.

    b. It is sold more than 6 months after the acquisition and the person holds a substantial participation in the company (i.e., a participation of more than 10% together with their partner and underage children in the 5 years preceding the sale): in which case the capital gain will be taxable at half the progressive income tax rate increased by the solidarity surcharge.

ii. For an individual acting in the framework of a professional activity, capital gains are taxable at progressive rates and subject to the solidarity surcharge).

    However, provided certain conditions are met, the capital gain may be neutralized/rolled-over by transferring the capital gain to fixed assets acquired or constituted as reinvestment.

iii. A Luxembourg taxable company realizing a capital gain upon the sale of the shares in another Luxembourg taxable company should be fully taxable on such capital gain. A full exemption on such gain may be available under the participation exemption regime (minimum of 10% shareholding or shares of an acquisition value of € 6 million in a fully taxable limited company held for at least 12 months).

iv. Concerning non-residents, many of the double tax treaties concluded by Luxembourg do not contain a real-estate rich clause. Hence, the sale of the shares in a Luxembourg company by a non-resident is generally only taxable in the jurisdictions of the seller.

For non-residents in a country which has not concluded a double-tax treaty with Luxembourg, Luxembourg capital gain taxation will only be due if cumulatively (i) the non-resident sells the participation within 6 months of the acquisition and (ii) he/she/it holds a substantial participation (see above) in the Luxembourg company.

12. Is there a withholding tax on rental income?

No, Luxembourg does not impose withholding tax on rental income.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

No, Luxembourg does not impose withholding tax on capital gains deriving from real estate, except for the real estate levy (see question 14 below).

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

Luxembourg currently does not offer a real estate investment trust (**REIT**) regime.

Despite the absence of such a regime, Luxembourg offers a wide range of other legal products to initiators, promoters and sponsors in the real estate investment business, which, although not specifically tailored to real estate investments, are suitable and widely used to acquire, develop and hold Luxembourg or foreign real property (such as specialized investment funds or reserved alternative investment funds).

That being said, the Law of December 19, 2020 on state revenue and expenditure budget for 2021 introduced a 20% real estate levy (**REL**) (*prélèvement immobilier*) on income derived from real estate (rental income, capital gains related to the sale of the assets, transfer of units or shares) situated in Luxembourg by certain Luxembourg investment funds (directly or through transparent entities).

Investment funds in scope include entities with a legal personality (but excluding the limited partnership - *société en commandite simple*) subject to the law of:

- December 17, 2010 relating to undertakings for collective investments (the so-called 'Part II Funds');
- February 13, 2007 relating to specialized investment funds (**SIFs**) and
- July 23, 2016 relating to reserved alternative investment funds (**RAIFs**).

The REL is to be declared and paid by the investment vehicle itself. The declaration must be made no later than May 31 following the calendar year in which the income is received or realized. The investment fund must then make payment to the Luxembourg tax authorities by the following June 10 at the latest.

15. Apart from REITs, are there any tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

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.

16. 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% versus 10%).

In addition, capital gains realized on shares of a Luxembourg property company may be exempt under the conditions of the participation exemption regime if, amongst others, the parent company holds or commits to hold a participation of at least 10% or of an acquisition price of at least EUR 6m for at least 12 months in the eligible subsidiary.

17. 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 24.94% CIT/MBT until 2024 (23.87% as of 2025), versus a maximum 21% personal income tax rate for individuals under certain conditions.

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

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Netherlands

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

Dutch real estate transfer tax (**RETT**) is due upon the acquisition of the legal ownership and/or the economic ownership of real estate assets located in the Netherlands. RETT is legally due by the acquirer. At the time of publication of this Guide, the general RETT rate is 10.4% For residential real estate (houses, apartments, etc.) a lower RETT rate of 2% applies where the acquirer uses the property him/herself.

The taxable base is the fair market value of the real estate or, if higher, the purchase price of the real estate. If the Dutch real estate assets concern leasehold properties, the taxable basis should be increased with the capitalized ground rent. The taxable basis shall, however, never exceed the fair market value of the Dutch real estate assets in freehold.

Under conditions, there are various RETT exemptions available – for instance the so-called 'concurrence exemption' in the case of the (indirect) acquisition of building-land for Value Added Taxes (**VAT**) purposes or a newly-build property, or the so-called 'internal reorganization exemption' in the case of intra-group reorganizations of Dutch real estate assets.

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

RETT can be payable in relation to asset deals and share deals. The acquisition of (the legal and/or economic ownership of the) shares in a Real Estate Entity (**REE**) is a taxable event if (together with affiliated parties) an interest of 1/3rd or more is acquired. A company is deemed to be a REE if, in short: (i) it has legal personality and (ii) it meets the Asset Test and Purpose Test (as defined below). A foreign company can also qualify as a REE if it has legal personality and meets the Asset Test and Purpose Test.

A company qualifies as a REE only if its assets (on a consolidated basis - participation interests of 1/3rd or more in other entities need to be consolidated) at the moment of the share transfer comprise, or have comprised at any moment in the twelve-month period prior to the transfer, of more than 50% real estate assets and:

- at least 30% of the real estate assets are Dutch real estate (together the "**Asset Test**"); and
- 70% or more of the real estate assets, considered as a whole, are attributable to purchasing, selling and 'passive' exploitation (i.e., the lease of real estate) activities (together the "**Purpose Test**").

RETT is due by the acquirer of the shares in a REE. The taxable basis is the fair market value of the Dutch real estate assets at the moment of the transfer, even though the shares are acquired. The rates and application of most RETT exemptions are similar to asset deals. As per January 1, 2025 a lowered RETT rate of 4% will apply to the acquisition of a REE owning newly built Dutch real estate assets (i.e., taken into use for not more than two years) which are used for VAT exempt purposes (e.g., residential property).

3. Is value added tax, goods and services 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?

Sale and purchase of real estate

As a general rule, the transfer of Dutch real estate is exempt from VAT, unless (i) the property qualifies as building land or a "newly built property", or (ii) parties opt for a VAT taxable transfer, or (iii) the transfer of the property qualifies as a so-called transfer of a going concern for VAT purposes.

i. A property qualifies as a "newly built property" before, on or no later than two years after the date of first use of the property, either after the initial development of the property or after a significant renovation (including, amongst others, constructional changes to the property). The transfer of a "newly built property" is VAT taxable by virtue of law. The VAT rate is 21%.

ii. If the purchaser intends to use 90% or more of the property for activities to which VAT applies, the seller and the purchaser are entitled to opt for a transfer which is subject to VAT. The VAT rate is 21%.

iii. The transfer of a property qualifies as a transfer of a going concern for VAT purposes if the purchaser will continue to perform the economic activities (e.g. lease of immovable property) with respect to the property. The transfer of a going concern is not subject to VAT (i.e., neither VAT exempt nor VAT taxable). In the case of a transfer of a going concern, the purchaser will inherit the seller's VAT position with respect to the property, inter alia with respect to the applicable VAT revision period(s) of the property (see below).

VAT can usually be offset against VAT received or reclaimed from the Dutch tax authorities if the real estate is used for VAT taxable activities (e.g. VAT taxable lease, see below).

The acquisition of shares is not subject to VAT.

VAT revision period

In respect of a property, a VAT revision period of nine (9) years commences following the year of first use of (a part of) that property, either after the initial development of the property or after a significant renovation resulting in a newly built property for VAT purposes (*in wezen nieuwbouw*), or after a VAT taxable transfer of a property.

During the VAT revision period, the entitlement to the deduction of VAT charged during the development or renovation phase or upon the purchase of the property, may be adjusted on a pro rata basis (i.e., 1/10th per year), depending on whether the use of the property shifts from VAT taxable use to VAT exempt use (or vice versa) for 10% or more. This may result in either an additional credit or liability for VAT.

It has been announced that as per January 1, 2026 a VAT revision period of five (5) years will be introduced for all investment services relating to Dutch real estate assets of at least EUR 30,000 (excl. VAT).

Letting of real estate

As a general rule, the lease of a property is exempt from VAT, unless the landlord and the tenant jointly opt for a VAT taxable lease. In order to be able to opt for a VAT taxable lease, at least 90% of the tenant's use of the property should be for taxable purposes. The benefit of opting for a VAT taxable lease is that any VAT charged on costs related to the operation of that property is deductible for the landlord. Since the tenant could also deduct the VAT charged on the lease, there usually is no disadvantage for the tenant to opt for a VAT taxable lease.

In order to correctly opt for a VAT taxable lease, the lease agreement should meet a number of formal requirements (i.e.: there should be statement that sets out that the lessee will use the property for VAT taxable purposes, the commencement date of the lease, the commencement date of the financial year of the lessee and the cadastral information of the property). However, it has been approved by the State Secretary of Finance in a Decree that a lease will still be VAT taxable if not all formal requirements are met, but the parties nonetheless acted as if they correctly opted for a VAT taxable lease.

4. Are there any annual taxes that may be payable on the ownership of real estate?

Municipalities impose a property tax on owners and users of real estate, based on the value of the real estate assets (**WOZ value**). The tax rate varies between municipalities. Property tax is deductible for Dutch corporate income tax (**CIT**) purposes.

The WOZ value of a property aims to reflect the market value of that property as at 1 January of the previous year, taking into account transactions of comparable properties. Hence, the WOZ value for 2025 is based on the market value of the property on 1 January 2024.

Other taxes which are usually charged in relation to property are sewerage taxes, waste taxes and water authority taxes.

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

Rental income (minus deductible operational expenses, depreciation and interest expenses, provisions) derived by a Dutch resident entity or by a foreign entity in relation to Dutch real estate is subject to 25.8% corporate income tax (19% applies to the first EUR 200,000 of taxable income). Dutch resident entities that meet certain conditions (such as pension funds and charitable institutions) are exempt from corporate income tax. Foreign entities may also qualify for such exemption if they meet certain strict conditions.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so: (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

Interest expenses and costs related to the borrowing of funds to acquire real estate are deductible from the rental income.

No thin cap rules apply. Where the funds are borrowed from related persons, the interest expenses and costs are deductible to the extent they lie within the arm's length range.

In case of a reduction of equity which is financed out of intra group debt, the deduction of interest and costs due on that debt may not be deductible, unless the interest income is taxed at an effective rate of 10%, or the reduction of equity as well as the debt financing are both predominantly based on sound business reasons.

A limitation may apply to the net interest expenses and costs, so only if the interest expenses and costs exceed the interest income. The net interest expenses and costs are not deductible in a given year if they exceed the highest of: (a) 24,5% of the adjusted tax profit or (b) EUR 1,000,000.

The adjusted tax profit is the taxable income excluding net interest expenses and cost, depreciation and amortization.

Interest expenses and costs that are not deductible because of this limitation, can be carried forward indefinitely and may be deducted in a later year insofar as the interest expenses and costs in that year are lower than the above threshold.

Non-deductible interest of companies that own Dutch investment real estate may be no longer be available for carry forward in case the (in)direct interest in the company has changed substantially (30% or more) compared to the ownership in the year the interest was non-deductible.

