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Key Tax Issues at Year End for Real Estate Investors 2024/2025

An overview of year-end tax considerations and important issues in real estate taxation in 36 tax systems worldwide

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Introduction

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

This publication gives investors and fund managers an overview of year-end tax considerations and important issues in real estate taxation in 36 tax systems worldwide.

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

Please note that the list of year-end tax considerations is not exhaustive. This content is for general information purposes only and should not be used as a substitute for consultation with professional advisors.

We hope that you will find Key Tax Issues at Year End for Real Estate Investors 2024/2025 a useful reference and source of information. We would be pleased to assist you with any further requests relating to your specific circumstances.

November 2024

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List of abbreviations

ADIs	authorised deposit-taking institutions
AIA	annual inflationary adjustment
AIF	alternative investment fund
AMIT	attributed managed investment trust
AMT	alternative minimum tax
ATAD	anti-tax avoidance directive
ATI	adjusted taxable income
ATO	australian taxation office
BAT	business activity tax
BCRA	banco central de la república argentina (Argentine central bank)
BCT	business continuity test
BEAT	base erosion anti-abuse tax
BEPS	base erosion and profit shifting
BTR	built-to-rent
CAEDB	central agency for equal distribution of burdens
CbCR	country-by-country reporting
CCA	capital cost allowance
CET	contribution économique territoriale
CFC	controlled foreign company
CFE	cotisation foncière des entreprises
CGT	capital gains tax
CIT	corporate income tax
CPC	communist party of china
CRA	Canada revenue agency
CVAE	cotisation sur la valeur ajoutée des entreprises

DDCR	debt deduction creation rules
DDD	deemed dividend distribution
DMTT	domestic minimum top-up tax
DST	documentary stamp tax
DTT	double tax treaty
EBITD	earnings before interest, tax and depreciation
EBITDA	earnings before interest, tax, depreciation and amortization
EIFEL	excess interest and financing expense limitation
ETR	effective tx rate
FAF	free availability funds
FATCA	foreign account tax compliance act
FDII	foreign-derived intangible income
FPI	foreign portfolio investors
FRCGW	foreign resident capital gains withholding
FSI	foreign sourced income
FX market	foreign exchange market
GAAP	generally accepted accounting principles
GAAR	general anti-abuse rule
GHS	general healthcare system
GILTI	global intangible low-taxed income
GLoBE	global anti-base erosion
GST	goods and services tax
IARPIs	indirect Australian real property interests
IIR	income inclusion rule
IFRS	international financial reporting standards
IMU	italian local property tax
IOSCO	international organisation of securities commissions
IRAP	italian regional production tax
IREF	irish real estate fund

ITC	input tax credit
JDA	joint development agreement
LAT	land appreciation tax
MCIT	minimum corporate income tax
MIT	managed investment trust
MLI	multilateral convention to implement tax treaty measures and prevent base erosion and profit shifting (multilateral instrument)
MOF	ministry of finance
MREC	mutual real estate company
MST	message structur table
NCST	non-cooperative states and territories
NCMI	non-concessional MIT income
NFE	net financial expenses
NOL	net operating loss
NRCGT	non-resident capital gains tax
NWT	net wealth tax
OECD	organisation for economic co-operation and development
PAC	provincial administrative court
PE	permanent establishment
PIT	personal income tax
PLC	preferred location charges
PNWT	property net wealth tax
QDMTT	qualified domestic minimum top-up tax
QIPs	quarterly instalment payments in UK
RAIF	reserved alternative investment funds
RCM	reverse charge mechanism
RE	real estate
REIC	real estate investment companies
REIF	real estate investment fund

REIT	real estate investment trust
RET	real estate tax
RETT	real estate transfer tax
RPT	real property tax
ROS	revenue online service
RTP	restricted transfer pricing
RPVARA	real property valuation and assessment reform act
SAF-T	standard audit file for tax
SDC	special defence contribution
SEBI	securities and exchange board of india
SEC	securities and exchange commission
SEZ	special economic zones
SIF	specialized investment funds
SIR	societé immobiliere reglementee (Belgian regulated real estate company)
SOCIMI	sociedades anónimas cotizadas de inversión en el mercado inmobiliario (Spanish REIT)
SRET	special real estate tax
STA	state taxation administration
STT	securities transaction tax, stock transaction tax
TAP	taxable australian property
TCJA	tax cuts and jobs act
TCP	taxable canadian property
TP	transfer pricing
TPD	transfer pricing documentation
UBO	ultimate beneficial owner
UIF	financial information unit
UTPR	undertaxed profit rule
VAT	value-added tax
WHT	withholding tax

Europe

1 Austria

Income tax rates

Generally, the corporate income tax rate in Austria amounts to 23% (until 2022 this rate was 25%; it was reduced to 24% in 2023). There are no local corporate taxes in Austria. For individuals, a progressive tax rate of up to 55% depending on the level of income applies.

Tax group

In order to form a tax group between companies, a written application has to be signed by each of the group members prior to the end of the fiscal year of the respective group member for which the application should become effective. Consequently, the taxable income of the group members is integrated into the parent's income. Profits and losses can be compensated between group members.

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

Losses carried forward

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

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

Substance requirements

Please note that anti-abuse provisions apply to the application of double tax treaties (DTTs) as well as to the Parent-Subsidiary Directive. Relief-at-source is available only if the direct parent company issues a written declaration confirming that

- It is an 'active' company carrying out an active business that goes beyond the level of pure asset management (holding activities, group financing, etc.),
- has own employees and
- office space at its disposal (substance requirements).

Provided the requirements are not met, Austrian withholding tax (WHT) has to be deducted and the refund method applies. In that procedure the foreign company has to prove that its interposition in the structure is not abusive. Further, the lack of substance can result in the non-deductibility of certain expenses (e.g. if the company which receives interest payments has no substance and the actual beneficial owner is an affiliated company which is located in a low-tax jurisdiction). Finally, it should be mentioned that there is also a general substance-over-form provision in the Austrian Fiscal Code, which shall avoid tax abuse.

Substance requirements are more and more challenged by the Austrian tax authority. Therefore, it should be ensured that these requirements are met.

DAC 6

Austria has implemented reporting requirements for cross-border tax arrangements according to DAC 6.

Cross-border arrangements should be reported within 30 days in order to avoid fines of up to EUR 50,000.

Transfer pricing

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

Further, Austria implemented mandatory transfer pricing documentation requirements as defined in Action 13 of the OECD's Action Plan on Base Erosion and Profit Shifting. A three-tiered documentation approach applies, requiring the preparation of a master file, a local file, and a country-by-country report (CbCR). The entire documentation is to be prepared in either German or English.

The arm's length principle should be duly followed and documented in order to avoid negative tax consequences. Further, the mandatory transfer pricing documentation requirements have to be considered.

Thin capitalisation rules

Under Austrian law, interest payments on senior and shareholder loans are generally tax deductible. There are no explicit thin capitalisation rules. Generally, group financing has to comply with the general arm's length requirements.

A debt/equity ratio of 3/1 is usually accepted by Austrian tax auditors. Payments made to related parties located in low-tax jurisdictions are not deductible for tax purposes in case the respective interest income is not taxed or subject to a nominal or effective tax rate of less than 10%. The low-taxation test has to be passed at the level of the beneficial owner of the income.

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

Real estate transfer tax (RETT)

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

Also, the transfer of shares in a company owning Austrian real estate may trigger RETT in case 95% or more of the shares in the asset-owning company are transferred or finally held by the buyer. In that case, RETT amounts to 0.5% of a so-called 'property value', whereby this 'property value' is usually lower than the market value of the property. Furthermore, the transfer of at least 95% of the shares in a real estate owning partnership to new shareholders within a period of five years is subject to Austrian RETT.

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

Structuring alternatives should be assessed before the transfer of Austrian real estate or shares in a real estate owning company or partnership.

Land registration fee

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

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

Capital gains on the sale of property

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

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

Losses arising from the sale of private real estate can be compensated with gains from other private real estate sales upon application. Further, 60% of the remaining losses can be offset with income from letting private property over a period of 15 years or in the same year (application necessary). Basically, the above-mentioned tax regime for the sale of private property is also applicable for business property held by individuals.

Losses arising from the sale of business real estate can be compensated with gains from other business real estate sales. With regard to business property, 60% of the losses can be offset against other income and an overhang is added to the loss carry forwards.

The special tax regime is not applicable for corporations since all their profits (including capital gains resulting from the sale of real estate) are taxed with the standard CIT rate of currently 24%.

Gains from the sale of private property are subject to income tax with a special tax rate of 30%.

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

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

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

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

Interest limitation rule

Austria implemented the interest limitation rule required by Article 4 of the Anti-Tax-Avoidance Directive (ATAD). The rule caps the deduction of net interest expenses at 30% of the taxable result (the tax-relevant EBITDA).

Nevertheless, taxpayers can make use of carry-forward options for interest expenses and unused EBITDA and numerous exceptions (e.g. EUR 3 million de minimis, stand-alone entities, loans prior to 17 June 2016, equity test based on consolidated accounting). Within a tax group, it is important to note that the interest limitation rule as well as exceptions only apply on group level.

Existing and future financing structures should be examined and planned in detail to avoid increased taxation and to ensure the interest deductibility.

2 Belgium

Tax advanced payments

Unless a company pays its Belgian corporate income taxes by means of timely tax prepayments, a surcharge of 9% will be due on the final corporate tax amount. If tax prepayments are made, a credit (‘bonification’) will be granted which can be deducted from the global surcharge.

Withholding tax

Belgian tax authorities continue to conduct a significant number of tax audits on ‘passive income’ payments such as dividends and interest and related WHT exemptions. In any case, formalities will need to be properly and timely fulfilled as always.

Companies should therefore be prepared to defend the compliance of their tax positions (incl. the appropriate and relevant functional level of substance and beneficial ownership of all companies involved with respect to any Belgian WHT reduction/exemption they are claiming).

Dividend and capital gains tax exemption

Dividend distributions between corporations are generally 100% tax exempt under the so-called dividend received deduction. Certain conditions are to be met, i.e., the recipient of dividends holds at least 10% of the nominal capital of the distributing corporation (or acquisition value of minimum EUR 2.5 million) for a period of at least one year and subject-to-tax conditions should be met at the level of the distributing company. The same conditions apply in order to exempt a capital gain on shares in the hands of a Belgian company.

It will be key to monitor whether all conditions to benefit from the exemption for dividend received / capital gains on shares are duly and timely complied with.

Deduction of interest expenses – 30% EBITDA rule

The Belgian 30% EBITDA rule applies to both intragroup loans and bank loans (certain loans are however specifically excluded by Belgian tax legislation). Exceeding borrowing costs (net basis computation, incl. payments economically equivalent to interest) will be deductible up to the highest amount of 30% tax EBITDA or EUR 3 million (= de minimis rule – EUR 3 million to be allocated across Belgian group entities via specific allocation keys). Disallowing exceeding borrowing costs can be carried forward without a time limit. It is possible to transfer ‘deduction capacity’ to another Belgian group entity.

The taxable basis of certain companies (i.e., regulated real estate companies (SIR/GVV) and real estate investment funds (FIIS/GVBF) does not include net borrowing costs in accordance with the 30% EBITDA limitation rule, if any.

The 30% EBITDA rule needs to be monitored in detail and should be kept in mind for the calculation of tax provision. Its impact should be carefully analysed (notably in presence of Belgian groups) together with the potential applicability of the group contribution regime (see below).

Anti-Hybrid Mismatch

Since the financial year 2019, anti-hybrid rules have been introduced within Belgian tax law in line with the Anti-Tax Avoidance Directive (ATAD) I and II.

These rules cover not only situations where Belgium is immediately involved in a hybrid mismatch but also imported mismatch situations. More particularly, payments made in the context of an imported hybrid mismatch are disallowed for tax purposes to the extent they (in)directly finance expenses that are deductible at the level of certain foreign taxpayers without any income corresponding to that cost being however included in the taxable income of the beneficiary (unless, of course, an equivalent adjustment is made in one of the jurisdictions involved).

This measure may very well turn the spotlight on certain financing instruments.

Group contribution

Under certain conditions and subject to formalities (incl. 90% direct shareholding between the companies (or via EEA parent), affiliation for at least five successive calendar years) Belgian companies can, since 2019, offset their profits against tax losses of another Belgian affiliated company. Only the consolidated tax base is then subject to corporate income tax.

Note that SIR/GVV and FIIS/GVBF are excluded from this possibility.

Tax losses carried forward

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

Since 2018, a new order of deduction applies. Non-taxable elements, dividends received deduction of the year, patent income deduction and investment deduction (the last one, since 2019) are fully deductible. Other tax attributes (e.g., tax losses carried forward) can only be claimed on 70% of profits exceeding the EUR 1 million threshold. The remaining 30% of profits are fully taxable at the above new rate. Note that this ‘basket rule’ does not apply to losses incurred by SMEs starters.

Please note that for the assessment year 2024, the total amount of tax deductions was temporarily limited to one EUR 1 million plus 40%.

Pillar 2

Belgium approved a minimum tax law for multinational corporations and large domestic groups whose annual consolidated turnover exceeded EUR 750 million in two or more of the four reporting years preceding the reporting year tested. Please note that groups within scope must make advance payments for the qualified domestic minimum top-up tax and/or the qualified income inclusion rule under the new minimum tax law. This law also impacts businesses by necessitating comprehensive data collection and reporting to comply with new regulations

Transfer pricing	Generally, all related-party cross-border payments must comply with the arm's length principle. Failure to present appropriate documentation to the tax administration might result in the non-acceptance of group charges and penalties for tax purposes The arm's length principle should be duly followed and documented.
VAT – Residential development	The regulations for applying the reduced VAT rate of 6% on demolition-reconstruction projects have been updated for 2024. Starting in 2025, developers will no longer be able to sell apartments at the 6% VAT rate. However, there is a possibility of further changes, as a new VAT rate of 9% is currently under negotiation in the formation of a new government.
E-invoicing as from January 2026	Belgium will introduce a B2B e-invoicing mandate beginning in January 2026. This mandate will apply to B2B transactions that are not VAT-exempt, specifically between companies established in Belgium.
VAT on rent	Since 1 January 2019, the new legislation allowing VAT to be applied to rent is applicable. This regime provides the following new possibilities: • Option to apply VAT (in a B2B context) to the rental of newly constructed or newly renovated buildings after 1 October 2018. • Application of VAT for short-term leases (maximum six months) in a B2B context. • Simplification of the conditions to apply VAT to the rental of (old or new) warehouses (only 50% of the building must be used for warehousing purposes).
Controlled Foreign Company (CFC) rules	A foreign company or permanent establishment qualifies as a CFC if a Belgian entity holds a majority of voting rights or 50% of capital/profit rights and if it is subject to low (<12,5%) or no corporate income tax. To assess this, the calculation will need to be made on Belgian tax rules. Starting in 2024, non-distributed passive income from CFCs will be taxed at the level of the Belgian shareholder, reflecting a shift to an entity-based approach. While there are exemptions for CFCs with sufficient economic substance, reporting requirements remain mandatory, even for exempt entities.
DAC 6	In relation to the reporting requirements for cross-border tax arrangements, there is a thirty-day turnaround period to report to domestic tax authorities. In other words, reportable cross-border arrangements must in principle be reported within 30 days of there having been made available for implementation, being ready for implementation or the first step in their implementation was taken (whichever occurs first).
Increase in registration duties for long-lease and building rights from 2% to 5%.	Since 1 January 2024, the registration duties for long-lease and building rights have increased from 2% to 5%. This change aims to address gaps in the federal budget, as Belgian real estate transfer taxes are already high (12% in Flanders, 12.5% in Brussels and Wallonia). Registration duties for regular leases will remain at 0.2%.

FIIS/GVBF Exit Tax

Since 1 January 2024, an additional “exit tax” of 10% for FIIS/GVBF is due if:
1. The FIIS/GVBF is removed from the FSMA's FIIS/GVBF list within 5 years of its registration; or
2. Shares acquired through contributions to the FIIS/GVBF are sold within 5 years of their acquisition.

This measure also affects companies that transitioned to FIIS/GVBF status before this date if they do not meet the 5-year condition afterward.

Ongoing Belgian political negotiations

Although negotiations on the formation of a new federal government are still ongoing, a draft working document has been published by the government and gives a good view of the measures which have been discussed between the various parties. These proposals remain subject to change based on ongoing political negotiations. The most important from a corporate income tax point of view can be summarized as follows: modification and simplification of the tax consolidation regime, more flexible application of interest deduction limitation, simplification of regime of disallowed expenses, tax reductions and exceptional exemptions, adaptation of the participation exemption regime and reduction of the WHT rate to 25%.

Deduction for investments

To encourage investments in Belgium, tax legislation offers various incentives to reduce the tax burden on companies and optimize cash flow. One key incentive is the energy-saving investment deduction, which allows businesses to deduct 15,5 % of the eligible investment value (excluding VAT) from their taxable income for the 2024 tax period (30% for 2025), for example: improvements to existing buildings, energy recovery systems, and renewable energy sources like solar panels and heat pumps.