The Netherlands does not impose withholding tax on interest payments. Interest that exceeds an arm's length interest is regarded as a hidden dividend and in principle subject to 15% dividend withholding tax.

However, interest payments (and dividends or royalty payments) made to (a branch of a) group companies in certain low tax jurisdictions (**LTJ**) are subject to an annual source tax of 25.8%. At the time of publication, the LTJ are:

Dutch list of low tax jurisdictions	EU list of non-cooperative jurisdictions for tax purposes
Anguilla	American Virgin Islands
Bahamas	American Samoa
Bahrain	Anguilla
Barbados	
Bermuda	
British Virgin Islands	
Guernsey	Fiji
Isle of Man	Guam
Jersey	Palau
Cayman Islands	Panama
Turkmenistan	Russian Federation
Turks and Caicos Islands	Samoa
Vanuatu	
	Trinidad and Tobago
	Vanuatu

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

Depreciation of the building is allowed. The depreciation basis is the acquisition price of the building (excluding the value of the land) plus the acquisition costs, minus the residual value of the building after the expected useful life. The depreciation basis will then be deducted over a period of usually 30 to 50 years. No depreciation of land is allowed.

Depreciation is no longer possible if the tax book value of the building reaches the WOZ value of the building (see question 4 above).

No investment allowances are available for real estate that is let to third parties.

Maintenance costs (i.e.: costs that must be made to keep the building in the same technical and structural condition) can be deducted in the year in which they are made.

Costs of improvement (i.e.: costs that are made in relation to substantial changes or the improvement of the functioning of the real estate) must be capitalized and depreciated separately over the useful life of the relevant element of the building. This period is at least 5 years.

If the market value of a building has dropped significantly and durably, it is possible to deduct such losses in that year, even if the tax book value would be less than the WOZ-value.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

The CIT contains several other deduction limitations. The starting point is that costs are only deductible insofar they are at arm's length and then specific deduction limitations may apply, for example related to fines, share based payments and deductions resulting from downward transfer pricing corrections without a corresponding upward correction in the hands of the related entity.

Payments or other remunerations that result in a deduction from CIT while they do not result in an inclusion in a profit tax as a result of a difference in qualification of a financial instrument, a hybrid entity, a difference in allocation between permanent establishment or head office, a disregarded permanent establishment, or deemed payments between permanent establishments and head offices, or payments that result in multiple deductions, are not deductible.

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

A tax loss can be carried back one year and forward indefinitely, provided the loss has been confirmed in a tax assessment. Tax profit up to EUR 1,000,000 can be fully offset against tax losses that are available, but tax profit exceeding EUR 1,000,000 can only be offset for 50% against the available tax losses.

Tax losses incurred by companies that own Dutch investment real estate may be no longer available in case the (in)direct interest in the company has changed substantially (30% or more) compared to the ownership in the year the losses were incurred.

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

Capital gains arising on the direct sale of Dutch real estate are taxed at the same rates as rental income (see question 5 above). The capital gains are calculated as the difference between the proceeds of the sale and the tax book value of the Dutch real estate. Transaction costs are in principle deductible, insofar they are at arm's length.

If a company has the intention to reinvest, capital gains may be deferred using the reinvestment reserve, rolling over the book value provided certain requirements are met, amongst others that the agreement to reinvest is signed within the 3 years following the sale

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

In principle, the sale of shares in a Dutch SPV that owns Dutch real estate by a non-Dutch tax resident company is not subject to Dutch CIT. However, in specific situations, it may be taxable under anti-abuse rules.

12. Is there a withholding tax on rental income?

No Dutch withholding tax is applicable on rental income.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

No withholding tax is imposed in the Netherlands on capital gains deriving from Dutch real estate, whether disposed of directly or indirectly.

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14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

The Dutch CIT has the fiscal investment institution regime (**FII-regime**), which is aimed at promoting collective investments, which can be compared with a REIT regime. The FII-regime allows investment companies which satisfy certain conditions to benefit from a corporate income tax rate of 0%.

As of January 1, 2025, the FII regime can no longer be applied by companies that directly hold Dutch real estate. The company is still allowed to indirectly invest in Dutch real estate, meaning it is still permitted to hold shares in a regularly taxed subsidiary company that invests in Dutch real estate. Direct investment in foreign real estate remains permitted.

To apply the FII-regime, the company must meet the following conditions:

i. the activity must be limited to portfolio investing (*beleggen*);

ii. the object clause in the articles of association must be limited to portfolio investing;

iii. the investment properties may be (indirectly) financed with up to 60% of the tax book value. 20% for other types of investments, such as listed securities;

iv. within 8 months after the calendar year, the profit must be distributed to the shareholders. Such dividend distributions are in principle subject to 15% dividend tax;

v. the regime is open to Dutch NVs, BVs and mutual funds; or similar entities incorporated under the law of a Member State of the European Union or a third country with which the Netherlands has concluded a bilateral tax treaty, provided that the bilateral tax treaty includes a non-discrimination clause;

vi. specific shareholder requirements must be adhered to; and

vii. Dutch resident entities may not own, together or with affiliates, an interest of 25% or more in the company applying the FII-regime through non-Dutch resident entities.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

Following the abolishment of the REIT regime (FII-regime) for Dutch real estate, there are a number of common investment structures for Dutch real estate:

i. **A Dutch tax resident cooperative owning Dutch real estate.** The profit is subject to Dutch CIT. No dividend tax applies to profit distributions by the cooperative if it only owns Dutch real estate.

ii. **A transparent entity for Dutch tax purposes owning Dutch real estate**. Each limited partner or unit holder is considered to own a part of the real estate in proportion to their interest. This means that each investor may be able to benefit from the lower CIT rate for the first EUR 200,000. If the foreign investor is a tax exempt pension fund, it may qualify for a CIT exemption, provided strict conditions are met. No Dutch dividend tax applies.

iii. **A non-Dutch tax resident entity owning Dutch real estate**. The profit is subject to Dutch CIT. No dividend tax applies as the company is not a Dutch tax resident. We note that foreign taxes may also apply.

When deciding on the type of transaction – an asset or share deal – immediate levy of Dutch CIT over the potential capital gains may be prevented by selling the shares in the company. In such cases, the deferred tax liability is usually shared between the seller and buyer in the share purchase price.

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

The acquisition of (the legal and/or economic ownership of the) shares in a REE is only considered a taxable event if (together with affiliated parties) an interest of 1/3rd or more is acquired. Therefore, a RETT could be mitigated if the shares in a REE are acquired by 4 non-affiliated parties which each acquire an interest of less than 1/3rd.

Other structures to mitigate VAT and/or RETT on acquisition and/or disposal of real estate should be considered on a case-by-case basis, in particular when acquiring or disposing building / land, a "newly built property" or a real estate asset to be demolished and/or (re)developed. The timing and sequence of the transactions could mitigate the VAT and/or RETT liability. The main aspects to considered in this respect are:

- The transfer of building land and the transfer of a "newly built property" are subject to VAT by virtue of law. VAT can usually be offset against VAT received or reclaimed from the Dutch tax authorities if the real estate is used for VAT taxable activities.
- The acquisition of shares and the transfer of a going concern (i.e., if the purchaser will continue to perform the economic activities (e.g. lease of immovable property) with respect to the property) is not subject to VAT (i.e., neither VAT exempt nor VAT taxable).
- Under condition, various RETT exemptions are available – for instance the so-called "concurrence exemption" in case of the (indirect) acquisition of building land for VAT purposes or a "newly build property", or the so-called "internal reorganization exemption" in case of intra-group reorganizations of Dutch real estate assets.

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

Individuals are taxed materially different from companies in relation to real estate. Individuals can primarily be taxed on the basis of either income from carrying on a business or savings:

a. Generally, acquiring, letting and disposing of real estate such as residential, commercial or industrial real estate is considered as portfolio investment, which is taxed at 36% over a deemed return on investment of 5.88% (2025) of the value of the property as at January 1 of the year. If the real estate has been financed with debt, this will decrease the taxable basis to compute the deemed return. Furthermore, a deemed cost of debt is calculated over the amount of the debt as at January 1 of the year and is deducted from the deemed return In 2024, the deemed cost of debt was 2.46%, and in 2025, it will be 2.62%. If the individual's net asset value is € 57,684 (EUR € 115,368 for taxpayers with tax partners) or less, no tax is levied.

b. Where the individual carries on a business in the Netherlands and the real estate can be attributed to this business, the rental income and capital gains are subject to personal income tax at a top rate of 49.50%. Various reductions and allowances apply. In practice, owning only one or a few properties is not considered to be a business unless additional activities are undertaken, such as development.

Dividend tax

Distributions of profit, such as dividends, by, amongst others, Dutch tax resident companies and open mutual funds are subject to 15% Dutch dividend tax over the gross amount of the distribution, unless an exemption or reduction applies based on domestic law or tax treaties. Any dividend tax must be withheld and remitted by the distributing company and a dividend tax return must be filed within one month after putting the profit at the disposal of the shareholder. Exemptions and/or refunds are available for group situations and exempt entities such as pension funds or charities.

Profit distributions made by Dutch tax resident cooperatives (*coöperatie*) are not subject to Dutch dividend tax, unless the activities in the year preceding the profit distribution consisted mainly (≥70%) of owning share interests to which the participation exemption applies or the financing of related entities and the member owns such a membership right that it is entitled to 5% or more of the profit or liquidation proceeds of the cooperative. If the only activities of the cooperative consist of owning investment real estate, this means that the profit distributions are in principle not subject to Dutch dividend tax.

The repayment of capital by Dutch tax resident companies is not subject to Dutch dividend tax, provided that prior to the repayment, a shareholders' resolution is passed amending the articles of association of the company to reduce the nominal share capital of the company, and the notarial deed effecting this reduction has been executed before a civil law notary. The conversion of share premium into nominal share capital is not subject to dividend tax, provided that proof of the contribution of share premium can be provided.

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Poland

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.)?

Polish tax on civil law transactions (**PCC**) is similar to stamp duty or transfer taxes in other countries. It can be levied on certain civil law activities, including contracts for the sale of real estate or parts thereof, if the activity (i.e. the transaction) enjoys an exemption from VAT or is outside the scope of VAT.

PCC generally does not apply to sale transactions that are subject to VAT (with the exception of 6% PCC applicable to the sale of residential units in bulk - see additional comments below).

Leasing of real estate is not subject to PCC.

PCC is levied at 2% of the fair market value of real estate and is payable by the buyer. Moreover, as from 2024, under the PCC laws, where a buyer:

- purchases at least six residential units constituting separate immovable properties in one or more buildings constructed on a single land property;
- an interest in such units; or
- has already acquired at least five such units or an interest in them,

within a transaction that is subject to VAT, the PCC rate for the sale agreement with the same buyer of the sixth and each subsequent unit in that building or buildings, or an interest in such unit, is 6%.

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

As a rule, the sale of shares in a Polish company (whether or not it owns Polish real estate) is subject to 1% PCC calculated on the fair market value of shares payable by the buyer. This 1% PCC is payable irrespective of whether the Polish company owns Polish real estate or not, and of whether the buyer of shares is a Polish or a foreign tax resident. Exemption from this tax may apply to sale of shares in a joint stock company if certain conditions are met.

On the other hand, the sale of a foreign company (whether or not it owns Polish real estate) is not subject to Polish PCC, unless the buyer has a place of residence or is a company seated in Poland and the sale agreement was concluded in Poland.

3. Is value added tax, goods and services 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.

Sale of real estate

If the seller is an entity conducting the economic activity (within the meaning of the VAT laws) and sells the real estate during 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 (i) exempt from VAT (parties may waive the VAT exemption) or (ii) fall outside the scope of VAT if the object of the transaction constitutes a transfer of going concern (**TOGC**).

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

- the seller can be considered a VAT payer in respect of the sale agreement;
- the object of the sale is classified as TOGC; 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 the buildings or structures (or their parts) developed thereon;
- the undeveloped land being sold is designated for other purposes than development; if so, such supply is generally exempt from VAT; and
- whether more than two years have lapsed from the first occupation within the meaning of the Polish VAT regulations of the building or structure subject to the transaction – if more than two years have lapsed from the first occupation, the transaction generally may be exempt but parties may waive the VAT exemption and opt for VAT taxation.

Lease services

Lease services are generally subject to 23% VAT. However, the lease of residential units for residential purposes is exempt from VAT, and accommodation services (such as short-term lease of apartments to tourists) are subject to an 8% VAT rate.

4. 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:

- land;
- buildings or parts thereof; and
- structures (e.g. internal roads, parkings) or parts thereof connected with business activity.

RET is payable to local authorities in monthly instalments in the case of corporate legal persons.

The maximum RET rates applicable as of January 2025 (local authorities may adopt lower rates) are as follows:

- for land used for business activity: PLN 1.38 per square meter;
- residential buildings or parts thereof: PLN 1.19 per m2 of usable area (calculated in accordance with the RET provisions);
- buildings or parts thereof related to business activities and on residential buildings or parts thereof occupied for business activities: PLN 34 per m2 of usable area (calculated in accordance with the RET provisions);
- for structures or parts thereof used for business activity: 2% of their initial value (from the tax books) adopted for income tax depreciation purposes.

Alternatively, land with specific characteristics may be taxed under agricultural / forestry tax regimes instead of RET.

5. 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 (**CIT**) and is calculated under general rules. Taxpayers who meet certain criteria (including, income-related criteria) may settle CIT at the rate of 9%.

Rent constitutes the landlord's taxable revenue. The landlord's tax costs may be any expenses related to the business and incurred in order to generate, maintain, or secure the source of income, including, for example, depreciation write-offs, financing costs (subject to appropriate restrictions), RET, or general operating costs (such as legal, tax, accounting services, management costs, etc.). The CIT Act contains a list of costs that are not tax deductible (e.g., certain contractual penalties and damages, representation costs), as well as provisions limiting the possibility of including certain expenses as tax deductible costs (e.g., excessive financing costs).

In case of corporate income taxpayers, the landlord's activity may also be subject to the tax on revenues from buildings (also known as the minimum CIT levy), which is 0.035% per month (0.42% annually) of the initial value adopted for tax purposes of the taxable building(s) (the basis for calculating the tax is reduced by PLN 10 million). To put it simply, this tax is ultimately imposed on the landlord's activity only in cases where the amount of this tax is higher than the amount of CIT payable under the general rules.

Moreover, from 2024, another minimum CIT is applicable to CIT taxpayers declaring tax losses or negligible income (≤ 2% of revenue).

Information on taxation of individuals is presented in the reply to question 17.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so: (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules? and (ii) is there any withholding tax on the interest?

Yes, for entities subject to CIT. With respect to individuals subject to PIT, it depends whether the rental income is related to the private rental or business activities (see also comments to question 17).

As a rule, interest may be tax deductible when paid (including set-off) or compounded (increasing loan principal). Accrued interest is not deductible for CIT purposes, however, if the financing concerns the development of fixed assets, accrued interest should be capitalized to the initial value of such assets (until the assets are put into use) and – along with the other cost of their development – subject to tax depreciation (unless limitations apply).

There are restrictions – in particular, the Polish CIT regulations limit the deduction of the excess of financing costs over interest income which constitutes a taxable revenue of the taxpayer in a given tax year (net financing costs) to 30% of tax-adjusted EBITDA or PLN 3 million whichever is higher.

Moreover, there are rules limiting the deductibility of interest on financing that are based on the provisions implementing the ATAD II Directive (provisions preventing discrepancies in the tax qualification of hybrid structures).

As to the transfer pricing regulations, any conditions set in the intra-group financing, in particular the interest rate, should be set at the market level, supported by a benchmarking study, and documented in transfer pricing documentation. Poland provides a safe harbor for loans under specific conditions.

Interest paid to foreign tax resident is subject to (i) 20% WHT in Poland (in respect of interest payments to corporate entities) (ii) 19% WHT (in respect of the interest payments to individuals), unless (a) the interest may benefit from the WHT exemption under Polish CIT Law regulations implementing the EU Interest Royalties Directive or (b) the rate may be reduced under a respective double tax treaty (**DTT**).

Usually, the withholding tax rates on interest under a relevant DTT range between 5% and 10%. Some of Poland's DTTs provide for a 0% withholding rate on interest (e.g., with the USA, Spain and France).

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.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

As a rule, expenses for the purchase of land do not constitute tax-deductible costs immediately (and land is not subject to tax depreciation). However, such expenses may be deducted for CIT purposes upon the sale of the property.

On the other hand, as a rule, expenses for the purchase (or development) of a building or premises, which will be used by the buyer for a period longer than one year (and are subject to accounting depreciation) may be recognized as tax-deductible costs via depreciation write-offs.

Depreciation rates:

- 2.5% per annum for new non-residential premises (e.g. service premises);
- a higher rate (up to 10%) for buildings and premises used by previous owners for a period of at least 60 months; and
- 4.5% per annum for building structures (e.g. parking plots).

Important note

As from January 1, 2022, **residential buildings**, apartments constituting separate properties, cooperative ownership rights to apartments and rights to a single-family house in a housing cooperative (used for business purposes) are not depreciable for Polish income tax purposes (costs of acquisition or development of such facilities are recognized only upon sale).

For buildings and premises other than residential owned by real estate companies (as defined under the Polish CIT rules), tax depreciation write-offs that are qualified as tax-deductible are limited by the amount of depreciation write-offs made for accounting purposes and charged (claimed) to the entity's financial result in the fiscal year. Nevertheless, based on recent case law, there are arguments to claim that if the property is not subject to standard accounting depreciation but is recognized for accounting purposes as a so-called investment property (where the value for accounting purposes is revaluated annually to its fair market value), the above limitation should not apply.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

Yes. The transfer pricing and anti-hybrid rules may be applicable not only to interest and other financing expenses, but also to the other costs and expenses a person may incur in the course of carrying on a real estate letting business. Polish CIT Law also includes a list of costs that cannot be deducted (e.g. certain contractual penalties).

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

Yes. 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.

Alternatively, tax losses generated in a given year may also be offset during one of the immediately following five tax years by an amount not exceeding PLN 5 million. In this scenario, the remaining not utilized loss may be deducted within the remaining years of this five-year period (the amount of such a reduction in any of these years may not be higher than 50% of the amount of the tax loss).

Tax losses resulting from a specific source of revenue (capital gains or other revenue sources) can only be deducted from incomes from the same source of revenue.

Tax losses cannot be carried back.

10. 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. Taxpayers who meet certain criteria (including income-related criteria) may settle CIT at the rate of 9%.

Comments on the taxation of individuals are presented in the response to question 17.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

Yes. Capital gains arising from the indirect sale of Polish real estate may be taxable in Poland.

A Polish-resident company is subject to Polish CIT, and a Polish-resident individual is subject to Polish personal income tax, on their worldwide gains, including gains derived from the disposal of shares in a Polish-resident or non-Polish resident company which holds an interest in real estate.

A non-Polish resident person may be subject to Polish taxes on gains from the disposal of shares in a company, if at least 50% of the value of assets of such a company consists (directly or indirectly) of real estate located in Poland or rights to such real estate.

However, the indirect disposal of real estate via the sale of shares in a company by a foreign shareholder is not subject to taxation in Poland unless the relevant DTT contains the so-called "real estate clause" (e.g. the current DTT with the US and Cyprus do not contain such a clause).

In the case of a sale by a foreign shareholder of at least 5% of shares (stocks) in a Polish real estate company (as defined in the CIT Act), the obligation to pay a CIT advance on the capital gains may be imposed on the company being sold (acting as a tax remitter – the seller of the shares (stocks) should provide the company with funds to pay this tax advance). However, this obligation arises only if the double tax treaty includes a real estate clause.

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

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 rules (i.e. the foreign owner must register for tax purposes in Poland and pay taxes directly to Polish authorities).

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

There is no withholding tax on capital gains derived from the direct sale of real estate. However, as noted in response to question 11, in the case of a sale by a foreign shareholder of at least 5% of shares (stocks) in a Polish real estate company (as defined in the CIT Act), the obligation to pay a CIT advance on the capital gains may be imposed on the company being sold (acting as a tax remitter).

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

No, there is no REIT regime available in Poland at the moment. However, in early April 2024, the Ministry of Development and Technology presented preliminary assumptions for a draft law introducing a REIT regime in Poland. According to the presented assumptions, the Polish REIT would be a listed company with a minimum share capital of PLN 100 million (approx. €25 million), earning at least 90% of its revenue from the rental or sale of real estate, or the sale of shares in subsidiaries investing in real estate, and distributing at least 90% of its profits to the shareholders annually. According to the assumptions presented, Polish REITs would enjoy preferential taxation with a 10% CIT payable only upon dividend payments. However, it is not known when the changes will be introduced, and that the main assumptions behind that system may change.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

A standard Polish limited liability company is the vehicle used most often for structuring investments on the Polish real estate market.

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

No. Typical investment structures for Polish real estate are:

- structure EU HoldCo-Polish PropCos; and
- structure with foreign PropCos investing in Poland directly.

One of advantages of having foreign PropCos invest directly in Poland is that such a structure typically avoids triggering Polish withholding tax (WHT) on dividends. In contrast, structures involving Polish PropCos (including EU HoldCo-Polish PropCos structure) require specific conditions to be met for dividends to qualify for WHT exemption or reduced rates. Otherwise, the standard Polish WHT rate of 19% on dividends applies.

17. 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: [see query related to currency: are they both correct?]

- The taxable income generated by corporate entities (legal persons) is subject to 19% CIT and is calculated under the general rules. Taxpayers who meet certain criteria (including income-related criteria, i.e., annual income lower than equivalent of €2 million) may settle CIT at the rate of 9%. The 9% CIT rate does not apply to income from capital gains. The above CIT rates will apply both in the case of income from the disposal and letting of real estate.