3 Cyprus

Cyprus income tax

Immovable property trading gains and rental income derived from Cyprus immovable property are subject to Cyprus income tax. If the property owner is a company (whether resident or non-resident) the corporate tax rate of 12.5% applies. If the property owner is an individual, rental income is added to his(er) other Cyprus taxable income and the following personal income tax (PIT) rates apply:

Chargeable income for the tax year	Tax rate (currently applying in 2024)	Accumulated tax
0–19,500€	0%	0€
19,501–28,000€	20%	1,700€
28,001–36,300€	25%	3,775€
36,301–60,000€	30%	10,885€
> 60,000€	35%	

Property running expenses incurred in deriving rental income such as insurance, repairs and maintenance, and property management fees as well as any other expenses incurred wholly and exclusively for the production of rental income are deductible if the owner of the Cyprus-situated immovable property is a company. In the case of an individual owner, a flat deduction of 20% on the gross rental income is granted instead of claiming actual expenses.

Capital expenditure such as stamp duty and legal costs incurred in acquiring the property are not deductible, but form part of the acquisition for tax depreciation allowances and for costs deductible against sales proceeds realised upon potential disposal of the property.

Special defence contribution (SDC)

In addition to income tax (refer to "Cyprus income tax" section) SDC is imposed on gross rental income, reduced by 25%, at the rate of 3% (effective rate of 2.25%) earned by Cyprus tax resident companies and Cyprus tax resident-domiciled individuals.

Contributions to the General Health System (GHS)

(GHS) is imposed on the gross rental income earned by individuals tax residents in Cyprus, at the rate of 2,65%. This contribution is subject to a ceiling of EUR 180.000. Certain individuals may obtain an exemption provided certain conditions are met.

Deemed dividend distribution (DDD) for 2022.

A Cyprus tax resident company is deemed to distribute 70% of its accounting profits of 2022 two years from the end of the tax year in which the profits were generated (i.e. by 31 December 2024), otherwise it will be subject to the deemed dividend distribution (DDD) provisions of special defence contribution at 17%, and pay the relevant SDC by 31 January 2025. In addition, to the extent that the ultimate beneficial owners of a Cyprus tax resident company are tax resident in Cyprus, a contribution to the GHS of 2,65% applies and is payable by 31 January 2025.

However, it should also be noted that a Cyprus tax resident entity ultimately held beneficially by 100% non-Cyprus tax resident (or Cyprus tax resident but non-Cyprus domiciled) shareholders is outside the scope of the DDD provisions.

Capital gains on sale of property

Unless the seller is considered to be a trader in real estate (as per badges of trade analysis – in which case CIT would apply, refer to “Cyprus income tax” section), any gains realised upon disposal of immovable property situated in Cyprus will be subject to capital gains tax (CGT).

Disposal for CGT purposes specifically include sale, sale by the Director of the Department of Land and Surveys or a district Lands Officer, agreement of sale, assignment of rights deriving from an agreement of sale of property, exchange, abandoning use of right, granting of right to purchase, and any sums received upon cancellation of disposals.

CGT at the rate of 20% is imposed (when the disposal is not subject to income tax) on gains arising from the disposal of immovable property situated in Cyprus including gains from the disposal of shares in companies that directly own Cyprus-situated immovable property. CGT is also imposed on disposals of shares in companies that indirectly own immovable property situated in Cyprus where at least 50% of the market value of the said shares derives from the market value of the Cyprus- situated immovable property.

Disposal of shares listed (with underlying Cyprus situated immovable property) on any recognised stock exchange are exempted from CGT.

In the case of disposal of non-listed company shares, the gain is calculated exclusively based on the gain relating to Cyprus-situated immovable property. The value of the immovable property will be its market value at the time the shares are disposed of.

The following lifetime exemptions are available to individuals:

Capital gain arising from:	Deduction
Disposal of private principal residence (subject to certain conditions)	85,430€
Disposal of agricultural land by a famer	25,629€
Any other disposal	17,086€

The above exemptions are lifetime exemptions subject to an overall lifetime maximum of EUR 85,430.

Levy 0,4% for the Central Agency for Equal Distribution of Burdens (CAEDB)

As from 22 February 2021, a Property Transfer Levy of 0,4% applies on disposals of immovable properties or shares of a company owning immovable property in Cyprus.

Certain exemptions may apply under conditions.

Depreciation allowances

Annual tax depreciation allowance on capital costs is available both to the individual and the corporate investors at the rate of 3% for commercial buildings, and 4% for industrial, agricultural, and hotel buildings. Land does not qualify for tax depreciation allowances.

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

Any trading tax loss incurred during a tax year and which cannot be set off against other same year income, is carried forward subject to conditions and set off against the profits of the next five years. In addition, for corporate owners of the Cyprus-situated immovable property, provisions of group loss relief apply in respect of same year results.

Dividends and withholding tax

No withholding tax is imposed on dividend payments to investors – both individuals and companies – who are non-residents of Cyprus in accordance with the Cyprus domestic tax legislation, irrespective of the percentage and period of holding of the participating shares. Additionally, no withholding tax will apply in case the recipient of the dividend is an individual who is Cyprus tax resident but not Cyprus domiciled – applicable as from 16 July 2015. As from 31 December 2022 payments of dividends to companies in Jurisdictions in the EU blacklist, are subject to withholding tax at the rate of 17% to shareholders with an over 50% holding.

Stamp duty

The general rule is that Cyprus stamp duty is imposed only on written agreements relating to assets located in Cyprus or relating to matters or things that are done or executed in Cyprus. The applicable rates are based on the value stipulated in each instrument and are nil for values up to EUR 5,000, 0.15% for values from EUR 5,001 up to EUR 170,000, and 0.2% for values above EUR 170,000, subject to an overall maximum amount of stamp duty of EUR 20.000 per agreement.

Transfer fees

The fees charged by the Department of Land and Surveys to the acquirer for transfers of Cyprus-situated immovable property are based on market values as follows:

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

It is important to note that, no transfer fees will be payable if VAT is applicable upon purchasing the immovable property, and the above transfer fees are reduced by 50% in case the purchase of immovable property is not subject to VAT.

VAT on immovable property

Leasing of immovable property

VAT at the standard rate must be charged on the lease of immovable property when the lessee is a taxable person and is engaged in taxable activities by at least 90% (with the exemption of residential dwellings). The lessor has the right to opt not to impose VAT on the specific property. The option is irrevocable.

Sale of buildings

Up to 10 November 2022, the supply of new buildings (before their first use as well as the land on which they are built) was subject to VAT at the standard rate of 19%.

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

As from 11 November 2022, the supply of building is subject to VAT when supplied before its first delivery and under any subsequent deliveries within a period of five (5) years from its completion, provided that no actual use has occurred by an unrelated person for a period of at least twenty-four (24) months. Otherwise, the supply will be exempt from VAT.

Sale of non-developed building land

VAT at the rate of 19% must be charged on the sale of non-developed building land, as from 2 January 2018. Non-developed building land is defined as any land intended for the construction of one or more structures in the course of carrying out a business activity. No VAT will be imposed on the purchase or sale of land located in a livestock zone or areas which are not intended for development such as zones/areas of environmental protection, archaeological and agricultural.

Leases of immovable property which effectively transfer the risks and rewards of ownership of immovable property.

As from 1 January 2019 leases of immovable property that effectively transfer the risks and rewards of ownership of the immovable property are considered to be supplies of goods which are subject to VAT at the standard rate. This does not apply in cases where the transfer of the risks and rewards relates to a used immovable property (building).

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

Old Rules – prior to the amendment in Law (up to 16 June 2023)
The reduced rate of 5% applies to contracts that have been concluded from 1 October 2011 onwards provided they relate to acquisition and/or construction of residences to be used as the primary and permanent place of residence for the next 10 years. The reduced rate of VAT of 5% applies on the first 200 square meters whereas for the remaining square meters as determined based on the building coefficient, the standard VAT rate is imposed.

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

New Rules – Amended Law (as from 16 June 2023)

The reduced VAT rate (5%) will be applicable on the first 130 sqm of the building coefficient, up to a value of EUR 350,000, provided that the total buildable area of the property does not exceed 190 sqm and the total value does not exceed EUR 475,000. For the reduced 5% VAT rate to apply, under the amended VAT Law, all the specified criteria should be met, otherwise the Taxpayer does not have the right to apply for the reduced VAT rate.

There is also an exception for persons with disabilities to be eligible for the reduced VAT rate for the first 190 sqm without imposing a cap on the maximum building coefficient.

Transitional Rules

The Tax Authorities have also announced a transitional period during which the new provisions will not apply for properties for which:

a. A planning permit has been obtained or duly completed planning permit application has been submitted until 31/10/2023 and,
b. A duly completed application for the reduced VAT rate of 5% is submitted within 3 years from the legislation enactment date.

Imposition of the reduced rate of 5% on the renovation and repair of private residences

The renovation and repair as well as extension (as of 20 August 2020) of used private residences (for which a period of at least three years has elapsed from the date of their first use) is subject to VAT at the reduced rate of VAT, 5%, excluding the value of materials which constitute more than 50% of the value of the services.

VAT Registration:

VAT Registration is compulsory for businesses with:

a. Turnover subject to VAT in excess of EUR 15.600 during the 12 preceding months, or
b. Expected turnover subject to VAT in excess of EUR 15.600 within the next 30 days.

Furthermore, an obligation for VAT registration arises for businesses carrying out economic activities from the receipt of services from abroad for which an obligation to account for Cyprus VAT under the reverse charge provision exists subject to the registration threshold of EUR 15.600 per any consecutive 12-month period.

No registration threshold exists for the provision of intra-community supplies of services and/or goods.

As of 1 October 2020, taxpayers who are not established in Cyprus but are engaged or expect to be engaged in taxable activities in Cyprus in the course of their business, will have the obligation to register for VAT purposes, without a VAT registration threshold.

4 The Czech Republic

Corporate income tax

The general Czech corporate income tax (CIT) rate is currently 21% (until 31 December 2023, the CIT rate was 19%). There are no local corporate taxes in the Czech Republic. For individuals, a progressive tax rate of up to 23% (depending on the level of income) applies.

Value added tax

There are two VAT rates: general rate of 21% and a reduced rate of 12% (until 31 December 2023, there were two reduced rates: 15% and 10%).

Tax group

There is no tax grouping for CIT purposes, only for VAT purposes.

Tax losses

Tax losses may, in principle, be carried forward for five tax periods immediately following the tax period in which the tax loss arose. As a measure to tackle down the COVID-19 impact, a two-year tax loss carry-back was introduced into the Czech legislation.

There is no limit to the amount of tax losses carried forward, however the carry back is capped at CZK 30 million. Certain restrictions on the ability to redeem losses apply if there is a substantial change in the ownership of a company, or the company undergoes a reorganization (e.g., merger).

Real estate acquisition / transfer tax has been abolished and as such there are no transfer taxes in the Czech Republic.

Transfer Pricing

Czech tax law requires that transactions between related parties be carried out on an "arm's length" basis (i.e., at usual market prices). If the price of a transaction differs from the price that would be agreed between independent persons under the same or similar business conditions, and the reason for this difference cannot be satisfactorily documented, the tax authorities may challenge the contracted price and adjust the tax base by the ascertained difference.

Although the transfer pricing documentation is not obligatory in the Czech Republic, it is highly recommended to prepare one to prove compliance with the arm's length principle, as the taxpayer bears the burden of proof.

It is possible to apply for binding transfer pricing rulings from the tax authorities.

Functional currency

Since 2024, the Czech legislation includes an option to use a functional currency (EUR / USD / GBP), which may be used for bookkeeping and CIT. However, it is not yet fully implemented into all tax areas – e.g., VAT must be paid in CZK, as a result of which this option is rarely applied in practice.

Ongoing developments

There are currently two major amendments in the legislative process – one is an amendment to the VAT Act (expected effectivity 2025-2027) and to the Act on Accounting (expected effectivity announced in January 2026, but likely one or two years later, if at all the law is enacted).

Real estate investments (CIT aspects)

An investor may either establish a Czech legal entity that will directly acquire the real estate or acquire shares in a Czech special-purpose company that owns the property. It is common practice to hold properties in separate special-purpose companies – a limited liability company and a joint-stock company are the most frequently used types of companies for holding real estate.

It is advisable to conduct a thorough due diligence review of the target company before acquiring its shares. In such a due diligence review, the legal, financial and tax positions of the company should be examined. Generally, the seller should be asked for certain representations, warranties, and indemnities regarding the legal, financial and tax position of the company.

There are no separate capital gains taxes. Capital gains are considered business profits and are as such, subject to income tax. Therefore, corporate owners of real estate are subject to CIT on capital gains realized on the sale of property in the Czech Republic, at the standard CIT rate. Capital losses on the sale of real estate, including land, are generally deductible for tax purposes.

If shares in a Czech entity are sold by one foreign shareholder to another, the capital gains derived from the sale of the shares is treated as Czech-sourced income and is, therefore, subject to Czech CIT, irrespective of the residency status of the seller and purchaser.

In cross-border situations, however, subject to the wording of the relevant DTT, the gain may be outside the scope of Czech taxation. Nevertheless, in certain DTTs (e.g., between the Czech Republic and France), such an exemption does not apply if the assets of the entity of which the shares are sold consist only or predominantly of immovable property.

Czech domestic law contains a participation exemption regime regarding capital gains from the sale of shares in a subsidiary. One of the main conditions for applying the participation exemption is a minimum holding of 10% of shares in the subsidiary for an uninterrupted period of at least 12 months.

Real estate investments (VAT aspects)

Acquisition of shares is VAT exempt.

The transfer of vacant land is generally VAT exempt; however, the sale of construction land is subject to VAT at the rate of 21%.

The transfer of unfinished structures (including buildings, houses) and the transfer of finished structures effected within five years after (i) the first use of the real estate started, or (ii) the very first approval for use of the real estate, whichever occurs earlier, are generally subject to VAT at 21%.

New draft VAT Act amendment (with proposed effect from 1 July 2025) proposes to shorten the 5-year period to 23 months.

The sale of real estate after above stated period is VAT exempt without the entitlement to claim input VAT. However, the vendor can decide to opt to apply VAT on sale of the real estate after the above-mentioned period. Provided the purchaser is a VAT payer, this can be done only upon a consent of the purchaser. In such a case, local reverse-charge applies, i.e., the purchaser will self-charge the VAT.

If a company registered for VAT purchases a building for entrepreneurial activities, it is, in principle, entitled to claim the related input VAT. A full refund will be granted if the building is only used for activities that generate taxable supplies. However, no refund will be granted if the building is only used for exempt supplies. A partial refund will be given if the building is used partly for taxable and partly for exempt supplies.

Thin capitalization

Thin capitalization rules apply in the Czech Republic. These may limit the tax deductibility of interest payments and other related financial costs on debt financing obtained from related parties.

The debt-to-equity ratio is 4:1, i.e., interest payments and related financial costs on the portion of a related-party debt that exceeds four times the borrower's equity is tax non-deductible for the borrower.

ATAD I (interest stripping rule)

Interest costs exceeding either CZK 80 million p.a., or 30% of company's tax EBITDA are disregarded as tax non-deductible (this applies to both related and unrelated-party loans including bank financing; the test applies to net borrowing costs, which also include interest-like costs in addition to genuine interest expenses). This interest stripping rule also relates to capitalized interest and interest-like portion of leasing payment.

Any interest costs treated as tax non-deductible due to this interest stripping rule may be carried forward for an indefinite period and may be used as a deduction in the years where the threshold has not been reached (up to the amount of such threshold); however, it cannot be transferred to a legal successor in case of a merger, demerger or similar reorganization.

ATAD II (hybrid mismatches)

The EU ATAD II introduced rules into Czech income tax law aimed at preventing the adverse effects of cross border arrangements between affiliated entities where different legal classification of mainly an entity or an instrument in two countries involved ("hybrid mismatch") would lead to deduction without corresponding taxation (deduction/non-inclusion), or double deduction without corresponding double inclusion of income (double deduction), or in case of an imported mismatch.

Foreign exchange differences

Both realized and unrealized foreign exchange (FX) differences are generally subject to CIT in the tax period in which they arise.

Since 2024, it is possible to choose to exclude unrealized FX differences from the CIT base. However, it may potentially increase the related administrative burden.

Holding real estate (CIT aspects)

The basis for computing the taxable income of a company is the difference between the company's taxable revenues and its tax-deductible costs.

Tax-deductible costs generally include depreciation of buildings, structures and other assets; repairs; maintenance; real estate tax paid; and other expenses incurred to generate, assure and maintain the company's taxable income.

For several costs, it is explicitly stated in the law that they are tax non-deductible.

Except for land, real estate is generally depreciable for tax purposes. Many acquisition-related expenses (such as architect's fees, lawyer's fees, notary's fees), should be capitalized as part of the cost of the relevant real estate. Regarding interest costs incurred before putting the asset into use, the taxpayer has the option to capitalize such interest costs or not.

In the first year of depreciation, tangible assets are to be classified into one of six depreciation categories, with minimum depreciation periods ranging from three to 50 years. The sixth depreciation category (depreciated over 50 years) includes hotels, "administrative buildings" (such as office buildings), logistics property, department stores and some other assets.

Generally, for newly acquired assets, the owner of the asset will determine the method of tax depreciation. Tax depreciation may be calculated using either the straight-line method or the reducing-balance method, whichever the taxpayer selects. The chosen method of depreciation cannot be changed during the depreciation period. A taxpayer has the right to stall, and then to recommence later, claiming tax depreciation.

Special provisions need to be considered with respect to the tax treatment of fit-out works installed by the lessee in leased premises to avoid disadvantageous tax impacts for both the lessor and the lessee, especially when lease agreements are terminated.

Holding real estate (VAT aspects)

The rent of most real estate is generally VAT-exempt, but in certain situations it is possible to apply VAT on the rent. In this case, the applicable rate is 21%.

The construction and assembly works are subject to the reverse charge mechanism.

Real estate tax

Real estate tax is for most corporate owners a negligible cost despite an increase in real estate tax rates from 2024. This tax is generally recovered from tenants via service charges.

5 Denmark

Corporate income tax (CIT)

Standard corporate income tax rate is 22% for corporate entities, which are either i) incorporated in Denmark, or ii) has their effective place of management in Denmark. The actual place of management is typically the place where the management decisions concerning the company's day-to-day operations are made.

The corporate income tax applies to all types of income, including rental income. The only exclusions are real estate and permanent establishments located outside of Denmark.

Permanent establishment (PE)

Non-resident companies are liable to tax in Denmark on business profits derived through a PE in Denmark. The existence of a PE is determined according to Danish case law, which makes either a reference to a specific DTT or to text similar to Article 5 of the OECD Model Tax Convention.

Danish real estate may constitute a permanent establishment for the foreign company, if the company has other significant activity in Denmark. However, as mentioned above, foreign companies are subject to limited tax liability on income from Danish real estate, including rental income and profits from the sale of the Danish real estate, even though the company in question does not have a permanent establishment in Denmark.

Danish tax consolidation

A mandatory tax consolidation regime obligates all Danish resident companies, permanent establishments and real estate that are members of the same Danish or international group to file a joint group tax return. The definition of a group generally corresponds with the definition of a group for accounting purposes, i.e. controlling interest. The tax consolidated income is equal to the sum of the taxable income of each individual Danish company, Danish permanent establishment and Danish real estate of foreign companies that are a member of the consolidated group.

The top parent company participating in the Danish tax consolidation group will be appointed the role of a so-called 'management company'; this company is responsible for settling tax on account and final corporate tax payments of all group members.

Companies included in a mandatory tax consolidation are jointly and severally liable for payment of corporate taxes. Withholding taxes on dividends, interest, and royalty payments are also covered by the joint and several liability. For companies with external minority shareholders, the company has a reduced liability and is merely liable if none of the other jointly taxed companies are able to pay the taxes.

Sale of shares

Profit from sale of shares in Danish companies is, as a general rule, exempt from Danish withholding tax. This also applies to shares in companies, whose assets either exclusively or primarily consist of real estate.

Stamp duty

A real estate transfer tax of 0.6% of the sales price or the public evaluation (whichever is the highest) is payable on the transfer of title to real property located in Denmark. A fixed registration fee of DKK 1,850 is charged for registration of ownership.

New mortgage loans registered in the Danish land register will be subject to a registration fee of 1.45% of the mortgage debt plus a fixed fee of DKK 1,825. It may be possible to reduce the 1.45% payment by replacing existing mortgages with the new mortgage loan.

Repatriation of dividend

Dividends distributed from a Danish company to a foreign group company are as a main rule subject to Danish withholding tax. However, the foreign group company should be tax exempt on dividends from the Danish company if the foreign group company:

1. Is a tax resident in an EU-member country or a state with which Denmark has a double tax treaty;
2. holds at least 10% of the share capital, and
3. is considered the beneficial owner of the dividends.

Lack of beneficial ownership in the foreign group company could result in the company not being recognised for tax purposes with regards to dividends resulting in a withholding tax obligation for the Danish company on dividends of 27% (refund of withholding tax can be claimed down to 22%).

Beneficial ownership is decided on a transaction-based assessment and the legal presence of beneficial ownership in agreements, substance etc. is not enough as focus is more on the cash flow.

Payment of interest

Payments/accrual of interest are subject to Danish withholding tax, but only on controlled debt. Debt is considered 'controlled' if the lender owns, directly or indirectly, more than 50% of the share capital of the Danish borrower or controls more than 50% of the voting rights. Transparent entities may also be considered to have controlling influence.

If the affiliated recipient benefits from the EU Interest and Royalty Directive or a double tax treaty, no withholding tax should be levied but it is a requirement that the recipient is considered beneficial owner of the interest.

Lack of beneficial ownership in the foreign corporate shareholder could result in the receiving company not being recognised for tax purposes with regards to interests resulting in a withholding tax obligation for the Danish companies on interests (22%).

Interest limitation rules

The Danish interest deduction limitation regime consists of three different rules thin capitalisation, interest ceiling and EBITDA.

If the Danish company is thinly capitalized, it will not be allowed to deduct interest payments or capital losses for tax purposes to the related lender if:

- The controlled debt (including secured external debt) exceeds a threshold of DKK 10 million, and
- the loan could not have been obtained from an independent lender without security on similar terms (the company has the burden of proof), and
- the debt/equity ratio exceeds 4:1.

Any limitation to interest deduction according to the thin capitalization rules will be calculated first. Under the interest ceiling-rule, it is only possible to deduct net financial expenses in a Danish jointly taxed group equal to a pre-determined percentage of the tax value of qualifying assets at year-end. A base amount will always be deductible. The allowed percentage is now 6% (2024), which will be adjusted once a year and the base amount is DKK 21,300,000. Under the EBITDA rule, the taxable income before net financing costs and depreciation and amortization may not be reduced by more than 30% when reduced by net financing costs. There is a special provision for groups of companies, whereby it may be possible to obtain more than 30% deductibility under the EBITDA rule, provided that the net finances do not exceed DKK 22,313,400 on a consolidated basis.

Danish general anti-abuse rule (GAAR)

Danish tax law contains a general anti-abuse rule (GAAR), which is based on the EU Anti-Tax Avoidance Directive (ATAD).

According to this provision, taxpayer cannot benefit from the EU directives or a double tax treaty (i.e. withholding tax may be payable on interest and dividends), if the relevant 'arrangement' has been carried out with the main purpose of obtaining a tax benefit that is not in line with the purpose of Danish tax law.

The preparatory works only contains very little guidance regarding the exact application of the provision.

Hybrid mismatches

Danish tax law contains rules that aim to counteract double deduction and deduction without inclusion that arise as a consequence of a hybrid mismatch of instruments (i.e. debt vs. equity) or entities (i.e. transparent vs opaque). In particular, it should be noted, that if a Danish transparent entity is affected by the rules, leading to it being treated as an opaque entity, distribution of profit will be treated as dividend, which can trigger a risk of withholding tax.

Transfer pricing

Danish transfer pricing rules apply to transactions between related parties (e.g. inter-group transactions), whether the transactions are cross-border or purely domestic. The rules apply when a company or person directly or indirectly controls more than 50% ownership of the share capital or more than 50% of the voting power of an entity. Transactions with PEs are also considered subject to the rules.

For income years starting 1 January 2021 or later, the transfer pricing documentation must be submitted no later than 60 days following the filing deadline for the tax return.

For prior income years, the documentation was to be finalized at the deadline for filing the tax return and then submitted upon request from the Danish Tax Agency within 60 days.

Depreciation

Tax depreciation need not be in conformity with book depreciation.

Land cannot be depreciated for Danish tax purposes.

As a general rule, properties acquired before 1 January 2023 can be depreciated for tax purposes in Denmark at a rate of up to 4% annually using the straight-line method. The same rule applies to technical installations. For properties and technical installations acquired on or after 1 January 2023, the maximum depreciation rate is 3% annually.

Professional advisors' fees and loan costs

Professional advisors' fees (financial, legal and tax advisors) are non-deductible for Danish corporate tax purposes and cannot be added to the acquisition price of the Danish real estate.

Costs occurring in close connection with the establishment of a loan can be added to the principal of the loan and be deducted for Danish tax purposes in connection with the repayment of the loan.

Value-added tax (VAT)

The standard VAT rate in Denmark is 25%, which is applicable when selling goods and services in Denmark. Various types of goods and services are, however, VAT exempt.

Sale of immovable property is as a starting point exempt for VAT. However, sale of new properties and building plots situated in Denmark is subject to 25% VAT with few certain exceptions.

A building is considered new in terms of VAT, when:
- The sale of the building takes place before the first occupation,
- The transfer of the building takes place after the first occupation but before five years, calculated from the completion of the building, or
- The building has been significantly rebuilt within the past five years.

VAT practice concerning the definition of a building plot versus an old property to be demolished after the sale has taken place, has changed significantly in the past and VAT practice has become less restrictive in this regard.

Sale of immovable property including existing lease agreement to be continued by the buyer does as a starting point qualify as a transfer of going concern not subject to VAT. Further, sale of immovable property that solely has been used for VAT exempt purposes, e.g. let out for residential purposes, is VAT exempt even though the immovable property is not older than 5 years.

6 Finland

Tax law updates and upcoming changes

The Finnish Government is planning a reform of property taxation. The aim of the reform is to correct the differentiation between property tax values and fair values. The legislative proposal for this amendment has not yet been published. The government's proposal is scheduled to be presented during Q4/2024. We expect the act to enter into force no earlier than 2027.

Recent changes in Finnish tax law include:

1. The lower limit of real estate tax for land plots has been increased from 0.93% to 1.3% as of 2024. Therefore, many municipalities have been required to increase their real estate tax rate for land plots. The amendment does not affect real estate taxation of buildings.
2. As of 1 January 2024, the Transfer Tax Act has been updated. The new tax rates are applicable for deeds of sale or other transfer agreements signed on or after 12 October 2023.

Reduction of the transfer tax rates on both real estates and securities retroactively as from 12 October 2023:

- Real estate: from 4% to 3%
- Shares in housing and real estate companies: from 2% to 1.5%
- Other securities: from 1.6% to 1.5%

As of 1 January 2024, the transfer tax base was extended by including shareholder loan receivables acquired in connection with a share acquisition to transfer tax base. Further, the scope of the transfer tax exemption applicable to a tax neutral transfer of assets was extended to transfers made into an existing company (this exemption was previously available only to newly established entities). In addition, in the case of a squeeze-out process, transfer tax would be paid on all the shares for which the purchase price is determined in an arbitration procedure.

Tax law changes in recent years

Capital gains taxation

A provision to extend the capital gains taxation of non-resident companies investing in Finnish real estate came into effect on 1 March 2023 and applies to all indirect real estate disposals by non-residents. According to the provision, the profit realised on the transfer of shares, or similar rights, of an entity will be subject to capital gains tax in Finland if more than 50% of the total assets consist directly or indirectly of Finnish real estate. The provision covers transfers of Finnish and foreign real estate holding companies and transfers of shares in a limited partnership or special investment fund that invests in Finnish real estate. Transfers of publicly listed companies are excluded from the scope of the provision. Furthermore, the provision does not affect taxation of foreign investment funds that are considered comparable to Finnish tax-exempt investment funds.

Year-end tax accounting and reporting

At year-end, real estate investors should generally take the following aspects into account: (i) levelling taxable profits at portfolio level and (ii) the interest deduction limitation rules.

i) Levelling taxable profits at portfolio level

Tax position of real estate portfolio may be optimised by adjusting the maintenance fees paid to a mutual real estate company ("MREC"), provision of group contributions, adjusting depreciations to be made in both taxation and accounting as well as utilising carry-forward tax losses. These aspects should be carefully considered at year-end.

Typically, Finnish real estate is owned via MRECs. An MREC collects taxable maintenance fees from the shareholder, corresponding to the tax-deductible maintenance expenses. Additionally, an MREC can collect taxable financial consideration from shareholders, which typically corresponds to annual depreciation of the real property and interest expenses at the MREC level. As a result, the MREC itself does not usually make any profit or loss. The maintenance fees collected by the MREC from the shareholder are generally tax-deductible for the shareholder. The financial consideration is also tax-deductible for the shareholder under certain conditions.

Furthermore, companies within the same group can level their income by giving and receiving group contributions (provided that certain conditions are met). The group contribution is considered as a deductible cost for income tax purposes of the distributing company and taxable income for the recipient company.

Depreciations should also be considered at year-end, as it is possible to adjust taxable profit by adjusting the depreciations (within the limits set in tax legislation) either through making lower or higher deprecations in taxation than in accounting, i.e. by creating postponed depreciations or depreciation differences.

Carry-forward tax losses can be utilised against future taxable profits for ten fiscal years following the fiscal year in which the losses have arisen. Tax losses may not be carried back. However, tax losses carried forward are forfeited if more than 50% of the shares in a company changes owner directly or indirectly, although there is a possibility to apply for a special permit to retain tax losses if certain conditions are met.

ii) Interest deduction limitation rules

The Finnish interest deduction limitation rules should be considered at year-end. The limitations are applied on a company-by-company basis by typically applying one of the below rules:

- If total net financing expenses of a company are no more than EUR 500,000, all financing expenses are deductible.
- If total net financing expenses of a company exceed EUR 500,000, the deductibility of a company's net financing expenses in Finland are limited to 25% of the company's adjusted taxable income (EBITD, i.e. taxable income including group contributions and adding back interest expenses and tax depreciation) and the amount exceeding 25% of EBITD is non-tax deductible.
- However, external net financing expenses are always deductible up to EUR 3 million. External bank loans may be contaminated into related party loans in certain situations such as e.g. when related party to the borrower has provided a security for the repayment of the bank loan in the form of a receivable

Tax accounting and reporting processes of real estate portfolios should be carefully managed in order to optimise the tax position at portfolio level and to ensure robust documentation is in place to support the decisions made

Input VAT deductions on transaction costs	Based on a ruling of the Supreme Administrative Court, input VAT on transaction costs related to sales and purchases of real estate and shares of MRECs can be deducted under certain conditions (as overhead costs) if the real estate has been or will be used for VAT taxable purposes. It should be verified whether the requirements for VAT deduction have been met. Non-deducted transaction costs for the year 2021 can still be recovered until the end of 2024
Change of VAT taxable use of premises	In case the VAT taxable use of premises has changed compared to the situation when the real estate investment (new building or fundamental improvement) was taken into use, VAT included in the real estate investment might be subject to adjustment at year end. It should be verified whether there has been changes to the VAT taxable use of real estate and determine whether the VAT deductions should be adjusted. The effect can be positive or negative, depending on whether the VAT taxable use has increased or decreased. If the VAT taxable use of the premises does not change during the adjustment period, no VAT adjustment right or liability will arise.
VAT deductions of real estate investors	The Finnish Tax Authorities have lately audited several real estate investors (e.g. funds and joint ventures) and denied deduction rights of input VAT relating to costs, which the Tax Authorities treat as costs related to activities of an investor (e.g. costs related to sale of real estate even when the real estates have been in VAT taxable use).

7 France

Most relevant recebt developments

Disclosure: The draft finance bill for FY2025 is being discussed before the Parliament and is not yet finalized as a result it cannot be described in the developments below. It could include significant tax changes and readers are urged to seek the most updated and recent advice once it will be finalized.

Impairment of French real estate assets

The decrease of value of certain French real estate assets may have conducted some French entities to book impairment in their account. This raises various questions and problems from a tax standpoint for past fiscal years and, especially, with respect to fiscal years to come during which such impairment may be reversed.

The first issue relates to the tax deductibility of such impairment when booked. French tax regulations provide for limitation of tax deductibility of impairment on real estate assets and shares of property companies. In addition, the French tax authorities have disputed the tax deductibility of such impairments on the basis of a subtle distinction between the market value (“valeur vénale”) and the value in use (“valeur d’usage”), which has proven very difficult to apply with respect to real estate assets.

The second issue relates to the taxation of reversal of impairment that have been tax deducted. In such case, it should be reminded that tax losses carried forward are available to offset only for the first EUR 1 million of taxable profits and 50% of taxable profits in excess of this. Such limitation of offset of tax losses carried forward may lead to the taxation of reversal of impairment and should be properly anticipated.

Benefit of the withholding tax exemption on dividends for foreign investors

Non-EU funds and the plurality of investors: The benefit of the exemption is conditional upon several requirements among which the fact that capital should be raised from several investors. A first-tier tribunal considered that this requirement was not met where the compartments of funds were all ultimately owned by the same insurance life company. This raises question notably for institutional investors investing through dedicated funds and which rely on such exemption.

Beneficial ownership

Benefits of double tax treaties is generally subject to a beneficial ownership condition which has been increasingly subject of the attention of the French tax authorities

An important decision rendered by the French Supreme Administrative Court on 22 May 2022 (Planet, n° 444451) could reduce the adverse tax consequences of tax reassessments made by the French tax authorities based on the beneficial owner requirement. In the Planet case law, the Court ruled that the “true” beneficial owner of a royalty payment can rely on the tax treaty between its country of residence and France to benefit from a reduced rate of (or an exemption from) withholding tax.