- Income generated by individuals is subject to Polish PIT, the basic tax rates are 12% (for income up to PLN 120,000 a year) and 32% (for income exceeding the PLN 120,000 threshold). Additionally, the solidarity levy of 4% applies to part of the overall annual income above PLN 1 million. The PIT rate for entrepreneurs is 19%. One may also choose to be taxed with a flat rate revenue tax, with rates ranging from 2% to 17%. Capital gains income is taxed at a 19% rate.
- Nevertheless, the rules for PIT taxation on income from real estate are different. The PIT rate for income earned on the disposal of real estate is 19% PIT. Under certain conditions, the income of individuals from disposal of the real property can be tax-exempt (i.e., if the income generated from such disposal is used for private residential purposes of an individual within three years, specific conditions must be met to benefit from this exemption).
- Rental income earned by individuals is taxed as follows:

For so-called private rental:

- a flat 8.5% PIT rate on annual income not exceeding PLN 100,000 a year;
- a flat 12.5% PIT rate on income exceeding PLN 100,000;
- no costs can be deducted from tax base.

For rental of real estate as part of business activities, individuals have two options:

  - apply the same rules as for private rental if specific conditions are met; or
  - use standard business activity taxation rules where:
    - income is calculated as rental revenue minus tax-deductible costs; and
    - tax rates of 12% and 32% apply, or alternatively a flat 19% rate.

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1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax ?

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

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

- BSD
- SSD for industrial property

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 (from February 22, 2014):

Table A

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 element in addition to the premium, stamp duty is payable on the rental based on lease duty rates.

Sale or purchase

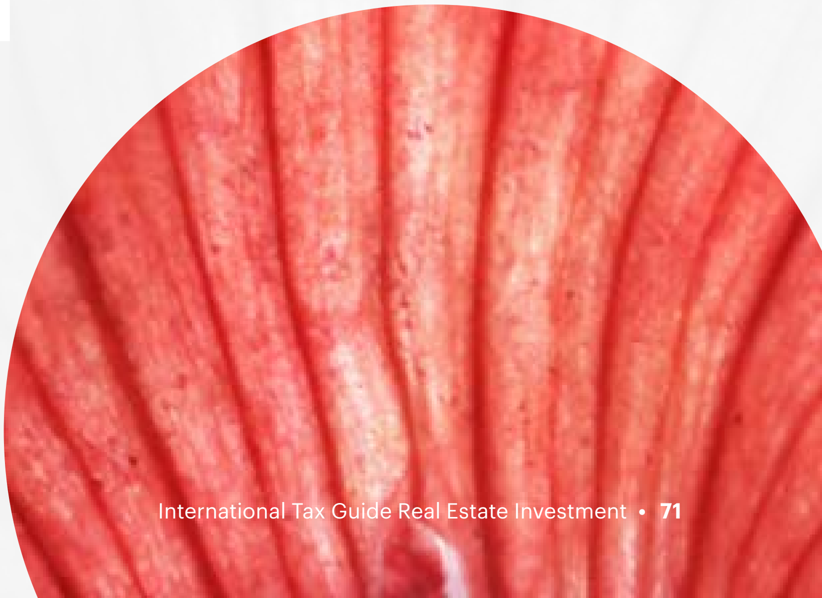
For a sale or purchase of immovable property in Singapore, the following duties are payable on the relevant instrument(s):

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 (assuming a date of purchase on or after February 15, 2023):

Table B

Purchase price or market value of the property	BSD rates
First S$180,000	1%
Next S$180,000	2%
Next S$640,000	3%
Next S$500,000	4%
Next S$1,500,000	5%
Remaining amount	6%



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 (assuming a date of purchase on or after April 27, 2023):

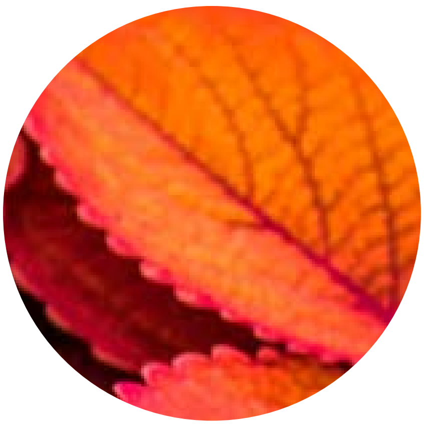
Table C

Profile of purchaser	ABSD rates
Singaporean citizen (SC) buying first residential property	N/A
SC buying second residential property	20%
SC buying third and subsequent residential property	30%
Singaporean permanent resident (SPR) buying first residential property	5%
SPR buying second residential property	30%
SPR buying third and subsequent residential property	35%
Foreigners buying any residential property	60%
Entities buying any residential property	65%
Housing Developers buying any residential property	35% (Plus additional 5% (non-remittable))
Trustee buying any residential property	65%

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:

Table D

	SSD rates	
Holding period	Date of purchase between January 14,2011 and March 10, 2017 (all inclusive)	Date of purchase on or after March 11, 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	No SSD payable



Non-residential property

BSD: The BSD for non-residential property is payable by the purchaser payable at the following rates (assuming a date of purchase on or after February 15, 2023):

Table E

Purchase price or market value of the property	BSD rates
First S$180,000	1%
Next S$180,000	2%
Next S$640,000	3%
Next S$500,000	4%
Remaining amount	5%

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):

Table F

Profile of purchaser	ABSD 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 stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

Effective from 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 hold interest directly or indirectly in prescribed immoveable property as defined by the regulations in Singapore.

A PHE is an entity which has at least 50% (i.e. asset ratio) of its total tangible assets comprising prescribed immovable properties (**PIP**) in Singapore. A PHE can be a Type 1 PHE, a Type 2 PHE or both.

PIP means any immovable property that is:

- zoned or situated on land that is zoned "Residential", "Commercial and Residential", "Residential/Institution", "Residential with Commercial at 1st Storey", or "White";
- permitted to be used by a written permission given under section 14(4) of the Planning Act (not being one that is given for a period of 10 years or less) or notification given under section 21(6) of the Planning Act for solely residential purposes or for mixed purposes one of which is residential; or
- used for solely residential purposes or for mixed purposes one of which is residential, in a case where the property was so used on February 1, 1960 and has not been put to any other use since that date, and where such use is not the subject of a written permission or notification mentioned above.

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 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 interest transferred in the PHE:

- **Additional conveyance duties for buyers (ACDB):** Existing BSD at 1% to 6%, and ABSD at 65% (flat rate)
- **Additional conveyance duties for sellers (ACDS):** SSD at 12% (flat rate)

3. Is value added tax, goods and services 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 and lease of properties in Singapore are taxable supplies for the purposes of Singapore Goods and Services Tax, except for residential properties. GST-registered persons or persons required to be registered for GST are required to account for 9% GST on standard-rated taxable supplies.

The sale and lease of residential properties are exempt supplies (i.e. no GST is applicable). However, supplies of movable furniture and fittings in both residential and non-residential properties in Singapore are taxable.

4. 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.

As of January 1, 2024, property tax rates are applied on a progressive scale from 0% to 32% for owner-occupied residential properties, and from 12% to 36% for non-owner-occupied residential properties. For non-residential properties, such as commercial and industrial buildings and land, the property tax rate is 10%.

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

There is no specific tax rate on rental income, which is taxed at the local personal income tax rates (progressive; currently from 0% to 24%) or the local corporate income tax rate (currently 17%), as the case may be.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so: (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

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.

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.

The withholding tax rate on interest paid to non-residents in connection with any loan or indebtedness is 15%, subject to any reduced rates in any applicable avoidance of double taxation treaties.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

The Land Intensification Allowance (**LIA**) allows for claims on qualifying capital expenditure incurred on the construction or renovation of a qualifying building or structure.

If applicable, Capital Allowances are deductions claimable for the wear and tear of fixed assets that qualify as "plant and machinery" used in one's company's trade, business or profession. Capital allowances are generally granted in place of depreciation, which is not deductible.

It should be noted that the Industrial Building Allowance (**IBA**) has been phased out since February 23, 2010.

There is no tax depreciation available on land.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income e.g. transfer pricing or anti-hybrid rules?

Costs or expenses arising from related party transactions are subject to transfer pricing requirements. Further, while Singapore tax laws do not have specific anti-hybrid regulations, there is a general anti-avoidance rule that generally allows the Comptroller of Income Tax (**CIT**) to disregard transactions that have the purpose or effect of reducing or avoiding taxes, if the requisite conditions are met.

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

Unutilised 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.

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

This is dependent on the facts. Generally, 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.

Where the real estate is a foreign asset, the sale of the real estate may be subject to capital gains tax under Section 10L of the Income Tax Act 1947.

Under Section 10L, gains from the sale or disposal of foreign assets will be subject to tax, if such gains are received in Singapore by entities without economic substance provided that certain conditions are met.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

As explained above, generally there is no tax on capital gains in Singapore.

12. Is there a withholding tax on rental income?

There is no withholding tax imposed on rental income for immovable property.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

There is no withholding tax on capital gains derived from real estate, but this depends on whether the property has been held as a capital asset by the seller.

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

Yes, Singapore has a REIT regime.

The trustee of a proposed/newly constituted REIT or its sponsor may apply for a tax transparency treatment in respect of the following income:

- rental income; or
- income from the management or holding of immovable properties (such as service charges and car park fees); or
- rental support payment if such payment is on an open market value basis and is made by the seller of the property or any interest in the owner of the property, or a person who wholly owns (directly or indirectly) the seller; or
- distribution from an approved sub-trust of the REIT in cash out of rental income or income from the management or holding of immovable property, income that is ancillary to the management or holding of immovable property, and rental support payment that is paid to the trustee of the sub-trust on an open market value basis on or after December 29, 2016 by the seller, the person who wholly owns the seller or any other person approved by the Comptroller; or
- interest income from temporary short-term placement of surplus cash as deposits with banks in Singapore and investment in debt securities.

The CIT may agree not to charge the trustee of a REIT with any tax, and to subject the beneficiaries of the REIT to tax on the distribution received from the REIT. The main condition is that that the trustee distributes at least 90% of the taxable income of the REIT to the unit holders in the same year the income was derived by the trustee.

Otherwise, a trustee of a REIT is taxed at the prevailing corporate tax rate on its income. Where the tax transparency treatment applies, the specified income that is distributed to the unit holders will not be taxed in the hands of the trustee.

Whether the distribution is taxed in the hands of the unit holder will depend on the nature of the income from which the distribution is made by the REIT ETF and the type of unit holder.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

Real estate investment vehicles in Singapore can be organised in the form of limited liability companies, variable capital companies or limited partnerships.

16. Are there any structures commonly used to mitigate real estate tax liabilities on acquiring and/or disposing of real estate?

It is common to structure transactions in real estate, particularly non-residential real estate, as indirect acquisitions to mitigate stamp duties. However, we wish to highlight that in Singapore, the laws on stamp study and income tax have both specific and general anti-avoidance provisions which should be carefully considered before any structure is adopted.