In practice, the French tax authorities scrutinize the following criteria to assess whether a recipient is the beneficial owner of a payment: (a) existence of a legal or a contractual obligation to repay the passive income it received; (b) immediate repayment of the entire amount of the passive income it received or at least partial reinvestment; (c) carrying out of another activity (even ancillary) rather than mere conduct of flow of passive income; (d) negligeable level of taxable income; (e) receipt of income from countries other than France; (f) staffing with qualified professionals and benefit of material resources, in particular in case of royalty income; (g) identity of directors between the recipient and the company to which it repays the passive income it received.

Country guide

Standard corporate income tax rate

For fiscal years beginning on or after 1 January 2022, the standard CIT rate is set at 25% (i.e. effective CIT rate of 25.825% taking into account the additional 3.3% contribution assessed on CIT exceeding EUR 763k for companies with a turnover in excess of EUR 7,63 million).

Moreover, a reduced rate of 15% is applicable to small and medium-sized enterprises (with a turnover below EUR 7,63 million) up to a taxable profit of EUR 42,500.

Carry back mechanism

French tax law provides the companies with the possibility to offset the tax losses of a financial year on the profits from the previous financial year (i.e. carry-back mechanism). The option for the carry-back can only be exercised for the tax losses recorded during the relevant financial year. These tax losses can only be carried back against the profits of the previous financial year, up to the lowest amount between the said profit or EUR 1 million. The tax losses that could not be carried back can be carried forward under the usual condition.

Domestic withholding (WHT) rate on dividends

Dividends paid by a French corporation to a non-resident shareholder are subject to a 25% WHT, unless a tax treaty provides for a lower rate or the EU Parent-Subsidiary Directive applies.

Under the Directive, dividends paid by a French corporation to qualifying EU parent company are exempt from WHT.

ATAD II, including hybrid mismatches with third countries

The 2020 finance bill transposed the measures to combat hybrid mismatches set forth by Directive EU 2016/1164 dated 12 July 2016 (so-called ‘ATAD I’ Directive) and Directive EU 2017/952 dated 29 May 2017 (so-called ‘ATAD II’ Directive), the latter being in line with the works of the OECD as part of the Action Plan against BEPS.

Article 212 I, b of the French tax code (FTC) (which conditioned tax deductibility of interest paid to a related party to the taxation of such interest at a rate exceeding 25% of the French CIT rate) was repealed and new provisions were introduced in Articles 205 B to 205 D of the FTC.

These provisions aim at neutralising asymmetrical tax effects (deduction/non-inclusion, double deduction) caused by certain so-called ‘hybrid’ mismatches resulting from differences in qualification of certain financial instruments and/or entities or in the attribution of payments.

Four categories of hybrid mismatches were identified in the 2020 finance bill:
- hybrid mismatches resulting from payments in relation with financial instruments;
- hybrid mismatches resulting from differences in the allocation rules of payments made to hybrid entity or establishment;
- hybrid mismatches resulting from payments made by a hybrid entity to its beneficiary or payment made between the head office and the establishment (or between two establishments or more);
- double deduction effects.

Expenses paid in the context of a hybrid mismatch would not be tax deductible in France if not included in the taxable basis of the beneficiary of the payment.

These rules apply to financial years beginning on or after 1 January 2020, except for the provisions relating to reverse hybrids, which will apply to financial years opening on or after 1 January 2022.

The FTA published their guidelines in December 2021.

Contribution économique territoriale (CET)

The territorial economic contribution (contribution économique territoriale or CET) is made of two components:
- the companies' land contribution (cotisation foncière des entreprises or CFE); and
- the companies' added value contribution (cotisation sur la valeur ajoutée des entreprises or CVAE).

The CET is capped according to the value-added produced by company. In the hypothesis where the CET exceeds 1.531% of the produced added value (this rate would amount to 1.438% for 2025, to 1.344% for 2026 and to 1.25% from 2027), the excess may be subject to a rebate.

Moreover, establishments created as from 2021 may be exempted of CFE and CVAE during a three-year period subject to local authorities ruling.

CVAE

CVAE is payable by the landlord of the property that is let, and the landlord will be taxable, based on the value-added derived from the rental activity. CVAE will be payable by the landlord of the property if their turnover exceeds EUR 500k.

CVAE was initially contemplated to be abolished by 2024, however, pursuant to the 2024 finance bill, it would be completely abolished only as from 2027. For 2024, CVAE goes from 0.094% for turnover of EUR 500k to 0.28% for turnover exceeding EUR 50 million (excluding VAT). The rate would be reduced to 0.19% in 2025, to 0.09% in 2026 and the additional CVAE tax rate would be increased to 9.23% for 2024, to 13.84% for 2025 and to 27.68% for 2026.

French 3% tax on French real estate

The tax is assessed on the fair market value of the French real estate, as at 1 January of each year, in proportion to the direct or indirect interest in the French real estate.

The 3% tax applies to entities whose real estate assets in France represent more than 50% of overall assets French assets (the 'French assets test').

French properties that are allocated to a professional activity (i.e. other than a pure real estate activity) are not included for purposes of computing the 50% ratio including where the professional activity is carried out by a related party (ex: property rented to a related party of the lessor who uses it for its own commercial or industrial business).

All entities of a chain of ownership between the French estate and the ultimate shareholders are jointly liable for the payment of the 3% tax whenever the latter is due.

Exemption cases do exist some are automatic, and the other are conditional. Generally, filing a 3% tax return on a yearly basis is required to benefit from a conditional exemption.

As from FY 2021, 3% tax returns have to be filed electronically via a dedicated platform on the website of the FTA.

In order to do so, each entity required to file a 3% tax return have to be registered with the FTA in order to obtain an identification number called 'SIRET' allowing it to access to the 3% tax platform.

Such registration must be made through the completion, signing, and filing of an official French form 15928*02 called 'Déclaration EE0' (EE0 form) per entity to be registered.

As a reminder, the 3% tax on French real estate applies to all French and foreign entities at large (i.e. including entities with no separate legal personality) which directly or indirectly own one or more real properties located in France.

French property net wealth tax

The French property net wealth tax ("PNWT") (impôt sur la fortune immobilière) set forth under Articles 964 to 983 of the FTC applies only to individuals.

For non-French tax resident individuals, subject to applicable double tax treaties, the PNWT applies to French real estate properties or French real estate rights, owned directly or indirectly, when the fair market value of their taxable net French real estate assets (or of their fiscal household) is equal to or greater than EUR 1,300,000 as at 1 January of each year. In case of indirect ownership of real estate assets through interposed entities, PNWT is generally applied on the fraction of the value of the interest in such entities representing real estate properties or real estate rights.

States or territories defined as NCST

The French list of non-cooperative states and territories (NCST) was amended on 16 February 2024 and includes: (i) based on the French criterion: Belize, Bahamas, Seychelles, Turks and Caicos Islands, Bahamas; and (ii) based on the EU list: Anguilla, Antigua, Fiji, Guam, American Virgin Islands, Palau, American Samoa, Samoa Trinidad and Tobago, Panama, Vanuatu and Russia.

Unfavorable French tax treatment applies to certain transactions in NCST or with entities located in NCST, based on their classification above (i or ii). In respect of NCST listed in (i) in the paragraph above, the French regulations provide inter alia that interest and dividends from French entities paid to entities located in a NCST or paid in a bank account located in a NCST are subject to a withholding tax of 75%; and capital gains on shares in a French non-real estate company derived by an entity located in a NCST are subject to a withholding tax of 75%.

DAC 6

On 21 October 2019, the French Government adopted a Ministerial Order (hereafter 'the Order') transposing into French law the EU Council Directive 2018/822/EU on cross-border tax arrangements (also known as 'DAC 6' or 'EU MDR') in force since 25 June 2018.

Pursuant to the EU Council Directive 2018/822/EU regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, intermediaries and taxpayers fall in the scope of new reporting obligations with respect to cross-border tax planning arrangements that meet certain hallmarks.

The provisions of the Order were scheduled to be effective as of 1 July 2020 with specific transitional measures applicable to arrangements implemented between 25 June 2018 and 30 June 2020.

Due to the COVID-19 pandemic, the 2020 amending finance bill implemented six months extension of the deadlines for reporting and exchanging information under DAC 6.

French Tax Authorities (FTA) have published their definitive guidelines regarding DAC 6 provisions on 25 November 2020.

8 Germany

Tax rates

The statutory corporate income tax rate is 15.825% (including 5.5% solidarity surcharge). The trade tax rate is depending on the local municipality in which the business operations are carried out and varies in most municipalities between 14.0% and 18.0%, The overall tax rate for a German corporation thus ranges between 29.825% and 33.825%.

Dividend and capital gains tax exemption

Dividend distributions between corporations are generally 95% tax exempt. However, the 95% tax exemption is only granted where the recipient of dividends inter alia holds at least 10% of the nominal capital of the distributing corporation at the beginning of the calendar year.

Capital gains received by corporations upon selling the shares in other corporations are 95% tax exempt. Since 1 January 2019 this generally also includes capital gains derived by selling shares in foreign corporations which assets – directly or indirectly – consists more than 50% of German real estate. If the shareholder is a foreign resident corporation, the capital gains are 100% tax exempt according to case law of the German Federal Fiscal Court. Currently, there is no minimum holding requirement.

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

Share capital repayments

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

Apply for equity qualification of share capital repayments made in 2023 before 31 December 2024 (if the fiscal year equals the calendar year).

Rollover relief

Gains of a German permanent establishment from the sale of land and buildings need not be taken to income immediately but may be deducted from the cost of replacement premises. For gains from the sale of land and buildings which do not belong to a German permanent establishment no rollover relief is available. However, the taxation of capital gains reinvested in another EU member country may be deferred and spread over five years. The application for tax deferral has to be made in the fiscal year in which the land or building has been sold.

Apply for tax deferral on capital gains for EU land and buildings sold in the fiscal year 2024 in the tax return for the fiscal year 2024.

Interest capping rules	Where an entity is not able to limit its net interest to below the EUR 3m threshold, other escape clauses (non-group escape clause or group escape clause) might be applicable. According to the group escape clause, interest expenses paid in 2024 may be fully deductible only where the equity ratio of the German business equals or is higher than that of the group (2% tolerance) as of 31 December 2024. It should be verified whether the equity of the tax paying entity equals that of its group. If it stays below the quota of the group by more than 2%, additional equity may be injected in order to ensure interest deductibility in 2025.
Net operating losses (NOL) planning	According to tax accounting rules, an impairment to a lower fair market value may be waived. In a loss situation, impairment may be waived to avoid an increase of net operating losses.
NOL planning for partnerships	Net operating losses of a partnership are allocated to a limited partner only up to the amount of its equity contribution. Inject equity before fiscal year end in order to benefit from losses exceeding the current equity contribution.
Losses carried forward	Any direct or indirect transfer of more than 50% of shares/interests (or similar measures, e.g., in the course of restructurings) may lead to a total forfeiture of losses and interest carried forward at the German entity's level. Exemptions may apply for tax privileged restructurings and where the entity continues to perform the same business as prior to the share transfer (restrictive requirements). Currently a case is pending at the German Supreme Court to determine whether the loss forfeiture rules are unconstitutional. The upcoming decision by the Supreme Court may have retroactive effect. It is strongly recommended to explore structuring alternatives where you intend to reorganise your investment structure. All tax assessments for years in which a harmful share transfer has occurred should be kept open.
Trade tax status	Investments relying on no trade tax due to the non-existence of a German permanent establishment, or a preferential trade tax regime under the extended trade tax deduction, must fulfil strict requirements. The requirements of the extended trade tax deduction must be met for a complete fiscal year. It should be verified whether the requirements are met from 1 January 2025 onwards (if the fiscal year equals the calendar year) in order to mitigate trade tax on income derived in 2025.
Tax prepayments	In the case of declining profits, an application can be made to reduce current income and trade tax prepayments. Cash flow models and profit forecasts should be checked in order to improve liquidity by applying for tax prepayment reductions and/or refunds.

Substance requirements

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

It should be ensured that the tightened German substance requirements are met.

Transfer pricing

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

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

Tax group

The acceptance of a tax group is subject to strict observation of certain legal requirements. The profit transfer agreement needs to be registered with the commercial register up to 31 December 2024 in order to become effective for the fiscal year 2024 (if the fiscal year equals the calendar year). If companies do not obey the requirements during the minimum term of five years, the tax group will not be accepted from the beginning.

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

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

Land tax refund

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

Apply for land tax 2024 refund before 1 April 2025.

Land tax reform

In the course of the land tax reform the tax base has been aligned to the fair market value as of 1 January 2022. The reformed land tax will be levied for the first time on 1 January 2025 on this new tax base.

Consider new filing requirement from 2022 onwards and changing land tax burden from 2025 onwards.

Real estate transfer tax (RETT)	Federal states have the right to set the real estate transfer tax (RETT) rate themselves instead of applying the uniform federal RETT rate of 3.5%. Only in Bavaria the rate of 3.5% applies. The other federal states have increased their RETT rate up to 6.5 %. Monitor and consider potential changes of RETT rates in federal states. From 1 January 2027 onwards RETT exemptions for transfers between partnerships are no longer applicable. Execute transfers of real properties between partnerships before 1 January 2027.
Value added tax (VAT)	Starting from 1 January 2025 mandatory electronic invoicing (e-invoicing) for transactions between entrepreneurs will be introduced in Germany. Prepare in order to comply with the legal requirements from 2025 onwards.
Pillar 2	In Germany, minimum tax rules have been introduced for the fiscal year 2024. File, the minimum tax declaration and the minimum tax report for the fiscal year 2024 up to 30 June 2026.
DAC 6	Germany has implemented reporting requirements for cross-border tax arrangements in July 2020. Report cross-border tax arrangements within 30 days in order to avoid fines of up to EUR 25,000.
Planned tax changes	German tax law is subject to continuous changes. Currently, there are a number of tax amendment acts in the legislative process which impact taxation of real estate investments (inter alia the abolition of the notional second property in RETT law, tax book value transfer of assets between partnerships, introduction of a housing non-profit status, reporting requirements for domestic tax arrangements).

9 Greece

Reduction of the CIT rate and advance income tax payment

From the tax year 2021 onwards, the corporate income tax rate is reduced from 24% to 22%. Regarding the advance income tax payment the advance tax payment rate has been reduced from 100% to 80% for legal entities.

Special real estate tax (SRET) – Key framework

Designed to deter Greek taxpayers from avoiding disclosure of their real estate property through the use of offshore vehicles, SRET applies to all companies owning real estate in Greece, unless they fall into one of the exemptions. If no exemption can be achieved, the company must pay an annual 15% tax on the objective value of the property.

Key exemptions inter alia include:
- Legal entities irrespective of the country of their establishment, exercising commercial, manufacturing or industrial, activity in Greece, provided that the gross revenue from this activity is higher than the real estate gross revenue.
- Legal entities irrespective of the country of their establishment, constructing premises to use exclusively for the exercise of their commercial, manufacturing or industrial activity (self-use) and for a period of seven years starting from the issuance of the initial building permit.
- Legal entities that have their registered seat in Greece or in an EU member country, provided that they disclose their ultimate shareholders all the way up to an individual, who have a tax registration number in Greece. In case other legal entities are participating in the shareholder chain, the exemption is granted to the extent that the shares of the ultimate shareholder entity are traded on regulated exchanged markets.
- Legal entities that have their registered seat in Greece or in an EU member country or in a third country (not considered as a non-cooperative country), provided that they disclose their ultimate individual shareholders, who have a tax registration number in Greece. In case other legal entities are participating in the shareholder chain, the exemption is granted to the extent that the shares of the ultimate shareholder entity are traded on regulated exchanged markets, which should be supervised by an authority accredited by the International Organisation of Securities Commissions (IOSCO).

It should be noted that the aforementioned disclosure of individual shareholders is not a prerequisite if the total of the shares is owned by a listed company or the whole or a part of the registered shares belong to:
- Credit institutions including savings banks or deposit and loan funds;
- social security funds;
- insurance companies;
- mutual funds specified in art 15 par 3 L. 3091/2002

The Greek tax authorities tend to strictly apply documentation requirements in support of the abovementioned exemptions. The latest enacted Decision. 1206/2020 as amended by Decision A. 1089/2023 provides for a detailed list of documentation required for every specific SRET exemption category and determines the exact process to be followed for invoking an exemption. In this context, Decision E.2086/2023 further clarified that it is allowed for SRET exemption purposes to use the documentation set out in A. 1089/2023 for years prior to the publication of decision A. 1089/2023 years, during which the statutory exceptions apply.

Moreover, to be noted that the SRET is assessed annually on 1 January of the tax year and the SRET return (even if zero in case of an exemption) is by 20 May (unless an explicit exemption is announced). To be noted that all the exemption supporting documentation shall be issued, collected and in place by the time of the submission of the SRET return.