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

Individuals who acquire residential property on or after April 27, 2023 are subject to ABSD on a progressive rate between 0% to 60%, depending on the individual's profile, residency status and the relevant count of residential properties owned by him or her as at the date of purchase or acquisition. Conversely, companies will be subject to ABSD at a flat rate of 65%.

In addition, rental income received by individuals from the letting of their property from YA 2024 onwards will be subject to personal income tax at a progressive rate between 0% to 24%, depending on their income-earning capacity. In comparison, the prevailing corporate tax rate is 17%.

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Spain

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

Acquisition/purchase

The acquisition of real estate is either subject to transfer tax (**TT**) or value-added tax (**VAT**). In general, VAT applies if the transfer of the asset constitutes a 'first transfer' for VAT purposes and is purchased from a VATable entity/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. For example, the leasing of commercial space would be subject to and not exempt for VAT purposes. However, the leasing of a principal residence would be subject to but exempt for VAT purposes and subject to but exempt from TT.

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 a "reverse charge mechanism" generally reduces the VAT leakage on the acquisition of real estate.

TT rates range from 6% to 13%, depending on the region where the asset is located. Reduced rates, bonifications or exemptions could apply under certain circumstances. This tax is paid by the purchaser.

Stamp duty rates range from 0.4% to 3%, depending on the region where the real estate asset is located. This tax is paid by the purchaser. Please find below details of the tax rates established for each region (at the time of publication of this Guide).

	Tax Rate[1]		
Autonomous Community	TT(%)	Stamp Duty (%)	
		General	Increased[2]
Andalucía	7	1.2	-
Aragón	8-10	1.5	2
Asturias	8-10	1.2	1.5
Baleares	8-13	1.5	2.5
Canarias	6.5	0.75	1
Cantabria	9	1.5	2
Castilla y León	8	1.5	2
Castilla-La Mancha	9	1.5	2.5
Cataluña	10-11	1.5	2.5
Extremadura	8-11	1.5	3
Galicia	8	1.5	2
La Rioja	7	1	1.5
Madrid	6	0.4-0.75	1.5
Murcia	8	1.5	2.5
Valencia	10-11	1.5	2

1. *Note that these are the standard applicable tax rates. However, there are certain cases in which reduced or increased tax rates apply, depending on the type of transaction and the parties involved. Additionally, please note that the regulations provide for certain discounts that will be applicable when the requirements for their application are met.*

2. *The increased tax rate applies in cases of the first copies of notarial deeds in which an express waiver of the VAT exemption in real estate transactions is explicitly stated.*

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g., by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

Transfer of securities -non-listed or listed in an official stock market- are generally exempt from VAT and TT. Nevertheless, such exemption would not apply, if the transfer of shares is carried out with the purpose of avoiding the payment of the VAT or TT that would have been paid on the direct transfer of the real estate held by the entities.

Unless evidence is provided to the contrary, the law deems that these share deal scenarios are designed for the purpose of avoiding the payment of taxes corresponding to a real estate transfer if:

i. The acquisition of the control of an entity whose assets are mainly made up of Spanish real estate not linked to a business activity (this also applies to increases of control).

ii. The acquisition of the control of an entity holding a controlling stake in another entity whose assets are mainly made up of Spanish real estate not tied to a business activity. This also applies to increases of control; and/or

iii. The transfer of shares acquired because of a contribution of real estate assets upon the incorporation or the increase of capital in a company, provided that such assets are not treated as related to a business activity and the transfer happens within the three-year period following the contribution.

Therefore, VAT or TT depending on the type of real estate properties held by the Company and the parties involved- would be applicable if any of the mentioned scenarios arise. For VAT purposes, the tax calculation will be obtained by considering the market value of the properties and, for TT purposes, it will be obtained by considering the value that should be determined according to the TT legislation.

Please note that control is achieved when the participation in the share capital is, at least, 50%. The shares held in other companies of the same group of companies would be considered to determine if there is control.

For rates, please refer question 1 above.

3. Is value added tax, goods and services 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?

Please refer to question 1 above.

4. Are there any annual taxes that may be payable on the ownership of real estate?

Yes. Property tax is a local tax that is levied annually for the ownership of real estate assets. The tax due ranges from 0.3% to 1.1% (although under certain circumstances, it can be increased), depending on the municipality, over the cadastral value of the asset (an administrative value of the property).

Depending on the municipality where the asset is located, minor taxes such as the garbage tax or the parking rate could apply.

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

Taxable income obtained by a Spanish entity from net rental income is subject to corporate income tax (CIT) at a 25% rate. Subject to the fulfilment of certain requirements, the following reduced rates may apply:

1. 23% applies to entities whose turnover – calculated on a group basis if the entity belongs to a group as per article 42 of the Spanish Commercial Code – in the previous tax year was less than €1 million; or

2. 15% applies to newly created companies for two fiscal years, as from the first fiscal year in which the taxable base is positive – under certain requirements, start-up entities can benefit from this reduced rate for an extra two fiscal years; or

3. 0% as per the SOCIMI regime – as explained in question 14 below.

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).

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so, (i) are there any restrictions, such as thin capitalization, transfer pricing or interest limitation rules; and (ii) Is there any withholding tax on the interest?

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, if the interest does not exceed €1 million per year it is deductible in any case (known as the minimum allowance).

For a non-resident taxpayer (subject to Spanish Non-Resident Tax) that is considered EU tax resident and not acting in Spain through a PE, it may be argued that interest accrued on mortgage-secured debt obtained for the financing/refinancing of real estate property may also be tax deductible if a direct link between the debt and the Spanish activity can be evidenced.

The interest paid (and, depending on the case, the principal amount) must also comply with transfer pricing rules if the loan is made by a related party. Generally, non-resident entities outside the EU and acting without a PE in Spain cannot deduct the interest expense.

Generally, if the lender is an EU resident (other than a blacklisted territory), it should benefit from a withholding tax exemption on interest payments, subject to anti-abuse provisions.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

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.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

In general terms, EU residents should be able to deduct the expenses related to the amounts received for the rental income. However, in principle, non-EU-residents would not be able to deduct these amounts.

On March 9, 2021, Spain adapted the measures under EU Anti-Tax Avoidance Directive (ATAD 2) in order to address hybrid mismatches, in line with action 2 of BEPS. Therefore, the Spanish measures (that have transposed ATAD 2) apply to hybrid mismatches that occur between Spain and third countries, including EU member states.

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

Carried 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.

The Spanish Congress has recently approved additional measures to limit the offsetting of taxable bases applicable to companies classified as large companies (i.e., those with a net turnover of at least €20M during the 12 months prior to the start of the tax period).

10. Are capital gains arising on the direct 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. For reduced rates, please refer to question 5 above.

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 entities (REITs, or Spanish SOCIMIs) would be exempt, provided certain conditions are met.

Non-residents are generally taxed for the capital gains obtained on the transfer of the property at a 19% rate.

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 either (i) the deemed increase in the value of the land which forms part of the property – based on the cadastral value; or (ii) the difference between the effective cost of purchase and that of sale, considering the percentage of the cadastral value corresponding to the land. The applicable tax rate may vary depending on the municipality where the real estate assets are located, with a 30% limit. Please note that, the municipal tax on the increase in value of the urban land would only be payable if there is a real increase of the land value.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g., by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

In principle, capital gains derived from the transfer of shares of a company would be exempt from Spanish Non-Resident Income Tax. However, the exemption will not apply when the assets of the entity consist mainly, directly or indirectly, of real estate located in Spanish territory. In this case, the capital gain would be taxed at a 19% tax rate.

Nevertheless, when there is a double taxation treaty in place, the taxation of capital gains in Spain will be subject to the rules of allocation of such double taxation treaty. According to the vast majority of the double taxation treaties signed by Spain in case of transfer of Spanish real estate companies, capital gains would be subject to 19% taxation.

Where the transferor entity is tax resident in Spain, the capital gain obtained on the transfer of the SPV shares would be 95% exempt for CIT purposes if the following requirements are met:

i. The percentage of direct or indirect participation in the capital or equity of the entity is at least 5% and

ii. The participation should be maintained for a period of one year before the transfer.

12. Is there a withholding tax on rental income?

If the lease agreement is between Spanish entities, 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), withholding tax may not apply.

Conversely, if the lessor is a non-resident entity, the lease income (gross amount) would most likely be subject to 19% withholding tax.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

Capital gains generated by a Spanish entity are not subject to withholding tax. However, transfer of a real estate property by a non-Spanish resident taxpayer (without a PE) is subject to a 3% withholding rate that applies in respect of the purchase price (i.e., total consideration).

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

The Spanish legislation includes a SOCIMI (the Spanish equivalent of a REIT) regime.

Requirements to apply for the SOCIMI tax regime are as follows:

i. The company would need to be a public limited company (in Spanish, *sociedad anónima*) and have a minimum amount of share capital of €5 million. Note that this requirement is not applicable to Spanish Sub-SOCIMIs – as defined below.

ii. The shares of the SOCIMI must be nominative and of the same class, meaning they all have the same nominal value and grant the same voting and economic rights to their shareholders.

iii. The shares should be admitted to trading on a regulated market or in a Spanish multilateral trading system or in that of any other Member State of the European Union or the European

Economic Area, or in a regulated market of any country or territory with which there is an effective exchange of uninterrupted tax information throughout the tax period. Note that this requirement is not applicable for sub-SOCIMIs.

iv. The main corporate purpose has to be:

- The acquisition and development of real estate properties for rental purposes.
- The holding of shares in the capital of other SOCIMIs or non-resident entities in Spain that have the same corporate purpose as the ones which apply to the Spanish SOCIMI tax regime and which are subject to a similar regime concerning the mandatory, legal or statutory profit distribution policy (such as Real Investment Trusts or REITs).
- The holding of shares in the capital of other entities (known as "sub-SOCIMI") whether resident or not in Spain, whose main corporate purpose is the acquisition of urban real estate properties for rental purposes and that are subject to a similar regime established for SOCIMIs regarding the mandatory, legal, or statutory profit distribution policy, and that meet the investment requirements established in point (e) below.

  Please note that the companies referred to in this point cannot have subsidiaries and their share capital shall belong to other SOCIMIs or non-resident entities with a similar tax regime to the Spanish SOCIMI tax regime.
- The ownership of shares in Real Estate Collective Investment Institutions.

**Note a SOCIMI can carry out economic activities different from the ones listed above as long as the income obtained from these other activities is less than the 20% of the total income.*

v. Investment and income requirements.

- **80% investment requirement:** 80% of the SOCIMI asset must be invested in leasable urban real estate assets, lands for the development of leasable urban real estate properties (development shall begin in a three-year period as from the acquisition of the land) and shares in the capital of other SOCIMIs, REITs, or resident or non-resident Sub-SOCIMIs, as well as shares in the capital of Real Estate Collective Investment Institutions.