VAT – Suspension of VAT on real estate sales until 31 December 2024

A 24% VAT applies on the sale of new buildings in Greece by persons subject to VAT. In particular, the supply of real estate subject to VAT is the transfer for consideration of ownership or rights in rem of buildings or part of buildings and the land on which they stand, before their first occupation. To be noted that the term occupation refers to the use of the real estate in any possible way (e.g. self-use, leasing of the property etc.) The above transaction is taxable only when the following conditions are fulfilled:

a. The person who transfers is a taxable person, or anyone who carries out, on an occasional basis, the transaction on condition that he opts for the standard VAT regime and
b. the construction permit is issued after 1 January 2006.

A suspension of VAT on real estate sales for until 31 December 2024 has been introduced, levying of real estate transfer tax on all unsold immovable property with a construction permit issued from 1 January 2006 onwards, upon relevant application by taxable persons. For permits issued from 1 July 2020 onwards, the application shall be submitted within a six-month deadline from the issuance of the permit. According to recent government announcements, the VAT suspension on newly built properties will be extended by an additional year, until the end of 2025.

Pursuant to the amendments introduced by L. 5073/2023 short-term lease income when the lessor is a legal entity or an individual who owns at least three (3) properties is considered as business income and is further subject to VAT at a reduced rate of 13%.

Exemption from donation tax for the purchase of a main residence

Based on the Greek Donation and Inheritance Tax Code, cash donations and parental grants provided by parents to their children for the purchase of a main residence shall be exempt from donation tax up to the amount of EUR 150,000. To be noted that the tax-free amount on donations and parental grants has been previously increased to EUR 800.000 per parent.

Real estate investment companies (REIC

The Greek real estate investment company (REIC) was introduced back in 1999 by Law 2778/1999. The initial version of the law was poorly adapted to the needs of the market, and no REICs were established.

A further amendment to the law, which lifts a number of restrictions (e.g. increases limitations on leverage, allows investments in real estate SPVs rather than only direct ownership of properties) has led to the establishment of more REICs, whilst the relevant market is still growing.

Considerable tax exemptions are the key advantage of the Greek REIC regime. Key exemptions are:

- Exemption from real estate transfer tax on acquisition of real estate property;
- Exemption from income tax;
- The transfer of non-listed shares to a REIC is exempt from capital gains tax;
- Dividends distributed by a REIC are exempt from income tax.

REICs are subject to several regulatory restrictions, as well as an obligation to list their shares within a 2-year period from their establishment, which can be further extended for another 36 months in total.

There is a growing interest and market for such type of institutional investors in real estate property. To be noted that as per the recent announcements legislative amendments are anticipated to be introduced in the REIC tax and regulatory framework with the aim of making REICs more attractive to foreign investors. More specifically, the proposed changes include an increase in the required paid-up share capital from EUR 25 million to EUR 40 million and the expansion of their operational scope to include the acquisition, construction, and exploitation of renewable energy facilities. Additionally, the new framework is intended to clarify REICs' ability to engage in real estate development through leases, concession agreements, or public-private partnerships, and seeks to allow them to offer services such as hospitality and hotel management.by Law 2778/1999. The initial version of the law was poorly adapted to the needs of the market, and no REICs were established.

Foreign individuals transferring their tax residence in Greece may be subject to an alternative taxation for their income derived abroad.

Special non-dom regime for high net-worth individuals/investors

The following conditions shall be met cumulatively:

- The taxpayer must not have been tax resident in Greece the previous seven years out of eight year before the transfer of the tax residence in Greece.
- The taxpayer provides evidence that themselves or relatives are in possession of the majority of shares or participation in immovable property, business, tangible assets or shares of legal person/entities tax resident in Greece.

The amount of this investment shall at least be equal to EUR 500,000 and the investment shall be completed within three years from the application submission date.

Under this regime, individuals will pay a lump-sum tax of EUR 100,000 per tax year, irrespective of the amount of income earned abroad, for a maximum of 15 fiscal years. It is also possible to extend the regime to any of their relatives by paying an additional tax equal to EUR 20,000 per person per tax year.

Any tax paid abroad on income covered by the alternative taxation regime will not be offset against the tax liability of the above persons in Greece. In case the individuals, who have opted for the non-domiciled regime, earn in parallel income subject to income tax in Greece (e.g. income arising from the leasing of a real estate property located in Greece), this will be taxed in accordance with the general income tax law provisions and will not be covered by the non-domiciled regime.

Taxpayers opting for the regime are not obliged to declare any income earned abroad. They will be able to justify the imputed income calculated based on deemed expenses and assets acquisition by importing funds from abroad.

For completeness purposes, to be noted that Greece has also introduced legislation to facilitate the establishment of family offices, providing a centralized structure to manage family wealth and assets. Family offices benefit from favorable tax treatment, since the gross revenue is determined by adding a profit margin at seven percent (7%) to the total of all types of expenses and depreciation, excluding income tax (cost-plus method).

Special non-domiciled regime for pensioners

In parallel, a special non-domiciled regime intended specifically for foreign pensioners is provided in domestic legislation, enabling individuals entitled to a pension arising abroad to be subject to a favorable taxation of their income.

Foreign pensioners wishing to enter the special regime should cumulatively meet the following eligibility conditions:

- Be earning non-Greek source pension amounts; the scope of qualifying pensions should be further defined.
- Have held their tax residence outside Greece for 5 out of the last 6 years; and
- be former residents of a state with which an agreement on administrative cooperation in the field of taxation is in force with Greece.

The qualifying individuals should be in a position to evidence that Greece is the center of their vital interests.

The key tax benefit provided in the context of this special regime is that qualifying individuals will pay flat tax on an annual basis at the rate of 7% on their foreign sourced income, with exhaustion of the tax liability for this income. Any tax paid abroad will be deducted from the tax due in Greece, up to the amount of the latter.

Qualifying individuals shall not be exempted from inheritance tax or property donations tax on wealth located abroad. In addition, any Greek-sourced income of qualifying individuals/pensioners (e.g. income from leasing of real estate property located in Greece) will be subject to tax, in accordance with the general income tax provisions. Pensioners subject to this regime are required to declare their income earned both in Greece and abroad. This regime has applied to tax years beginning on or after 1 January 2020. The maximum duration of applicability of the regime is set at 15 tax years, starting from the next tax year from the date of submission of the application, while the possibility of revocation is provided within the fifteen-year period.

Special regime for angel investors

A special regime for angel investors has been set in effect as from 29 July 2020. According to this regime, angel investors i.e. individuals who contribute capital to a duly registered start-up company, shall deduct from their taxable income, an amount equal to 50% of the amount of their contribution, in the tax year in which it took place. This incentive applies to capital contributions via a bank deposit of up to EUR 300,000 per tax year, which are invested in up to three start-ups with a maximum investment of EUR 100,000 per start-up.

Fines and penalties may be imposed in case, following a tax audit, if it arises that the capital contribution has been made with a view to obtain a tax advantage, which would effectively frustrate the purpose of the regime, which is, in essence, the increase investment activity through the support of start-ups during the early stages of their operations. In case of a tax audit during which there is evidence that the capital contribution to the start-up company has been made for the purpose of the tax advantage, the amount of the fine imposed to the angel investor may reach the amount of the pursued tax benefit.

As per the most recent announcements, the Ministries of Finance and Development are advancing legislative provisions aimed at increasing tax incentives for angel investors allowing up to three investments per year, with a total potential investment of EUR 900,000. Each investment can provide a tax deduction of up to EUR 150,000, amounting to a total tax deduction of EUR 450,000 annually, and the capital contribution must be made through a share capital increase, with the transaction recorded on the "Elevate Greece" platform as per the information so far announced. The above remain to be confirmed once the final provisions are published and enacted.

10 Ireland

Taxation of rental income

Rental income profits are subject to corporation tax at the rate of 25% where the real estate asset is held through an Irish company.

Interest deductions

A deduction for interest is only allowed in computing the rental profits for the year where the money borrowed has been used on the purchase, improvement or repair of the property which generates the rental income.

There is no limit on the deductibility of interest on borrowed money used to purchase, repair or improve commercial property.

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

Other allowable deductions

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

Capital allowances

Tax depreciation is available on plant and equipment at an annual rate of 12.5% of the cost over eight years. Where items of plant and equipment are deemed to be energy-efficient, the entire allowance can be claimed in the year in which the expenditure is incurred.

Excess allowances over rental income profits can be carried forward as a loss to offset against future rental income.

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

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

Withholding tax on rent

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

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

Interest withholding tax

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

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

Dividends withholding tax

Distributions made by an Irish resident company are generally subject to withholding tax at a rate of 25%. Several exemptions are available under the Irish tax legislation subject to having the appropriate declarations in place.

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

Disposals by non-residents

A non-resident will be subject to capital gains tax in Ireland on the disposal of Irish specified assets. Land (including tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land) situated in the State is considered to be an Irish specified asset. Additionally, shares in a company which derives the greater part of its value from land are also considered to be Irish specified assets. A disposal of such shares by a non-resident would also be within the scope of Irish capital gains tax.

A vendor who is disposing of an Irish specified asset where the consideration exceeds EUR 500,000 (or EUR 1 million where the asset is residential property) should obtain a Form CG50A from the Irish Revenue Commissioners to avoid any withholding tax. If the vendor does not obtain the Form CG50A, the purchaser is obliged to withhold 15% of the purchase price and pay it directly to the Irish Revenue Commissioners.

Tax filing obligations

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

Stamp duty

Stamp duty applies to the acquisition of real estate assets and is payable by the purchaser. The rate of duty is 7.5% on the acquisition of commercial property and generally 1% on residential property transactions up to a value of EUR 1 million, 2% on the next EUR 500k, and 6% on the excess over EUR 1.5 million. These rates do not apply to acquisitions of relevant residential units, which are liable to a 15% rate (see below) and the 6% rate does not apply on purchases of 3 or more apartments (these transactions are liable to 1% on the first EUR 1 million, and 2% on the excess).

Furthermore, Irish legislation contains anti-avoidance provisions which apply the higher stamp duty charge to certain conveyances or transfers of:

- Shares (in Irish and non-Irish incorporated companies)
- Shares/units in Irish real estate funds (IREFs)
- Interests in foreign collective investment schemes
- Interests in partnerships

That derive their value or the greater part of their value, directly or indirectly from Irish non-residential land and buildings. The 7.5% stamp duty charge will only apply where:

a. The transfer results in a change in the person or persons having direct or indirect control over the real estate assets listed above, and
b. It would be reasonable to consider that the real estate assets concerned:
    1. Were acquired by the company, IREF or partnership with the sole or main objective of realising a gain from its disposal;
    2. Were or are being developed by the company, IREF or partnership with the sole or main object of realising a gain from its disposal when developed; or
    3. Were held as trading stock by the company, IREF or partnership.

The rules apply not only to conveyances or transfers of shares/units/partnerships interests that are caught under the above provisions, but also to contracts for the sale of any such shares/units/interests which might otherwise not be stampable.

The stamp duty rate in respect of 'relevant residential units' has been increased from 10% to 15%. A residential unit will be considered a 'relevant residential unit' where it is part of a bulk purchase of 10 or more residential units, or where the buyer has bought at least 9 other residential units in the 12 months preceding the current purchase.

Residential units in apartment blocks are not liable to the 15% rate.

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

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

Losses carried forward

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

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

Value-added tax (VAT)

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

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

Local property tax

Local property tax is only chargeable on residential properties and is generally payable by the owner of the premises. The local property tax for 2024 is calculated based on the market value of the property as at 1 November 2021.

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

Tax clearance certificates

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

Transfer pricing

Irish transfer pricing legislation endorses the OECD Transfer Pricing Guidelines and adopts the 'arm's length' principle. The rules apply to domestic and international arrangements entered into between associated persons, involving the supply or acquisition of goods, services, money, or intangible assets, and relating to trading activities within the charge to Irish corporation tax at the trading rate of 12.5%.

Under Irish rules, the Irish tax authorities have the power to recompute the taxable profit or loss of a taxpayer where income has been understated or where expenditure has been overstated as a result of non-'arm's length' transfer pricing practices. There is, however, an exemption available for small and medium sized enterprises.

Ireland's domestic transfer pricing rules are in line with the 2017 OECD Guidelines with the rules applying to certain non-trading transactions, enhanced documentation requirements and the use of a 'substance over form' provision which provides Irish Revenue with the ability to disregard and recharacterise a transaction in certain circumstances.

Finance Act 2021 introduced exclusions for bona fide non-trading 'Ireland to Ireland' transactions from the scope of transfer pricing which apply to chargeable periods commencing on or after 1 January 2022. Finance Act 2021 also legislated for the 'authorised OECD approach' for the attribution of income to a branch of a non-resident company operating in the State.

Anti-hybrid legislation

Irish legislation transposed the EU Directive on the mandatory disclosure of certain cross border arrangements (known as 'DAC 6') into the Irish tax code. The new provisions align very closely with the Directive and operate in addition to Ireland's domestic mandatory disclosure regime which was introduced with effect from 2011. The 30-day period for reporting to the Irish Revenue Commissioners commenced on 1 January 2021.

The Irish anti-hybrid rules, brought into force via Irish Finance Act 2019, apply with effect from 1 January 2020 and implement the requirements of EU ATAD II. The rules broadly deny deductions or impose tax on transactions between associated entities where there is an element of hybridity in the transaction or due to the form of the payor/payee.

Interest limitation rules

Finance Act 2021 saw the completion of Irish anti-hybrid rules through the introduction of rules to deal with reverse hybrids. Where a reverse hybrid mismatch arises, the rules provide for a neutralising mechanism whereby the income of the reverse hybrid entity will be subject to Irish corporation tax, "as if the business carried on in the State by the entity was carried on by a company resident in the State.

Ireland has introduced interest limitation legislation that had effect from 1 January 2022. The rules impose a cap on interest deductions to no more than 30% of EBITDA where a company has over EUR 3 million of an interest expense.

11 Italy

Interest capping rule

For corporate income tax (IRES) purpose, interest expenses (even those capitalized on assets) are deductible within the limit of interest revenues and, subsequently, within the limit of 30% of the fiscal EBITDA. The fiscal EBITDA derives from the accounting EBITDA (as per P/L), adjusted according to the same provisions used to compute the IRES taxable base.

Interest expenses that exceed such limits can be carried forward to be deducted in the following fiscal years, without time limitations, but only up to the amount of the interest revenues and 30% fiscal EBITDA of any following year (the latter, net of the interest expenses excess of the same year). Any “unused” 30% fiscal EBITDA can be carried forward and used to increase the 30% fiscal EBITDA of the following 5 years. In case, in a year, interest revenues exceed interest expenses, such excess may be carried forward without any time limitation.

As a temporary provision adopted with the enactment of ATAD rules in the Italian income tax system, interest expenses concerning facilities executed before 17 June 2016 whose amount or duration has not varied after that date, can be deducted by using the 30% (accounting) EBITDA excesses not yet used up to 2018 and carried forward. This specific portion of the EBITDA can be carried over indefinitely (as in the previous system), but it can be used only to deduct interest expenses on the facilities stated above (contrarily, out of this circumstance, any EBITDA excess existing at 2018 year-end is definitively lost).

However, it has been confirmed that interest expenses that have been generated by loans/ debts guaranteed by mortgages on real estate up for lease are still not subject to the interest capping rule. Pursuant to law, the benefit of such exclusion is applicable only to companies which carry on “actually” and “prevalently” real estate activity. This is met if the following conditions are fulfilled:

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

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

Evaluate the impact of the interest capping rule, especially with regard to capitalized interest and carried forward EBITDA. Check if the stated asset test and revenues test are fulfilled to take benefit from full deduction of interest on mortgage loans concerning properties up for lease. In case of refinancing, check if the original financing (other than bridge loans) fulfilled the conditions to enjoy the exclusion from the EBITDA limitation.

Shareholder's debt waivers

Shareholder's debt waivers are taxable for IRES purposes in the hands of the Italian subsidiary to the extent its accounting value, as booked in the subsidiary's general ledger, exceeds its related tax value in the hands of the shareholder.

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

In case of shareholder's debt waivers, obtain the shareholder's communication to prevent (or limit) the raising of a taxable contingent income in the hands of the Italian subsidiary.

Tax loss carry-forward

For corporate income tax (IRES) purpose, tax losses can be carried forward without any time limit, as follows:
- Tax losses incurred in the first three years of activity (provided that they derive from the launching of a new activity) can be used to entirely offset future taxable income;
- Tax losses incurred in subsequent years can be used to offset only 80% of the taxable income of any following year. The remaining 20% must be taxed according to the ordinary rules (IRES rate: 24%).

It is possible to combine the use of the two kinds of tax losses to reduce/offset the taxable income as much as possible.

The tax losses carried forward may be limited in case of:
(i.) transfer of shares representing the majority of voting rights in the company's general meetings ("change of control"), if also the change of the business activity from which such tax losses derived intervenes in the year of transfer or in the preceding or subsequent two years (exceptions exist); or
(ii.) in case of tax neutral reorganizations (e.g., mergers, spin-offs).

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

Passive company legislation

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

For companies which are deemed as "non-operative" the IRES rate is increased by 10.5% (therefore, from 24% to 34.5%). Other implications for "non-operative" companies may include limitations to the tax losses carry-forward and to the VAT credits refund/offset.

Check the impact of the "operative test" and of this special legislation.