  Please note that, if the SOCIMI is the parent company of a group (as per the Commercial Spanish Code), compliance with this requirement shall be calculated based on the consolidated balance sheet with certain particularities.

  The investments made should be maintained for a minimum three-year period.
- **80% income requirement:** At least 80% of the income -excluding those derived from qualifying assets - must come from the lease of urban real estate properties (to individuals or entities that are not part of the same group, regardless of their residence) and from dividends distributed by any subsidiary SOCIMI (including REITs or sub-SOCIMIs).

  Please note that, if the SOCIMI is the parent company of a group, compliance with this requirement shall be calculated based on the consolidated balance sheet with certain particularities.

vi. Distribution of results. A SOCIMI is required to distribute its accounting profit as follows:

- At least 80% of the overall benefits, including those obtained from the lease real estate properties.
- At least 50% of the benefits obtained from the transfer of real estate properties and shares eligible for the application of the SOCIMI regime. The remainder of these profits should be reinvested in other, qualifying, assets during the following three years as from the date of the transfer. If the reinvestment is not made, these profits must be distributed in their entirety together with the rest of the benefits.
- 100% of the profits obtained from dividends in its subsidiaries.

How are SOCIMI taxed:

a. *CIT tax regime:* These entities are subject to the reduce tax rate of 0% for all their income, except for those taxed under the general regime – at a 25% rate – (for instance, benefits derived from non-compliance with the investment maintenance requirement set forth in sub-paragraph (e) of paragraph (i).

b. *Special levy:* The SOCIMI is subject to the special tax rate of 19% on the gross amount of distributed dividends when the following conditions are met:

- The shareholder holds a participation in the share capital of the SOCIMI equal or greater than 5% and
- The dividends received by the shareholders are exempt or subject to a tax rate lower than 10%.

c. Since 2021, the SOCIMI would be subject to the tax rate of 15% for the profits obtained and not distributed, for the part that comes from income that has not been taxed at the general CIT tax rate or, are incomes covered by the reinvestment period.

d. A SOCIMI is entitled to a 95% reduction on the Transfer Tax triggered on the acquisition of residential assets to be leased or land for the promotion of this type of properties to be leased, provided that the holding period of three years is met.

e. However, please note that not all the requirements mentioned above need to be fulfilled at the time of option for the special regime. Thus, some requirements may be met within the two-year period from opting for the SOCIMI regime without this being an impediment to applying the special tax regime.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

There is another tax regime for entities dedicated to housing rental whose main corporate purpose is the leasing of residential properties located in Spain.

The properties may have been acquired, constructed, or developed by the entity. This main activity must be compatible with the undertaking of other complementary activities.

The following requirements should be met to apply the special tax regime:

i. The Company should have, at least, eight residential properties leased or offered to be leased.

ii. The properties should remain leased or offered for lease for at least three years. This period will be calculated according to the following points:

- *For properties that are part of the entity's assets before opting for the special tax regime: from the start date of the tax period in which the option for the regime is communicated as long as, at that date the property was leased.*
- *For properties acquired or developed subsequently by the company: from the date they were first leased by the company.*

   If the above requirements are not met, each property would lose the tax reduction and the company would be liable to pay the full amount of reductions previously applied for under this regime.

iii. The real estate development and leasing activities should have an independent accounting register for each property acquired or developed, in order to know the income obtained per unit.

iv. The income eligible for the tax reduction should be at least 55% of the whole income for the fiscal year, without considering those that derive from the transfer of properties. The tax reduction may apply to the income derived from the leasing of residential properties.

v. If the incomes eligible for the tax reduction are less than 55%, the tax reduction cannot be applied to any of the company's income.

vi. Alternatively, at least 55% of the entity's asset value must potentially generate income derived from the leasing of residential units.

The option for this regime should be communicated to the Spanish Tax Authorities.

For CIT purposes, the company would be able to apply a tax reduction amounting to 40% of the tax quota.

16. Are there any structures commonly used to mitigate real estate tax liabilities on 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.

17. 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 or not the individual is tax resident in Spain, and whether or not the individual will be exploiting the real estate asset within a business activity.

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United Kingdom

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

Yes, stamp duty land tax (**SDLT**) is payable on the direct purchase and direct leasing of real estate situated in England and Northern Ireland.

Similar land transaction taxes are payable in Scotland and Wales, based on different rates and charging bands. The rules described below relate to SDLT only.

SDLT is payable by the buyer or tenant on increasing portions of the chargeable consideration, at rates that depend upon the non-residential or residential use of the real estate.

Where two or more real estate transactions between the same person (or persons connected with them) are "linked", the rates apply to the total consideration of all such transactions, such that a higher rate of SDLT may be payable than if the transactions were subject to tax individually.

Non-residential and mixed-use real estate

The current rates of SDLT for acquisitions of non-residential, or mixed-use (i.e. mix of non-residential and residential use) real estate are as follows:

Table A

Consideration (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 non-residential or mixed-use real estate, SDLT is payable on the lease premium at the rates listed in Table A. In the case of new leases (rather than the assignment of an existing lease), SDLT is also payable on the net present value (**NPV**) of the rent payable over the term of the lease.

The current rates of SDLT for the rent element are as follows:

Table B

NPV of rent (including any VAT)	SDLT rate
Up to £150,000	0%
The portion from £150,001 to £5 million	1%
The portion above £5 million	2%

Residential real estate

The current default rates of SDLT for acquisitions of residential real estate are as follows:

Table C (rates up to March 31, 2025)

Consideration	SDLT rate
Up to £250,000	0%
The portion from £250,001 to £925,000	5%
The portion from £925,001 to £1.5 million	10%
The portion above £1.5 million	12%

Table D (rates from April 1, 2025)

Consideration	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 above £1.5 million	12%

If the acquisition is of a new leasehold interest, SDLT is payable on the lease premium as per the rates in Tables C and D. If the NPV of the rent payable over the life of the lease is more than £250,000, SDLT is payable at 1% on the portion above £250,000. From April 1, 2025, the threshold value over which the 1% rate will be paid will be reduced to £125,000. Where a lease is assigned, SDLT is payable only on the lease premium.

If a company, partnership with a corporate member or collective investment scheme purchases high-value residential real estate (currently any single dwelling for which consideration of more than £500,000 is given), SDLT is payable at 17% on the entire purchase price. There are, however, reliefs available from the 17% rate, including for high-value residential properties purchased as part of a real estate development, real estate rental or real estate trading business.

If an individual buys residential real estate otherwise than to replace their existing main residence, or if a person who is not an individual acquires residential real estate, the buyer must generally pay a 5% surcharge on each portion of the consideration or lease premium paid, in addition to the default rates noted above.

If a buyer of residential real estate is not resident in the UK, or is a UK-resident company controlled by non-UK resident persons, a 2% surcharge is also generally payable on each portion of the consideration or lease premium paid, in addition to the default rates (and, if applicable, the surcharge rates) noted above.

2. Is stamp duty, transfer tax or a similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

The stamp duty and SDLT implications of an indirect purchase of UK real estate will depend on the type of indirect real estate holding structure. The most common structures of holding UK real estate involve the use of a UK- or non-UK incorporated limited company (including a UK real estate investment trust (**REIT**)), offshore unit trust, or UK- or non-UK partnership.

Stamp duty or stamp duty reserve tax (**SDRT**) (at a rate of 0.5%) is generally payable if UK real estate is purchased via the acquisition of shares in a UK-incorporated company. Ordinarily, neither stamp duty nor SDRT is payable in respect of a transfer of shares in a non-UK incorporated company. No SDLT or other UK land transaction tax is payable on the transfer of shares in a UK- or non-UK incorporated company.

Provided that the unit trust is a collective investment scheme, no stamp duty or SDRT, or SDLT or other UK land transaction tax, is payable on a transfer of units in an offshore unit trust.

SDLT is chargeable on the transfer of a partnership interest in a UK partnership (including limited partnerships and limited liability partnerships established in the UK), and in a non-UK partnership of a similar character, which holds real estate in England or Northern Ireland and whose sole or main activity is investing or dealing in real estate in those jurisdictions. A similar rule applies under the land transaction tax legislation of Scotland and Wales.

Stamp duty may also be payable on the transfer of a partnership interest if the partnership holds shares or marketable securities.

3. Is value added tax, goods and services 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 real estate is non-residential or residential.

No VAT is chargeable on the supply of the assets 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:

- in the case where the transferor is registered (or required to be registered) for VAT in the UK, the transferee is also registered (or required to be registered, whether as a consequence of the transfer or otherwise) for VAT in the UK;
- the business is capable of being carried on as an independent economic activity; and
- the transferee intends to use the assets in the same kind of business as carried on by the transferor.

If the UK real estate 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 real estate.

The main exceptions, which are standard-rated at the current rate of 20%, are:

- the sale of a freehold interest in an uncompleted non-residential building;
- the sale of a freehold interest in a non-residential 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 non-residential building who intends to make exempt supplies of the real estate, and who would therefore not be able to recover any VAT incurred in making those supplies, may "opt to tax" the real estate so that it charges an amount of VAT at the standard 20% rate and can recover the VAT incurred on costs relating to its supplies of the real estate. On the basis that the real estate supplied to tenants is predominantly non-residential, there should generally be no restrictions to input tax recovery for the landlord.

The sale by a developer of a new residential building, or of a building which has been converted from non-residential into residential use, may be eligible to be treated as a zero-rated supply. If the relevant conditions are satisfied, the seller need not charge VAT, but can generally recover the VAT it has incurred in making that supply, including VAT incurred on the costs of construction or conversion.

4. 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 real estate valued at more than £500,000. The annual charges with effect from 1 April 2025 will be as follows:

Table E

Real estate value	ATED charge
More than £500,000 but not more than £1 million	£4,450
More than £1 million but not more than £2 million	£9,150
More than £2 million but not more than £5 million	£31,050
More than £5 million but not more than £10 million	£72,700
More than £10 million but not more than £20 million	£145,950
More than £20 million	£292,350

Similar to the 17% SDLT charge on high value residential real estate, there are reliefs available for (among others) real estate rental businesses, real estate development trades and real estate dealers.

ATED does not apply to UK residential real estate held directly by individuals or to UK non-residential real estate.

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

UK companies are subject to corporation tax on the profits of their worldwide real estate rental business, which is currently chargeable at a main rate of 25%.

Non-resident corporate landlords are subject to corporation tax at the above rate on the profits of their UK real estate rental business. UK letting agents (or, in certain cases, tenants) are required to deduct the basic rate of income tax from rental payments unless the non-resident landlord has applied to and been approved by the UK tax authority (His Majesty's Revenue and Customs, or **HMRC**) under the Non-Resident Landlord Scheme (**NRLS**) to receive payments of rent gross.

Individuals are subject to income tax on rental profits charged on a progressive scale, which currently ranges from 20% for basic rate taxpayers to 45% for additional rate taxpayers. Individuals resident for tax purposes in Scotland are subject to income tax at rates ranging from 19% to 48%.

Non-residents that are subject to tax on UK rental income in their country of residence may be able to claim tax credit relief under the terms of an applicable double taxation agreement with the UK.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so (i) are there any restrictions, such as thin capitalisation, transfer pricing or interest limitation rules? and (ii) Is there any withholding tax on the interest?

UK companies and non-resident corporate entities are generally entitled, for corporation tax purposes, to deduct interest on borrowings used to acquire UK real estate against other profits (either income or capital), subject to certain restrictions.

Both UK companies and non-resident corporate entities are subject to restrictions including the UK's corporate interest restriction, hybrid mismatch rules and transfer pricing rules.

Corporate interest restriction The UK corporate interest restriction limits deductions for finance expense by reference to a fixed and group interest-to-EBITDA (earnings before interest, tax, depreciation and amortisation) ratio.

The restriction follows recommendations by the Organisation 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 has insufficient 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 expense exceeds the worldwide group's total external interest expense. In this way, the Modified Debt Cap applies 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 Fixed Ratio Rule by gearing up to 30% of the UK group's EBITDA.

Overriding the restriction 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. It remains to be seen whether the £2 million allowance will be increased to take account of increases in interest rates since the restriction was introduced.

Hybrid mismatch rules

The UK hybrid mismatch rules are intended to implement the OECD's final recommendations on BEPS Action 2.

One 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). The rules 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 scenarios in which a mismatch may arise include shareholder loans, Luxembourg financing structures, 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 entitled to a tax deduction in the UK for its interest expense, without a corresponding amount of income being 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 arises in connection with the loan arrangement and is both ordinary income of the UK payer for corporation tax purposes and ordinary income of the offshore payee for the offshore country's tax purposes. 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.

Transfer pricing

The UK's transfer pricing rules can limit the deductibility of interest on a loan, particularly where the loan-to-value ratio (**LTV**) 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 HMRC can treat the terms of the actual transaction as having instead taken place on 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 in excess of the arm's length rate 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 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 an advance agreement with HMRC; (ii) benchmarking the proposed structure usually by an internally produced economic analysis; or (iii) commissioning a report by a third-party transfer pricing specialist.

Other restrictions

Corporation tax rules connected with tax avoidance might also be applied, including in particular the "unallowable purpose" rule which can apply to disallow debits or reduce credits if a loan has a tax avoidance purpose. Although the rule has been a feature of the UK tax code for some time, it is seen by HMRC as an increasingly important tool for challenging certain financing structures.

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 centre 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 agreement to receive interest payments gross.

7. Are deductions for capital expenditure available against rental income for tax purposes, for example capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

Capital allowances may be claimed on qualifying capital expenditure incurred on assets to be used wholly or partly for the purposes of a taxable business. Allowances may be claimed in respect of both new and second-hand assets and provide tax relief for the depreciation of those assets.

Capital allowances are available for most fixed and moveable plant and machinery, for which the default allowance is 18% per year on a reducing balance basis. Certain "special rate" plant and machinery (including integral features such as electrical systems, lifts and escalators) attracts a reduced rate of writing down allowance of 6% per year.

Enhanced allowances may be available for certain types of expenditure. For example, under the full-expensing regime introduced in 2023, UK-resident companies and other entities subject to corporation tax may obtain a deduction for the full cost of new plant and machinery in the year in which the expenditure is incurred (reduced to 50% for special rate expenditure), unless the plant and machinery has been acquired for leasing.

A person who has claimed capital allowances on an item of plant or machinery must bring into account a disposal value when the item is sold (and in certain other circumstances). The person may be liable for a "balancing charge" if the disposal exceeds the tax written down value of the item.

The availability of capital allowances on fixed plant and machinery may be restricted by reference to the allowances claimed and disposal values brought into account by previous owners of the real estate.

Except where it relates to fixed plant or machinery, capital expenditure incurred in respect of the construction, renovation or conversion of a building will not generally be eligible for plant and machinery allowances. Such expenditure may however be eligible for the structures and buildings allowance, to the extent that it is incurred in respect of a non-residential building pursuant to a contract entered into on or after October 29, 2018. Where available, the structures and buildings allowance is given at a fixed rate of 3% per year. Any unclaimed allowance may be transferred to the buyer when the building is sold.

8. Are there any other material restrictions on the costs and expenses which may be deducted in calculating a person's taxable rental income e.g. transfer pricing or anti-hybrid rules?

As a general rule:

- costs and expenses may be deducted in calculating a person's taxable rental profits only if they have been wholly and exclusively incurred for the purposes of the person's rental business, and
- except to the extent they are eligible for capital allowances, costs and expenses of a capital nature are not generally deductible in calculating taxable rental profits.

The transfer pricing and anti-hybrid rules outlined in question 6, above, are applicable not only to interest and other financing expenses, but also to the other costs and expenses a person may incur in the course of carrying on a real estate letting business.

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

UK-resident companies and other entities subject to corporation tax must set off the losses of a real estate rental business against their total profits subject to corporation tax (from whatever source) in the accounting period in which the losses arise, following which any unrelieved losses may be carried forward and set off against total profits arising in subsequent accounting periods, provided that the entity continues to carry on the real estate rental business.

If a loss derives from a real estate development or other trading activity, the loss may in addition be set off against total profits arising in accounting periods falling wholly or partly within the period of 12 months prior to start of the accounting period in which the loss arises.

Carried-forward losses arising on or after April 1, 2017 can be set off against the profits of other companies within a corporation tax group. Coupled with this flexibility, however, is a restriction to limit the amount of the set-off in each year to £5 million plus 50% of group profits exceeding £5 million. 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.

Capital losses arising on a disposal of real estate must be set off against capital gains (from whatever source) arising in the same accounting period, following which any unrelieved losses may be carried forward and set off against gains arising in future accounting periods.

From 1 April, 2020, the restriction for carried-forward losses was extended to the set-off of capital losses against capital gains. For periods from 1 April, 2020, companies are therefore required to allocate their £5 million deductions allowance among their trading profits, non-trading income profits and capital gains.

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

UK companies are subject to corporation tax (at 25%) on their business profits, which includes capital gains from the direct disposal of real estate, wherever situated.

Non-UK resident companies are subject to corporation tax on capital gains arising on the disposal of direct interests in UK real estate.

In either case, group relief may be available for transfers of real estate between 75% group companies such that the transfer is made on a no gain/no loss basis.   In addition, non-UK collective investment vehicles satisfying certain conditions may be entitled to make an exemption election, exempting them from UK taxes on gains deriving from the disposal of interests in UK real estate held directly or indirectly by them, with tax instead accounted for at investor level.

UK-resident individuals are subject to capital gains tax (**CGT**) at 18% or 24% on the direct sale of real estate, depending on their level of taxable income in the relevant tax year. Individuals and trusts benefit from an annual exempt amount (£3,000 for individuals and £1,500 for most trustees for the 2024-2025 tax year). No CGT charge arises if a UK individual disposes of their only or main residence.

Non-resident individuals disposing of UK real estate are subject to non-resident capital gains tax (**NRCGT**). NRCGT is chargeable at the same rates as for UK-resident individuals (depending on their level of total taxable income and gains in the relevant tax year) and 24% for trustees. 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, although it may be necessary for the individual to satisfy a day-count test in order to qualify for the relief.

11. Are capital gains arising on the indirect sale of real estate taxable e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and are there any exemptions?

Capital gains arising from the indirect sale of UK real estate may be taxable in the UK.

A UK-resident company is subject to corporation tax, and a UK-resident individual is subject to CGT, on their worldwide gains, including gains derived from the disposal of shares in a UK-resident or non-UK resident company which holds an interest in real estate.

A non-UK resident person is subject to UK taxes on gains from the disposal of an asset if:

- the asset derives at least 75% of its value from UK real estate, and
- the non-UK resident person has a substantial indirect interest in the real estate.

As a general rule, a non-UK resident person is treated as having a substantial indirect interest in UK real estate only if they (together with any persons connected with them) hold an interest of 25% or more in the entity through which the real estate is held. By way of exception, non-UK resident persons holding an interest in certain collective investment vehicles are deemed to hold a substantial indirect interest regardless of the size of their holding.

An exemption from the charge on non-UK resident persons may be available if all of the relevant interests in real estate are used for trading purposes or if the disposal is linked to another indirect disposal and the 75% test is not met when aggregating the assets of the companies.

More generally, a UK-resident or non-UK resident person may be entitled to claim the substantial shareholding exemption (the UK's participation exemption for the disposal of equity) if the entity disposed of is a stand-alone trading company or the holding company of a trading group. The exemption may also be available in whole or in part on the disposal of a non-trading entity or group which is held indirectly by certain classes of institutional investor, including sovereign wealth funds, pension schemes and certain widely-held fund vehicles.

Indirect disposals of UK real estate by a non-UK collective investment vehicle which has made an exemption election (or by entities within its group) are generally exempt from UK taxes on capital gains.

The normal corporation tax and CGT rates apply to gains arising on an indirect disposal.

12. Is there a withholding tax on rental income?

Under the NRLS, non-resident landlords are subject to withholding tax at the basic rate (20%) on rental income received from UK real estate. Such non-resident landlords may apply for the rental income to be paid gross, provided that they have a clean UK tax compliance record. While this may give rise to a cash flow benefit, such landlords will nonetheless continue to be subject to UK taxes on their UK rental profits.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

No withholding tax is imposed in the UK on capital gains deriving from UK real estate, whether disposed of directly or indirectly.

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of REIT and the main conditions that must be satisfied to enter and remain within the regime.

Yes, the UK does have a REIT regime. The UK REIT regime allows companies that carry on a real estate rental business and which satisfy certain conditions to benefit from a tax-efficient regime for closed-ended funds.

Where the qualifying conditions are satisfied, a REIT (whether a stand-alone company or a group REIT) is exempt from UK corporation tax on income and gains from its qualifying rental business. Property income distributions by the REIT are generally subject to corporation or income tax in the hands of shareholders, and by default are paid under deduction of withholding tax at a rate of 20% (although exemption from withholding is available for certain types of shareholder).

The following are the main conditions under which a company may enter and remain in the UK REIT regime. The company (or the parent company in the case of a group REIT) must:

- be tax resident solely in the UK;
- not be an open-ended investment company;
- have its ordinary shares admitted to trading on a recognised stock exchange or be at least 70% owned directly or indirectly by one or more institutional investors;
- not be a close company;
- have only one class of ordinary share capital in issue;
- not be party to a loan with specific restricted characteristics;
- hold at least three properties for the purposes of its property rental business (none of which may represent more than 40% of the total value of the properties involved in its rental business), or at least one property with a value of at least £20 million;
- derive at least 75% of its profits, and at least 75% of the value of its assets, from its property rental business; and

distribute at least 90% of the profits of its property rental business annually.

15. Apart from REITs, are there any other tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

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 either transparent or opaque for UK capital gains purposes.

In relation to residential real estate, companies were often used to hold UK real estate. However, with the introduction of the higher rate SDLT charge and ATED charges on enveloped UK real estate, this has now become less tax-efficient.