Pillar Two considerations

Italy has transposed into domestic law the Minimum Taxation Directive (2022/2523) by means of Legislative Decree No. 209/2023.

The legislation applies to entities located in Italy that are part of a multinational enterprise (MNE) group or a large-scale domestic group with annual revenues of EUR 750 million or more in at least 2 of the 4 fiscal years immediately preceding the tested fiscal year, where their effective tax rate is lower than the minimum rate of 15%.

The imposition of a top-up tax of at least 15% is ensured via two interlocking Global Anti-Base Erosion (GloBE) rules:

- the income inclusion rule (IIR), which applies to fiscal years beginning from 31 December 2023; and
- the undertaxed profits rule (UTPR), which applies to fiscal years beginning from 31 December 2024.

However, in-scope MNE groups are excluded from the application of the IIR and the UTPR in the first 5 years of the initial phase of their international activity.

The new Italian NRCGT ("land rich" provisions) Additionally, Italy chose to implement a domestic minimum top-up tax (DMTT) (imposta minima nazionale), intended to meet the requirements for the qualified domestic minimum top-up tax (QDMTT) safe harbour.

The Ministerial Decree of 20 May 2024 implemented the Pillar Two transitional safe harbours and the Ministerial Decree of 1 July 2024, provides the implementing rules on the DMTT.

Evaluate the impact of the new Pillar Two provisions to the group.

Transfer pricing documentary requirements

The setup of a transfer pricing (TP) documentation according to certain parameters allows avoidance of tax penalties in case of assessment on transfer pricing matters carried out by Italian tax authority (penalties range from 90% to 180% of the higher tax). The existence of such documentation has to be declared in the annual income tax return.

Map intra-group transactions and possibly prepare compliant TP documentation.

Deductibility of local property tax (IMU) on "instrumental" buildings

Local Property Tax (IMU) paid over "instrumental" buildings (these being buildings directly used in the company's business – therefore subject to depreciation) has become fully deductibility for IRES purpose since FY2022.

This provision is precluded to buildings for sale (inventory), which for builders and at stated conditions may be exempt from local property tax, and those held as investment that do not pertain to the company's business.

Consider IMU deductibility rules for real estate companies based on the destination of the properties owned.

The new Italian NRCGT (“land rich” provisions)

Starting from 1 January 2023, the taxation of capital gains earned by non-residents (excluding those deriving from the disposal of shares and similar securities listed in regulated markets) has been modified as follows:

- Capital gains deriving from the disposal, for consideration, of shareholdings in non-resident companies and entities, more than half of whose value is derived, in any of the 365 days prior to the disposal, directly or indirectly, from real estate located in Italy, are deemed to be earned in the Italian territory for income tax purposes.
- The domestic tax exemption for non-residents in respect of capital gains deriving from the disposal of shares, securities and other financial instruments which are not “qualifying” shareholdings (i.e., those not exceeding, in terms of voting rights or capital ownership, respectively, 20% or 25% for unlisted shareholdings, computed over a 12-month period) in Italian resident companies and entities is no longer applicable if more than one-half of their value is derived, in any of the 365 days prior to the disposal, directly or indirectly, from real estate located in Italy.

In this respect, real estate assets for sale (inventory) and those directly used in the company’s business shall not be included in the one-half value.

Furthermore, the new land rich provisions are not applicable to capital gains realized by foreign Undertakings for Collective Investments compliant with UCITS IV EU Directive or, for those not compliant, which are managed by a regulated manager under the AIFMD EU Directive, in both cases set-up in an EU or EEA country.

In case of disposal of companies and entities, consider if they may be qualified as Italian real estate “rich” (even indirectly).

The 2-year Preventive Composition Procedure (“Concordato Preventivo Biennale” – “CPB”)

The 2-year Preventive Composition Procedure (“CPB”) is a newly introduced option to agree in advance the taxable income of the following two tax periods. Applicable from FY2024, it aims to streamline tax obligations and encourage voluntary compliance, and it is offered to resident companies applying ISA (Indici Sintetici di Affidabilità, the audit tool based on a synthetic index of reliability).

Access to the CPB is allowed provided specific conditions are met (e.g., no tax/social contribution debts, no tax criminal sanctions in the preceding three years, regular tax returns filings in the same preceding period).

Pursuant to the CPB regime, the subsequent 2 years’ taxable income for IRES and IRAP purposes is determined in advance directly the Italian Tax Authority on the basis of the information in their hands. The taxable income so determined excludes capital gains, extraordinary income/costs and income derived from partnerships actually incurred (these items must be added to the tax income automatically determined by the taxpayer).

The 2-year taxable income is then “proposed” to the taxpayer, for acceptance or denial in the relevant tax return.

In case of CPB option, if the taxable income agreed is higher than the taxable income of the previous FY, the difference is subject to a substitute tax (of IRES and IRAP) with rate ranging from 10% to 15%.

The CPB regime provides several benefits, such as, among others: exclusion from certain types of tax audits and from the dummy company legislation; a one-year reduction of the statute of limitations. However, the CPB regime does not apply for VAT purposes.

For FY2024/2025, the deadline for the option is 31 October 2024. For subsequent years, the deadline will be 31 July.

Consider, from a cost-benefit perspective, the subsequent 2 years taxable income automatically determined by the Italian Tax Authorities.

12 Latvia

Matters to be aware of

Due to the increase in the interest rate, it is important to consider the application of thin capitalisation rules (debt to equity ratio of 1:4 and EBITDA 30% rule).
In 2025, changes are planned in the field of taxation, which will affect the application of personal income tax (PIT). It is planned to implement a PIT rate of 3% on dividends paid to individual.

Stamp duties

Stamp duty is paid by the entity which acquires the ownership rights. In cases where RE ownership rights are obtained as a result of reorganisation, the new owner does not have to pay stamp duty. Stamp duties per immovable property are determined as follows:

- For alienation of real estate (RE) on the basis of a contract is 2% of the RE value if ownership rights are transferred to a legal entity, but not more than EUR 50,000.
- For alienation of RE on the basis of a contract is 1.5% of the RE value if ownership rights are transferred to an individual, but not more than EUR 50,000.
- For alienation of RE on the basis of a gift agreement is 3% of the RE value.
- Investment of RE into the share capital of a company is 1% of the RE value invested into the share capital, but not more than EUR 50,000.

The rental income received by non-resident is subject to 5% withholding tax (WHT).

Sale of real estate/rental income

The taxation principles applied to income from the sale of a real estate differs for Latvian residents and non-residents. Sale of real estate by non-residents would be subject to 3% WHT on gross proceeds. This tax must be either withheld by the Latvian purchaser or, in case the transaction is between two non-residents, declared and paid by the non-resident seller.

CIT Act allows non-residents from EU or double tax treaty (DDT) countries to pay 20% on profit from such sale, on condition that the company can justify the acquisition costs by documentary evidence. This tax must also be withheld on a non-resident company's proceeds from the sale of particular real estate or shares in a Latvian or foreign company if Latvian real estate represents more than 50% of the company's asset value (whether directly or indirectly through participation in one or more other Latvian or foreign entities) in the tax period the sale is made, or in a previous tax period.

Taxation of dividends

The taxation of dividends is made on the company's level. The CIT rate of 20% is applicable to the taxable base. However, before applying the statutory rate, the taxable base should be divided by a coefficient of 0.8. As the taxable base is increased by the coefficient, the effective CIT rate is 25%.

CIT exemption: Flow through dividends would be exempt from CIT if they are received from CIT taxpayer or tax has been withheld at source state. In addition, some anti-avoidance provisions would apply aimed at offshore entities or artificial structures.

Review your dividend payment policy to benefit from the current CIT regime (e.g., profits paid out of retained earnings up to 31 December 2017 are not subject to CIT. However, if the shareholder is an individual personal income tax (PIT) rate of 20% is applicable).

Sale of shares and securities	In line with the CIT Act the income arising on the disposal of shares constitutes CIT taxable base. At the same time, CIT Act provides the relief determining the reduction of the taxable base in case of a disposal of direct participation shares held for at least 36 months (i.e. three years). Mentioned relief is not applicable to the shares held in the companies established in black-listed jurisdictions and to the real estate company's shares. Please note there are specific rules for the sale of real estate company's shares by non-residents. More details are provided in the paragraph Sale of real estate. If relevant, please consider that income gained on disposal of shares held for 3 years or more may be used to reduce CIT taxable base.
Losses carried forward	The CIT Act does not include the concept of tax losses.
Deductibility of interest payments	CIT is payable on the increased interest payments. The allowable interest shall be calculated applying two methods. If both methods are applicable, the higher of the two amounts calculated which exceed the calculated threshold should be added to the CIT taxable base. There are a number of exemptions from above rules, e.g. qualifying loans from credit institutions do not fall under the mentioned regulation. If relevant, consider options for improving equity before year's end to improve deductibility of interest next year, as well as seek for clarification from tax consultants or tax authorities on the use of exemptions of interest deductibility rules.
Exchange of shares	Where a share exchange takes place (one kind of shares being exchanged for another kind), payment of PIT is postponed and is due when the individual sells the shares acquired through exchange.
Provision for bad debts	Provisions for bad debts do not become a subject to CIT if debts are repaid during a 36-months period. If a company made provisions up to 31 December 2021 and the debtors are going through insolvency proceedings, the recovery period may be extended to 60 months. Opportunities to recover bad debts should be considered to decide how much provision for bad debts is necessary.
Write-offs for bad debts	Bad debts must comply with certain criteria listed in the CIT Act in order not to constitute the CIT taxable base, when written off.
Transfer Pricing	All related-party cross-border payments as specified in the Taxes and Duties Act must comply with the arm's length principle. Failure to present appropriate documentation to the tax administration might result in the non-acceptance of group charges and penalties for tax purposes. The arm's length principle should be duly followed and documented.

Real estate tax

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

As of 1 January 2024, there is 50% tax relief available for energy-efficient buildings in Riga. Tax relief is granted for newly built or fully renovated buildings that are delivered for occupancy after 2023. Energy efficient buildings eligible for relief mean newly built or fully renovated buildings with international certification such as BREEAM International New Construction, BREEAM Refurbishment and Fit-Out, LEED BD +C or DGBN certificate with at least a 55% rating.

As of 1 January 2025, there will be two cadastral values for each cadastral object: the fiscal cadastral value and universal cadastral value. One of them will be used for the calculation of taxes, state fees, but the other one will be used for other purposes (e.g. for accounting and financial reports).

In accordance with The National Cadastre of Real Estate Act the cadastral values are changed once every four years if the property market or factors affecting the value of an area have changed. The base of cadastral value for the period from 2025 to 2028 has been approved and will enter into force as of 1 January 2025. This would result in increase in cadastral value and RET payments.

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

Value-added tax (VAT) legislation regarding sale of real estate in Latvia

According to VAT Act sale of unused real estate and development land attracts the standard VAT rate of 21%.

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

Input VAT incurred upon construction works, renewal, rebuilding or restoration is recoverable if the building is intended to be used for taxable transactions. The taxable person should follow the deducted input VAT for 10 years, that is, follow whether the actual use of real estate is not different from the planned one and no adjustment of the deducted input tax is required.

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

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

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

VAT grouping	The VAT grouping facility helps related companies reduce their administrative burden and improve cash flows, as their mutual transactions no longer attract VAT. A single VAT return can be filed covering all group companies. This especially benefits group companies with both taxable and exempt supplies and companies that have extensive sales outside Latvia. Consider the option of creating a VAT group.
Reverse-charge VAT on construction services	Construction services are subject to domestic reverse-charge VAT, meaning VAT is paid by the recipient. VAT Act defines construction services as any performance of construction work and all types of design work included in a construction project. Make sure that reverse-charge VAT has been applied correctly.
Permanent establishments	If you have not registered a legal entity or a branch in Latvia, consider if your business operations have created a permanent establishment (PE), which requires a CIT compliance in Latvia. Consider the requirements for registering a PE in Latvia.
Management fees	Management and consulting fees paid to non-residents are subject to a 20% WHT. However, WHT may be eliminated under provisions of the respective tax treaty. In order to apply for a more favorable tax regime, a non-resident has to provide the payer with a tax residency certificate. The Latvian taxpayer should obtain this certificate from the income recipient and approve with the Latvian tax authorities until the financial statement submission deadline

13 Lithuania

Investment in real estate and land

There are no restrictions for foreigners to acquire the immovable property in Lithuania (except for land). Agricultural, non-agricultural and non-forestry land, inland waters and forests can be acquired only by companies or individuals who are established or residing in the EU member countries or in countries that are the members of OECD, NATO or EEA and receive relevant permissions from local authorities.

Real estate (RE) related transactions are subject to a notary's approval and registration fee. The notary fee charged in case of a sale and purchase of RE amounts to 0.37% of the RE price but not lower than EUR 76 and not higher than EUR 5,000 (plus VAT). Registration fees of RE are not material (up to EUR 21.67).

In case of a share deal the transfer of shares in a RE holding entity is subject to the notary fee of 0.26% on the value of transaction (the fee shall not be less than EUR 24 or exceed EUR 5,000 (plus VAT), when:
- ≥25% of limited liability company's shares are sold;
- the sale price of the limited liability company's shares sale exceeds EUR 14,500 except for certain exemptions.

Group taxation

Generally, tax grouping is not allowed in Lithuania (except for intra-group tax loss transfer possibility), thus each company is taxed separately.

Real estate tax (RET)

The real estate tax (RET) is applied both for local and foreign tax residents holding RE in Lithuania. The tax rate may vary from 0.5% to 3% depending on municipalities.

In Vilnius, the RET rates established for 2024 varies between 0.7% and 3% (the standard rate is 1%) depending on the purpose of use of the RE and the condition of the RE, e.g. 3% applies for RE in actual use, the construction of which has not been completed. In addition, the increase of the rate by 1% may apply in specific cases (by increasing the rate of 1% or 0.7%), e.g. when the requirements for the design of the building structure or noise in public places are not complied with.

Residential and other personal premises owned by individuals are exempt from tax where the total value of EUR 150,000 is not exceeded (threshold for individuals raising 3 or more children, etc. is EUR 200,000), whereas the excess value is subject to progressive taxation from 0.5% to 2% (2% applies when the taxable value exceeding EUR 500,000, for individuals raising 3 or more children, etc. when the taxable value exceeding EUR 650,000).

Procedure of filing advance real estate tax return

RET base is the value of the property: depending on the type and purpose of the property it can be assessed either by mass valuation method (performed every 5 years) or using the replacement value (costs) method (established not earlier than 5 years ago). There is a possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20%.

Legal entities have an obligation to pay advance RET on a quarterly basis. Advance RET return for the first 9 months of the current tax period should be submitted together with the annual RET return for the previous tax period.

Value-added tax (VAT)

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

Additionally, the reduced 9% VAT rate is applicable to accommodation services provided in accordance with the procedure established by legal acts regulating tourism activities.

Reverse-charge VAT on construction service

Local reverse-charge VAT mechanism applies for supply of construction services, when such services are supplied to a taxable person Lithuanian VAT payer. If a foreign entity supplies construction services in Lithuania to a taxable person Lithuanian VAT payer, then the foreign entity is required to register with the Lithuanian VAT payers' register and apply local VAT reverse-charge mechanism for construction services.

Reverse-charge VAT mechanism is also applicable to supply of goods installed in immovable property in which construction services are performed and after such installation the goods become an integral part of the property. Such treatment is applicable when goods are supplied under a single agreement (supply of goods and installation services).

IT-based tax administration system – i.MAS

The Lithuanian tax authority has introduced an IT-based tax administration system ("i.MAS").

For the tax period starting from October 2016, all persons registered for VAT purposes in Lithuania are required to submit invoice data to i.SAF subsystem on a monthly basis (with some exceptions).

In addition, following certain turnover thresholds, companies established in Lithuania are required to prepare their accounting data in a SAF-T file and upon request provide it to the tax authority or other authority.

Corporate income tax

Standard corporate income tax (CIT) rate is 15% (from 1 January 2025 – 16%). Small entities (i.e. entities with fewer than ten employees and less than EUR 300,000 gross annual revenues) can benefit from a reduced CIT rate of 0% for the first tax period and 5% (from 1 January 2025 – 6%) for the consecutive tax periods with certain exceptions.

Generally, the taxable period for CIT is the calendar year. The tax return has to be filed and CIT due has to be paid before June 15th of the next taxable period.

The companies with annual turnover exceeding EUR 300,000 are also subject to advance CIT payment in Lithuania.

Dividends exemption rule

Dividends distributed by a Lithuanian company to another Lithuanian company are generally subject to a 15% (from 1 January 2025 – 16%) CIT, which is withheld by a distributing company.

Dividends distributed by a Lithuanian company are exempt from withholding tax (WHT) if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period (without interruption) (except for blacklisted territories).

Dividends distributed by a foreign company are subject to a 15% (from 1 January 2025 – 16%) CIT that is to be paid by the receiving Lithuanian entity.

However, dividends distributed by a foreign company to a Lithuanian company are exempt from CIT in Lithuania if the distributing foreign entity is established in the EEA and related profit is properly taxed in the domiciled country. Also, dividends distributed by a foreign company to a Lithuanian company are exempt from CIT in Lithuania when the Lithuanian company has held not less than 10% of the voting shares in the distributing foreign company for at least a 12-month period (without interruption) and when the profit of foreign company is subject to CIT or similar tax, and which is not registered or otherwise organized in the blacklisted territories.

Dividends paid out to foreign companies or received from foreign companies are not subject to tax exemption in cases where tax benefit is the main or one of the main objectives of a particular structure of companies. Dividends received from foreign companies are also not subject to tax exemption if they were deducted from taxable profit at the distributing company level.

Depreciation of fixed assets

The depreciation of fixed assets is calculated separately for each asset using the straight-line method, double declining balance depreciation method or production method. Generally, buildings may be depreciated over periods from 8 to 20 years (new buildings over 8 years), machinery and plant – over 5 years.

Land is not subject to tax depreciation.

Withholding tax on sale of real estate

Income from the sale of RE situated in Lithuania and derived by a foreign entity is subject to a WHT of 15% (from 1 January 2025 – 16%). WHT on income sourced in Lithuania must be withheld and paid to the state budget by both Lithuanian entities and permanent establishments in Lithuania.

Withholding tax on interest

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

Deduction of interest expenses

In Lithuanian thin capitalization rule apply: interest on the debt in excess of the controlled debt-to-fixed-equity ratio of 4:1 is non-deductible for CIT purposes if the company can not substantiate that the same loan under the same conditions would be received from a non-associated party. Mentioned rule do not apply to the financial institutions providing financial leasing services.

Additionally, an entity is given the right to deduct interest costs exceeding interest revenue up to a 30% of taxable EBITDA or up to EUR 3 million. If an entity belongs to the group of entities, the above criteria shall be applied jointly for all Lithuanian entities and permanent establishments of foreign entities in Lithuania that belong to the same group. Restrictions do not apply if an entity's financial results are included in the consolidated financial results of a group, and the equity-to-asset ratio of that entity is not more than 2 percentage points lower than the equivalent ratio of the group. Interest costs exceeding interest revenue could be carried forward without time limitation. Mentioned rules do not apply to financial institutions and insurance companies.

Transfer pricing

Based on the transfer pricing rules applicable in Lithuania, transfer pricing documentation (TPD) should consist of two files: 1) Master File, which describes inter-company transactions in the worldwide context of an entity’s group, and 2) Local File, which includes more detailed information and analysis about the local entity's inter-company transactions.

Local File should be prepared by all Lithuanian entities with the annual revenue for the previous period exceeding EUR 3 million. Master File is mandatory if an entity belongs to the international group of companies and its previous period’s revenue in Lithuania exceeds EUR 15 million.

TPD requirements are not applicable for transactions between Lithuanian associated parties, provided such transactions are related to their activities in Lithuania (applicable from 2020 onwards).

Penalties, amounting from EUR 1,820 to EUR 6,000 for non-compliance with the TPD procedures for transactions between associated persons could be imposed for CEO of the company. The arm’s length principle should be duly followed and documented in order to avoid negative tax consequences.

Losses carried forward

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

Land tax

Land tax applies on land owned by companies and individuals, except for the forest land.

Land tax rates range from 0.01% to 4% depending on local municipalities. In Vilnius, the land tax rates established for 2024 varies from 0,12% (standard rate) to 4% (e.g. for the land that is not used and for the land with buildings recognised as unauthorised construction).

Exemption from land tax is available in some cases. The tax base is the average market value determined according to the mass valuation performed not rarer than every 5 years. There is a possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20%.

Land lease tax

Users of state-owned land are subject to land lease tax. The tax rate ranges from 0.1% to 4% of the value of the land. The actual rate is established by municipalities. In Vilnius, the land lease tax varies from 0.5% to 4%. Municipalities have an opportunity to apply tax incentives.

Personal income tax

For local and foreign individuals, income from the sale/rent of RE located in Lithuania is subject to 15% PIT of income not exceeding EUR 228.324 per calendar year of 2024, and 20% PIT rate is applied on the part exceeding this threshold. Upon certain conditions (i.e. rental of residential premises), individuals can opt to pay a fixed amount of tax on rent of RE once a year, if such property is rented to individuals and not to legal entities. In such case individuals should obtain a business certificate for rent of residential premises. However, if the amount of income received from rental of residential premises exceeds EUR 45.000 per calendar year, the excess is taxed as property rental income, despite of having a business certificate, at a 15% PIT rate.

DAC6

The European Union (EU) Directive on the mandatory disclosure and exchange of reportable cross-border tax arrangements (referred to as DAC6 or the Directive) has been introduced into Lithuanian law. Under DAC6, starting from 1 January 2021 taxpayers and intermediaries are required to report cross-border reportable arrangements which include at least one of the distinguishing hallmarks defined in the law.

14 Luxembourg

Corporate tax rate

The aggregate income tax rate for 2024 is 24.94% for entities registered in Luxembourg City:
- Standard corporate income tax rate is 17% for taxable income exceeding EUR 200,001. Companies with a tax base of less than EUR 175,000 benefit from a reduced corporate income tax rate of 15%. Companies with a tax base between EUR 175,000 and EUR 200,001 are subject to a corporate income tax of EUR 26,250 plus 31% of the tax base above EUR 175,000
- Municipal business tax is also levied at a rate generally varying from 6.75% to 10.50% depending on where the company is located (the municipal business tax rate is 6.75% if the company has its registered office in the Luxembourg City).

Luxembourg undertakings are also contributing to the Luxembourg employment fund for 1.19% of their taxable income (i.e. 7% rate assessed on the 17% income tax).

Losses carried forward

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

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

Tax losses cannot be carried back in Luxembourg.

Net Wealth Tax (NWT)

Companies resident in Luxembourg are subject to an annual Net Wealth Tax on their unitary value (net asset value) to be determined as at 01.01 of each calendar year.

The following rates are applicable:
- for a unitary value up to and including EUR 500 million: 0.5%;
- for a unitary value exceeding EUR 500 million: 0.05% on the portion of the unitary value above EUR 500 million and EUR 2.5 million (i.e. EUR 500 million at 0.5%).

Some exemptions are available under the Luxembourg participation exemption regime (e.g. shares in certain companies) or by virtue of the applicable Double Tax Treaties (e.g. real estate located abroad).

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

Minimum Net Wealth Tax

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

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

There is no withholding tax on interest.

Withholding Tax

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

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

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

Real Estate Levy

The Bill (n°7666) presenting the Budget for 2021 and issued by the Luxembourg Government on 14 October 2020 has proposed the introduction of a new tax, termed a Real Estate Levy ("prélèvement immobilier"). It applies to Luxembourg investment fund vehicle which is regulated under the 2007 specialised investment fund ("SIF") regime, or the 2016 reserved alternative investment fund ("RAIF") regime, or Part II of the 2010 UCI regime and has its own legal persona and owns directly (or indirectly through one or more entities that are regarded as tax transparent under Luxembourg principles) real estate assets that are sited in the Grand Duchy of Luxembourg.

The Real Estate Levy is to apply to the gross (but VAT-exclusive) amount of rental income deriving (directly or through tax transparent entities) from Luxembourg real estate assets and the net amount of gains on disposal deriving from such assets (directly or through tax transparent entities, either on disposal of the real asset by a transparent entity or disposal of the interest in the tax transparent entity owning the Luxembourg real estate) on or after 1 January 2021, and is charged at a rate of 20%.

Real Estate Levy due on income or gains arising or realised in a calendar year must be reported to the tax authorities no later than 31 May of the following calendar year, and the Levy due must be paid no later than 10 June of the following calendar year. Returns of Real Estate Levy due must be accompanied by an auditor's certificate confirming that the amount being subject to the levy is computed in accordance with the provisions of the legislation.

Payments to EU "black-listed" countries

With the law of 10 February 2021 (the Law), Luxembourg introduced defensive measures in its tax legislation that disallows tax deduction of interest or royalties paid or due to related parties, if these are corporate entities established in countries that are "black-listed" as being "non-cooperative" for tax purposes listed on Annex I of the EU List. The new provisions apply as from 1 March 2021.

On 31 May 2022, the Luxembourg tax authorities published an updated circular on the application of these measures (L.I.R. n°168/2).

VAT Grouping implemented in Luxembourg

The VAT grouping legislation has been introduced in Luxembourg with effect from 31 July 2018 (via Law no.671 of 6/08/2018). Some of the feature of the VAT group include:

- Enhances consolidation for VAT purposes;
- Is an optional regime, choice is left to the taxpayer, but all-in or all-out, limited opt-out possibilities;
- Only Luxembourg resident companies and a local branch of a foreign company can join.
- Applicable for any sector/industry but the three following links need to exist simultaneously:
  - Financial links;
  - Economic links and
  - Organizational links.
- Members cannot be part of more than one VAT group;
- Must be set up for at least 2 calendar years.

Although this is a new regime in Luxembourg, VAT groups are already used in other jurisdictions as a way to mitigate irrecoverable VAT costs and cash flow effects on intra-group charges.

VAT and Transfer Pricing

The Luxembourg VAT law has been amended (via Law no.671 of 6/08/2018) to implement Article 80 of the EU VAT Directive with effect from 31 July 2018. This law aims at avoiding VAT loss by allowing the VAT authorities to disregard consideration agreed between related parties to retain the open market values under the following situations:

- When the consideration for a supply has been underestimated while the purchaser has a limited recovery right;
- When the consideration for an exempt supply has been underestimated while the supplier has a limited recovery right and
- When the consideration for a supply has been overestimated while the supplier has a limited recovery right.

Directors Fees

Since 1 January 2017, directors' fees paid to directors (private individuals) are subject to 17% VAT, based on the Circular issued on 30 September 2016. Since 1 January 2017, increase of the enforcement powers of the VAT authorities:

- Personal liability of the delegated administrators, directors and 'de jure' or 'de facto' managers is engaged in case of VAT underpayments/late payments/non-compliance with VAT law if it can be proved that they failed in the performance of their duties.
- General increase of penalties.

FAIA requirement

The Luxembourg VAT Authorities may require certain VAT taxpayers to provide all the information necessary for their audit on an electronic structured audit file (the so-called 'Fichier d'Audit Informatisé de l'Administration de l'enregistrement et des domaines' – 'FAIA').

As a general rule and based on the guidance from the Luxembourg VAT Authorities, this FAIA file can be requested to (1) VAT registered entities under the normal regime and that are subject to the Luxembourg Standard Chart of Accounts and (2) which perform more than 500 transactions per year.

These requests are more and more frequent and the affected companies should ensure that they are able to generate the file and can provide it when requested since failure to provide may attract penalties.

Anti Tax Avoidance Directive (ATAD) I

On 18 December 2018, the Luxembourg Parliament voted for Bill (n°7318) (the 'Law'), implementing ATAD I in Luxembourg domestic law. The Law was published on December 21st 2018 and entered into force on 1 January 2019. The Law covers the following measures:

Interest limitation rules

The Law sets out new interest deduction limitation rules restricting deduction of 'exceeding borrowing costs' up to a higher of (i.) 30% of the taxpayer's EBITDA or (ii.) EUR 3m. Exceeding borrowing costs not deductible in a tax period may be carried forward without time limitation. Interest capacity which cannot be used in a given tax period may be carried forward for five years.

The Law also provides for a grandfathering to be applied to any loans granted to a Luxembourg company before 17 June 2016 and to the extent that these loans have not been modified since this date and will not be modified afterwards. Borrowing costs arising from long-term infrastructure projects (where the project operator, borrowing costs, assets and income are all in the European Union) are also excluded from the scope of the interest limitation rules.

Controlled foreign company rules (CFC)

The Law sets out new CFC rules targeting non-distributed income of CFCs arising from non-genuine arrangements, which have been put in place for the essential purpose of obtaining a tax advantage.

If a CFC is identified, the Luxembourg company may have to include totally or partially the non-distributed income earned by the CFC entity/-ies following a functional analysis.

General anti-abuse rule ('GAAR')

The Law aims at modernizing the existing general anti-abuse rule as provided by the Adaptation Law. Under the Law, there is an abuse of law if the legal route which, having been used for the main purpose or one of the main purposes of circumventing or reducing tax contrary to the object or purpose of the tax law, is not genuine having regard to all relevant facts and circumstances.

Exit tax rules (applicable as from 1 January 2020)

The Law modifies the existing exit taxation rules and amends the existing taxation deferral rules to provide for a payment of tax in installments over five years.

The payment of the Luxembourg tax arising on the gains upon transfer of assets outside Luxembourg in any of the circumstances listed in ATAD may be made in installments over a period of five years. However, this is possible only where the transfer is to an EU Member State, or an EEA State with which Luxembourg has an agreement on the recovery of taxes.

Anti Tax Avoidance Directive (ATAD) II

On 19 December 2019, the Luxembourg Parliament voted to approve the law implementing the EU Anti Tax Avoidance Directive regarding hybrid mismatches with third countries ("ATAD 2") into Luxembourg domestic law (the "ATAD 2 Law"). The Law generally follows the text of ATAD 2 rather closely, adapting it mainly to integrate with the structure and terminology used in the Luxembourg Income Tax Law. The ATAD 2 Law applies to tax years starting as from 1 January 2020, with the additional "reverse hybrid" measures that comprise Article 9a of ATAD 2 applying from the 2022 tax year, i.e. to tax years closing in 2022. For taxpayer having a tax year diverging from the calendar year, this means that Article 9a of ATAD 2 may apply to them already in 2021.

The ATAD 2 Law aims at preventing "deductions without inclusion" and "double deductions" caused by "hybrid mismatch" tax treatments. A "hybrid mismatch" may be defined as the difference in the legal characterization of a financial instrument (e.g. debt in the jurisdiction of a payer and equity in payee's jurisdiction) or an entity (i.e. tax transparent in one jurisdiction but opaque from another jurisdictions' perspective).

The provisions of the ATAD 2 Law apply whenever there is a 'hybrid mismatch' under:
(i.) a 'structured arrangement' or
(ii.) between 'associated enterprises' or
(iii.) between a head office of an entity and a permanent establishment or
(iv.) between two or more permanent establishments of the same entity or
(v.) in cases of dual tax residence.

Essentially any link, where there is a 50% or more right to votes, capital ownership or profits, causes two entities, or an individual and an entity, to be associated enterprises (except in relation to payments under a financial instrument - here a threshold of 25% is sufficient to create an associated relationship).

In relation to the 'acting together' concept, the Law deals specifically with investors (either physical persons or entities) in an investment fund that own, directly or indirectly, less than 10% of the shares or units of the fund and are entitled to less than 10% of the profits of that fund. Unless demonstrated otherwise, any such investor in a fund is not to be regarded as 'acting together' with any other investor. This means that in these circumstances any such 'less than 10%' investor should not be 'associated' with the fund vehicle, and as a consequence also not be 'associated' with the entities the fund vehicle controls.

2022 reverse hybrid mismatches

With effect as from the 2022 tax year, Luxembourg transparent partnerships will become liable to corporate income tax in relation to net income, to the extent that such income is not otherwise taxed under the Luxembourg domestic tax law or the laws of any other jurisdiction, provided one or more associated non-resident entities i) holding in aggregate a direct or indirect interest in 50% or more of the voting rights, capital interests or rights to a share of profit in the Luxembourg partnership ii) consider the Luxembourg partnership to be a taxable person.

The ATAD 2 Law confirms that, while the Luxembourg partnership will be considered as a tax resident for corporate income tax purposes, it will be exempt from Net Wealth Tax.

In line with the exclusion provided for in ATAD 2, collective investment vehicles are out of the scope of this provision. For the purpose of this rule, collective investment vehicles are defined as an investment fund or vehicle that is widely- held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established. The Commentary to the ATAD 2 Law clarifies that this definition includes undertakings for collective investment in the sense of the Law of 17 December 2010, specialised investment funds ('SIFs') covered by the Law of 13 February 2007, reserved alternative investment funds ('RAIFs') covered by the Law of 23 July 2016, and other alternative investment funds ('AIFs') not falling within the above categories but covered by the Law of 12 July 2013 (implementing the EU AIFM Directive) relating to managers of alternative investment funds although only to the extent that such AIFs are widely-held, hold a diversified portfolio of securities and are subject to investor-protection regulations.

The recent 2023 Budget Law adopted by the Luxembourg parliament on 15 December 2022 clarifies that reverse hybrid rules should only be triggered in case the non-inclusion of the income of a Luxembourg tax transparent partnership in the investors' taxable basis results in a difference of characterization of the Luxembourg tax transparent partnership in the investors' tax jurisdictions (i.e. investors viewing the Luxembourg partnership as tax opaque for their own local tax purposes when it is actually a tax transparent entity for Luxembourg tax purposes). The reverse hybrid rules should however not be triggered when the non-inclusion of the Luxembourg tax transparent partnership's income at the level of the investors is rather due to the investors' tax status (i.e., tax exempt entities) or results from the fact that the investors' jurisdictions do not levy corporate tax.

On 9 June 2023, the Luxembourg tax authorities issued an administrative circular (Circular L.I.R. n°168quater/1) providing some additional guidance on their interpretation of the reverse hybrid.