16. Are there any structures commonly used to mitigate real estate tax liabilities on acquiring and/or disposing of real estate?

It is common for UK commercial real estate to be owned by an offshore special purpose vehicle (in jurisdictions such as Jersey, BVI and Luxembourg). The principal reason for this is that the acquisition of an offshore vehicle holding UK real estate is generally free from UK land transaction taxes, stamp duty and SDRT. This brings a c.5% reduction in acquisition costs for the buyer. The use of a non-UK entity may also assist in eliminating withholding taxes on shareholder finance.

It is therefore common in the UK market for a sale of commercial real estate to be structured as a sale of the company or unit trust owning the asset, with the buyer and seller negotiating who obtains the benefit of the land transaction tax saving.

Acquiring a real estate-owning company means that the buyer will assume responsibility for any historical liabilities (tax or otherwise) of the target company.

It is therefore 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, which at least in theory should allow the seller to have a "clean break", without the need to stand behind the warranties and indemnities.

While similar issues arise on the acquisition of a unit trust, its transparency for the purposes of taxes on income (and, in many cases, for the purposes of capital gains taxes) should mean that historical liabilities for direct taxes generally remain with the unit sellers.

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

While the SDLT rules relating to the acquisition of non-residential real estate apply in broadly the same way to individual and non-individual purchasers, there are a number of material differences in the rules as they apply to residential real estate. In particular, individual purchasers have no liability for the fixed 17% charge, nor are they automatically liable for the 5% surcharge, unless (in broad terms) they are purchasing a second home or buy-to-let property. The differences are less pronounced in Scotland and Wales, since neither land transaction tax regime has an equivalent of the fixed 17% charge.

Individuals have no liability for the ATED charge described in question 4, above.

The profits of a letting business are subject to income tax in the hands of individuals and corporation tax in the hands of companies and other corporate entities. While there is still a considerable overlap, the taxes have increasingly diverged in recent years. For example, the income tax regime has no equivalent of the corporate interest restriction or anti-hybrid rules, gives relief for finance expenses on a different basis and has different rules for the utilisation of losses. There also remains a material difference between the highest rates of income tax and corporation tax.

On a disposal, individuals are liable for CGT on any gain arising, while companies and other corporate entities are liable for corporation tax. While the corporation tax regime largely follows the CGT rules, there are certain differences: as well as the difference in rates outlined in question 10, above, individuals may be entitled to reliefs not available to corporates (and vice versa), while the CGT regime has no limitation on the utilisation of carried forward capital losses.

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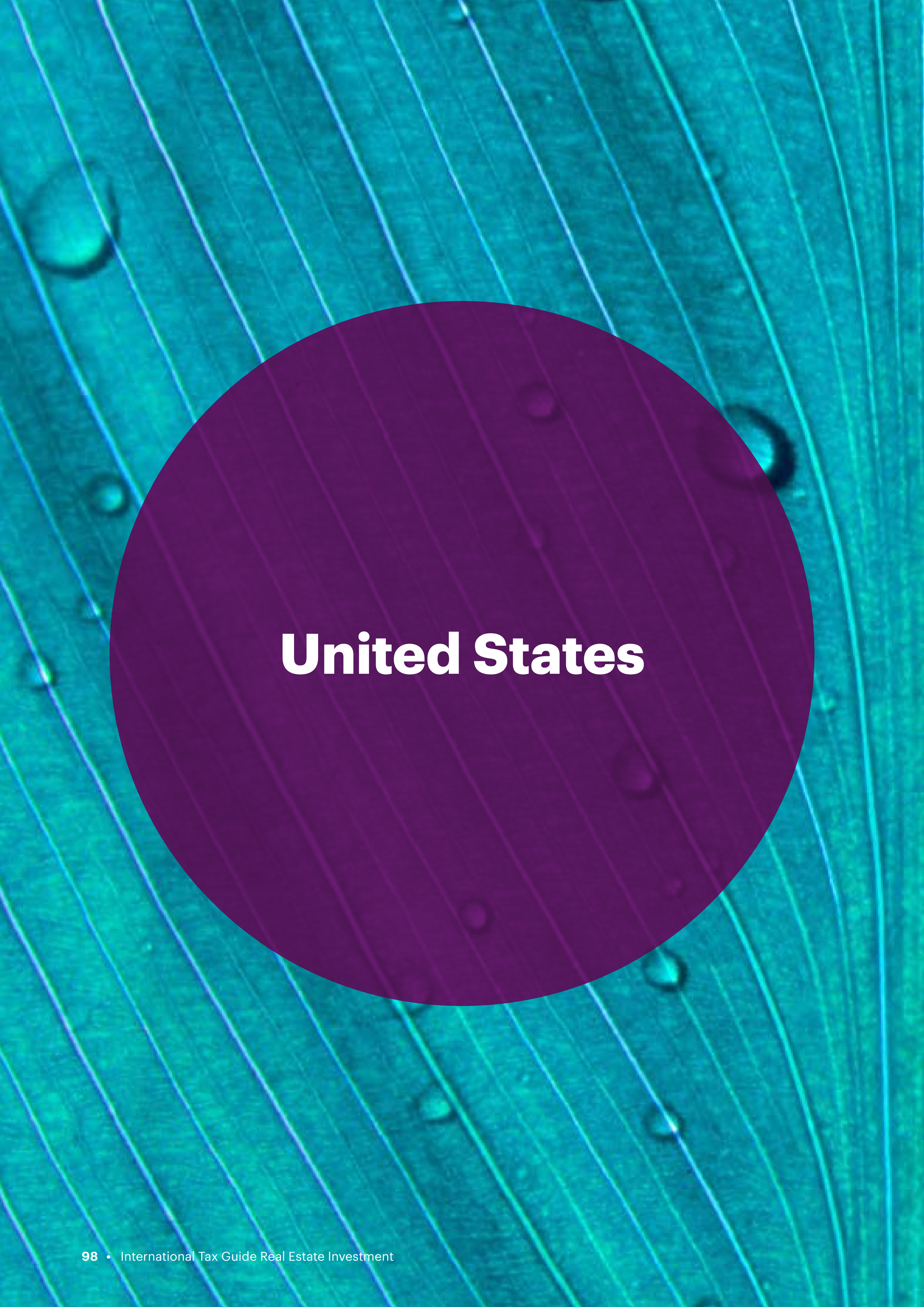

United States

1. Is stamp duty, transfer tax or a similar tax payable on the direct sale, purchase or leasing of real estate? If so, what are the rates and who is required to pay the duty or tax?

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.

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 stamp duty, transfer tax or similar tax payable on the indirect sale or purchase of real estate, e.g. by means of the sale of an SPV which holds real estate in the jurisdiction? If so, what are the rates and who is required to pay the duty or tax?

In the U.S., transfer taxes are often imposed on the indirect sale or purchase of real estate at the state or local level. For example, New York State imposes an indirect real estate transfer tax on conveyances of real property or interests therein when the consideration exceeds $500. Tax is computed at a rate of two dollars for each $500, or fractional part thereof, of consideration. An additional tax of 1% of the sale price (mansion tax) applies to residences where consideration is $1 million or more.

Local jurisdictions also impose their own transfer tax. For example, properties transferred in Los Angelos, California are subject to a current county and city transfer tax rates of 0.11% and 0.45%, respectively. The rates vary based on the state or local jurisdiction.

In most jurisdictions, these taxes are paid by the transferor but this rule can vary based on the jurisdiction

3. 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%.

4. 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 2.33%, 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.

5. 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 37%. 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 21%. 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 35%.

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.

6. Is interest on borrowings used to acquire real estate deductible for tax purposes against rental income? If so, (i) are there any restrictions, such as thin capitalisation, transfer pricing or interest limitation rules; and (ii) is there any withholding tax on interest?

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.

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.

Business interest expense deductions are limited to 30% of adjusted taxable income (**ATI**) plus business interest income. The calculation of ATI is similar to EBIT. An exception to the business interest expense limitation, however, is provided for an electing real property trade or business (**RPTOB**). If a RPTOB election is made, the election is irrevocable and the taxpayer would generally be required to use longer depreciation lives to depreciate its real property assets.

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 US Treasury Regulations, 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.

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

7. Are deductions for capital expenditure available against rental income for tax purposes, for example, capital allowances or deductions for depreciation? If so, are deductions available for expenditure on both land and buildings, or on buildings only?

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.

8. Are there any other material restrictions on the costs and expenses which may be reduced in calculating a person's taxable rental income, e.g. transfer pricing or anti-hybrid rules?

There are several restrictions on the costs, including the passive loss rules. Under these rules, individuals may deduct costs only to the extent of rental income and income from other passive activities. Any disallowed expenses 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.

Under US transfer pricing rules, the IRS may reallocate income among related taxpayers to the extent such income does not reflect an arm's-length transaction.

US anti-hybrid rules disallow deductions for interest in the case of certain related party payments pursuant to hybrid arrangements or that involve hybrid entities. The rules are intended to address situations where a taxpayer is provided a deduction under US tax law but the payee does not have a corresponding income inclusion under foreign law.

9. 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 forward indefinitely but are limited to 80% of each subsequent year's net income. 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.

10. 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 a US corporation the assets of which predominately consist of US real estate, i.e., a US real property holding corporation (**USRPHC**), 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 37%. 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 21%, 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 5). 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.

11. Are capital gains arising on the indirect sale of real estate taxable, e.g. by means of the sale of an SPV which holds real estate in jurisdiction? If so, what are the rates and are there any exemptions?

A foreign person is subject to tax on capital gains arising on the sale of stock of a US corporation that is a USRPHC. In the case of a foreign individual, a 20% federal income tax generally would apply if the stock was held for more than one year, but ordinary rates would apply if the stock was held short term. A foreign corporation would pay 21% federal income tax on the gain. Gain from the disposition of stock in a USRPHC is generally not subject to US branch profits tax. In addition, as discussed below, purchasers of stock of a US corporation that is a USRPHC are generally required to withhold from the purchase price a tax equal to 15% of the total consideration.

Stock of a foreign corporation held by a foreign person can be sold free of US tax.

12. Is there a withholding tax on rental income?

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.

13. Is there a withholding tax on capital gains derived from real estate? If so, does the withholding tax apply to both direct and indirect sales, or to direct sales only?

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. FIRPTA withholding applies to direct sales and certain indirect sales (i.e., sales of stock of a US corporation that is a USRPHC).

14. Does the jurisdiction have a REIT regime? If so, please outline the tax treatment of the REIT and the main conditions that must be satisfied to enter and remain within the regime.

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.

15. Apart from REITs, are there any tax-efficient real estate investment vehicles or structures which are commonly used to acquire, hold and exploit real estate in the jurisdiction?

See question 16, below.

16. Are there any structures commonly used to mitigate real estate tax liabilities on acquiring and/or disposing 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 21%, 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 26% corporate-level deduction (assuming a combined federal, state and local tax rate of 26%) 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.

17. 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 21% 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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