DAC 6 – Disclosure for certain cross-border arrangements

DAC 6 provides for a mandatory disclosure of certain cross-border arrangements by intermediaries or relevant taxpayers to the tax authorities and mandates automatic exchange of this information among EU Member States (taking place every quarter). As a result, intermediaries who provide their clients with complex cross-border financial schemes may be obliged to report these structures to their tax authorities. Similar reporting obligations may apply to fund promoters.

On 21 March 2020, the Luxembourg Parliament voted to approve the Bill (n°7465) implementing the EU Directive into local law. This DAC 6 Law is applicable since 1 July 2020. The first reportable transactions will however be those whose first implementation step occurred between 25 June 2018 and 1 July 2020 (transitory period). According to the DAC 6 Law, the relevant information would then have to be reported to the Luxembourg tax authorities by intermediaries (or relevant taxpayers) by 31 August 2020.

However, on 22 July 2020, the Luxembourg Parliament voted to approve the draft bill (n°7625), which was published in the Memorial on 24 July 2020 to enact the extension of reporting deadlines, in accordance with the provisions of the Directive 2020/876 adopted on 24 June 2020. According to the Law of 24 July 2020, the final deadline for filing arrangements linked to the transition period is postponed to 28 February 2021. In addition, the date for the beginning of the period of 30 days for reporting by intermediaries (or relevant taxpayers) on reportable cross-border arrangements for which the first step of implementation occurs between 1 July 2020 and 31 December 2020 (the “post-transition” period) is changed from 1 July 2020 to 1 January 2021.

Investment structures should be analysed by intermediaries or relevant taxpayers to identify potential reportable cross-border arrangements and to assess any reporting obligations towards the Luxembourg or foreign tax authorities based on the applicable local law. And even if, based on the local assessment, no reporting is required, a proper documentation would be crucial and might serve as a proof for DAC 6 compliance.

Disclosure obligations

As from 2017 tax return, the following TP (Transfer pricing) related information would need to be disclosed:

- if the Luxembourg company engages into transactions with related parties;
- if the Luxembourg company opts for the simplification measure stated in section 4 of the 2017 TP Circular (L.I.R. n° 56/1 – 56bis/1 of 27 December 2016).

As from the 2018 tax return, Luxembourg entities are required to indicate in their tax return whether they have performed any transaction.

Development concerning Country-by-Country (CbCR) reporting

A grand-ducal regulation has been issued on 18 March 2019 (the Mémorial A N° 163), amending the revised grand-ducal regulation published on 13 February 2018. In case the ultimate parent is resident in a jurisdiction that is not listed in the mentioned regulation, a CbC report will have to be filed either by a "surrogate entity" resident in a jurisdiction listed in the grand-ducal regulation or by an affiliate in Luxembourg. Exceptions may apply, on a case-by-case basis, if countries mentioned in the regulation have CbC reporting obligations but starting from a different fiscal year. In case of CbC reporting and notifications finalised before the regulations, MNE groups (Multinational group of enterprises) shall review them to ensure they have been done in compliance with the list of 'exchanging' jurisdictions listed in the regulations.

The grand-ducal regulations only indicate that exchange of information will take place from Luxembourg to each of the other jurisdictions listed. It is important to note that there are jurisdictions, which are exchanging CbC reports with Luxembourg, although Luxembourg may not be exchanging with such countries, i.e. so-called 'non-reciprocal' jurisdictions. In case MNE groups have the ultimate parent company in such jurisdictions, the Luxembourg tax authorities may not accept that those groups can satisfy their CbC reporting obligations by using a Luxembourg group entity as a 'surrogate entity' filing in Luxembourg.

On 15 August 2023, the Law implementing the European Union directive regarding the Disclosure of Income Tax Information by Certain Undertakings and Branches (2021/2101) (the Public Country-by-Country Reporting (CbCR) Directive) has been signed and published on 22 August 2023 in Memorial A532 in Luxembourg. The Public CbCR is an additional requirement for MNEs besides the existing CbCR reporting that is in place since 23 December 2016.

On 22 June 2024, the implementing law came into effect in Luxembourg and concerns EU-based MNEs and non-EU-based MNEs doing business in the EU through a branch or subsidiary with total consolidated revenue of more than EUR 750 million in each of the last two consecutive financial years.

OECD's Chapter X

Transfer Pricing

On 11 February 2020 the OECD issued its final report on "Transfer Pricing Guidance on Financial Transactions".

The Report addresses general guidance to the application of the arm's length principle, as well as specific issues relevant to treasury functions (i.e., intra-group financing, cash pool structures, and hedging), issues linked to financial guarantees, and captive insurance and reinsurance arrangements.

We would recommend taking a look at the inventory of TP documentation currently in place supporting the arm's length nature of the existing intra-group financing transactions and revisit such analyses in light of the clarifications conveyed in new Chapter X of the OECD TP Guidelines.

Substance in Luxembourg

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

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

To avoid the risk of challenge by other tax authorities, it is usually recommended that it can be evidenced that a Luxembourg company is effectively managed and controlled in Luxembourg and that minimum substance exists in Luxembourg (e.g. bookkeeping, phone line, etc.). In particular, with respect to the day-to-day management it is recommended to have at least one local director in charge of the day-to-day management with a real decision power (to be assessed in light of the decision power of the foreign directors).

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

Pillar 2 Law

On 20 December 2023, the Luxembourg Parliament voted to approve the Pillar Two law transposing the EU Pillar Two Directive 2022/2523 which aim to ensure a 15% minimum tax rate for multinational groups (MNE) and large-scale domestic groups in the European Union with a consolidated revenue of at least EUR 750 million.

The Pillar 2 Law introduced the Income Inclusion Rule (“IIR”), Undertaxed Profits Rule (“UTPR”) and Qualified Domestic Minimum Top-up Tax (“QDMTT”) into Luxembourg law for fiscal years starting on or after 31 December 2023 (with a general one year delay for the UTPR to become effective).

On 12 June 2024, the Luxembourg government submitted a draft law (n°8396) to amend the law of 22 December 2023 introducing the Pillar 2 minimum taxation rules (the "Pillar 2 Law"). While the draft law mainly aims to incorporate administrative guidance issued by the OECD until the end of 2023, the commentary to the draft law clarifies some important principles which could be relevant for Luxembourg businesses impacted by the rules.

The draft law proposes the following main amendments:

- The exclusion of an Investment Fund or a Real Estate Investment Vehicle (“REIV”), which is not an Ultimate Parent Entity for the sole reason that the applicable financial accounting standard does not require it to prepare consolidated financial statements, would be assimilated with an Ultimate Parent Entity, for the purposes of applying the Excluded Entity test for holding entities or special purpose vehicles.
- The exemption for the Luxembourg investment funds (e.g. RAIF, SICAR, SIF) to prepare consolidated financial statements.
- The QDMTT Safe harbour which would allow switching off the Luxembourg IIR and UTPR for jurisdictions that follow the QDMTT rules as outlined by the EU and the OECD and that would benefit from QDMTT Safe harbour. Moreover, Luxembourg entities which form part of MNE groups in their initial phase of expansion would be excluded from the application of the QDMTT for a period of 5 years.

15 The Netherlands

CIT – Statutory corporate income tax (CIT) rates

The (highest bracket) corporate income tax (CIT) rate remains at 25.8% per 1 January 2025. The threshold for the lower bracket is EUR 200,000. The rate for profits up to this threshold remains at 19% as per 1 January 2025.

CIT – Amendments in the earnings stripping rules

Interest expenses are currently capped under the earnings stripping rules to the highest of (i) 20% of a taxpayer's EBITDA (adjusted for tax purposes) or (ii) EUR 1M. Based on a legislative proposal, which is still subject to approval of the Senate, the EBITDA threshold will be increased to 24.5% to bring the Dutch earnings stripping rules more in line with the implementation in other EU Member States. In contradiction to what was proposed, the EUR 1M threshold remains available for real estate entities as per 1 January 2025.

CIT – Concurrence between loss compensation rules and waiver profit exemption

The concurrence between the loss offsetting rules and the exemption for waiver profits can in certain cases complicate the restructuring of a loss-making company, i.e. if claims on that company are waived, which results in a waiver profit. Due to the current loss offsetting rules, waiver profits can still result in corporate income tax despite the existing exemption for waiver profits. Based on the legislative proposal, a new waiver profit exemption scheme will be introduced for taxpayers with losses exceeding EUR 1M. Under this scheme, waiver profits will be fully exempt to the extent that these profits exceed the losses from the previous year. Additionally, the carry-forward losses from the past will be reduced.

CIT – Implementation general anti-abuse rules

The 'general anti-abuse rule' (GAAR) from the Anti-Tax Avoidance Directive (ATAD1) will be incorporated into corporate tax law. When implementing ATAD1 in 2019, the Netherlands opted not to include the GAAR in legislation, as the fraus legis doctrine already achieved the same goal. Following input from the European Commission, statutory anchoring will now be provided. This proposal does not aim to introduce any material changes in the concept of fraus legis in the Netherlands.

Reminder CIT – partnership qualification rules

As already announced last year, per 1 January 2025 new partnership classification rules will be enacted. Based on this new legislation the 'unanimous consent requirement' is revoked as it is the source of many hybrid mismatches in the Netherlands that cause the application of ATAD2 hybrid mismatch rules. Based on the current 'unanimous consent requirement', a Dutch limited partnership (commanditaire vennootschap, CV) and comparable foreign partnerships are considered non-transparent for Dutch corporate income tax purposes if the admission or replacement of limited partners is possible without the consent of all other partners. Based on the new rules, CVs and other Dutch partnerships as well as comparable foreign partnerships will in principle always be transparent under the new rules and will not be liable to Dutch CIT nor to Dutch dividend withholding tax or conditional withholding tax. Instead, as of 1 January 2025 the partners of these partnerships will become liable to Dutch – corporate or personal – income tax for their participation in the partnership.

Dutch and foreign partnerships that qualify as investment fund or undertaking for collective investment in transferable securities (UCITS) or an AIF may – under proposed law – be requalified into a mutual fund/fund for joint account. In that case, such partnerships are only transparent if the units/interests in such funds can only be transferred to the fund itself by way of redemption.

Reminder CIT – abolishment of the FBI-regime for direct Dutch real estate investments

Starting from 1 January 2025, fiscal investment institutions (FBIs) are no longer allowed to directly invest in Dutch real estate. Unless a restructuring is executed, such FBIs become subject to the regular corporate income tax rate. For FBIs it remains possible to engage in managing a real estate entity connected to the FBI.

Conditional withholding tax – group concept

(In)direct payments of dividends, royalties or interest towards affiliated companies in (i) non-cooperative jurisdictions (EU list) and (ii) low taxing jurisdictions (Dutch list) are subject to a Conditional withholding tax (25.8%). Included jurisdictions are e.g. Bermuda, Cayman, Guernsey and Jersey.

"Affiliation" is determined by the presence of a so-called qualifying interest, which requires a stake enabling to determine the activities. This qualifying interest can currently also be determined based on the presence of a so-called collaborating group. This concept has turned out to be unclear in practice, in many cases for Conditional withholding tax purposes. Therefore, the government now proposed to replace the concept of 'collaborating group' for the Conditional withholding tax with a new, narrower and distinct group concept: "Qualifying Unit" ("Kwalificerende eenheid"). Under this concept, the interest held by a group of entities should only be consolidated if the entities (i) act together with (ii) the principal purpose or one of the principal purposes to avoid tax for one of these entities. This significantly increases the threshold for consolidation of interests held by separate entities, compared to the current collaborating group concept which has a broader range. This anti-abuse test should thus provide more arguments in genuine fund structures to substantiate that no consolidation of interests between the investors should arise.

The burden of proof regarding the presence of such a qualifying unity lies with the tax inspector.

Real estate transfer tax – reduction of the rate for investments in residential real estate

Apart from the Tax Plan, the government has announced the proposal to reduce the real estate transfer tax ("RETT") rate for investments in residential real estate from 10.4% to 8% as per 1 January 2026. For investments in other real estate (such as commercial or logistic real estate) the RETT rate remains 10.4%. Also, the rates for real estate acquired by an individual that uses the real estate as its primary residence, remains unchanged (i.e. a 2% rate applies; under conditions an exemption may apply).

Real estate transfer tax – (de)merger exemption

The RETT (de)merger exemption aims to prevent obstacles for companies aiming to restructure. The conditions for this exemption will become stricter, which means that the proposed conditions are:

- The acquired shares must be held for a three years period ("retention requirement");
- The real estate must be transferred as part of a business ("business requirement"), and
- The business must be continued for a three years period ("continuation requirement").

The exemption does not apply if a succession of different legal acts (merger, demerger, internal reorganization) is predominantly aimed at tax avoidance.

The exemption does also apply to a so-called disputed demerger (ruziesplitsing) resulting in a separation of the shareholders. In such cases the business requirement does not apply. Although no part of the formal Budget Day plans, but based on an attachment to the Budget Statement ("Miljoenennota"), likely the new rules come into effect as per 1 July 2025.

Value added tax – revision period for VAT on investment services for real estate

The Dutch Tax Plan 2025 introduces a revision period for VAT deduction on investment services for real estate. This means that the VAT deduction for investment services must be monitored for a period of approximately 5 years. The revision period will apply to investment services that exceed the threshold amount of EUR 30,000 and have a sustainable character. Examples include renewing, enlarging, repairing or replacing and maintaining real estate, painting window frames and doors on the outside or inside, soil or asbestos remediation, installing kitchens and bathrooms (sealing), insulating, and facade or roof renovation. Demolition work related to a renovation is also included. Based on recent case law, we foresee discussions about the definition of 'investment services' and the five-year revision period.

For the applicability of this regulation, the service acceptance date is considered crucial. The regulation can therefore also apply to services that started before 2026, such as major renovations or refurbishments. As a result of this new legislation, we foresee an increase in administrative burdens for the real estate sector and for all entrepreneurs who own or rent real estate.

Value added tax – abolition of reduced VAT rate for accommodation

The reduced VAT rate for accommodation within the framework of the hotel, pension, and vacation industry and for certain cultural goods and services will be abolished as of January 1, 2026. This means that these services, and in some cases the rental of accommodations, will be taxed at the general rate of 21%. Camping will remain taxed at the reduced rate of 9%.

Reminder Real estate transfer tax/ Value added tax – concurrence scheme

Part of the 2024 Tax Plan was already the changes in the RETT/VAT concurrence exemption. These changes come into force per 1 January 2025 as well. Based on this new legislation, the exemption from transfer tax is being adjusted to create a level playing field between share transactions and real estate transactions. This concerns situations where a company holds newly developed real estate and instead of the real estate itself ('the bricks'), the shares are transferred. In such cases, neither VAT nor transfer tax is due. The change means that if the real estate in the company is used for less than 90 per cent for VAT-taxed services (such as the rental of housing or real estate in the education or healthcare sector), the acquisition of the shares is taxed with 4 per cent transfer tax.

The measures described above are (mostly) part of a set of proposals published on Budget Day (September 2024) and are subject to approval of the Senate, which is scheduled for December 2024. The tax issues marked as ‘Reminder’ were part of previous legislative proposals and are already final to come into force as per 1 January 2025, unless indicated otherwise.

16 Poland

Withholding tax ("WHT") – hot topic

Despite the lack of legislative changes as regards WHT, it is still a hot topic in Poland.

Working groups at the Ministry of Finance ("MF") – consultations on selected issues related to WHT

Currently, working groups are engaged at the MF, in consultations on selected issues related to the application of WHT regulations. Following these consultations, the MF plans to issue a draft of tax guidelines in this area (the latest draft of WHT guidelines was published on 28 September 2023).

The works include discussions on applying the provisions on the beneficial owner clause as one of the conditions for applying WHT exemption resulting from implementation of the EU Directives (PSD and IRD) or preferential WHT rate based on Double Tax Treaties binding Poland. The consultations concern also the look-through concept and the interpretation of the condition of being subject to taxation.

Supreme Administrative Court's judgements from December 2023 – a strict interpretation of the substance and beneficial ownership

As regards tax practice, in December 2023, the Supreme Administrative Court ("SAC") heard three last-resort appeals (cassations) against negative verdicts of the Provincial Administrative Court in Lublin (Lublin PAC) relating to tax authorities' denials to issue so-called "WHT rulings". In all cases SAC upheld earlier negative verdicts of Lublin PAC (hence, confirmed negative decisions of the tax authorities).

These verdicts present a very strict interpretation of the substance and beneficial ownership with respect to the holding companies and disregard the specific economic functioning of companies within investment funds and holding structures as such.

Once the guidelines are issued, it is recommended to carefully analyse their content. Also, further monitoring of the practice of the authorities and courts.

"General minimum CIT" – applicable as of 2024

From 2024, the "general minimum CIT" applies to the taxpayers declaring tax losses or relatively low taxable income (<2% of the revenue). Certain exclusions are provided, e.g. for new companies for the first 3 years of operation.

Analysis, whether general minimum CIT will apply to a given entity should be performed.

Global minimum tax (Pillar II)

The legislative process for the implementation of the global minimum tax (Pillar II) in Poland is underway. At this time, it is assumed that the relevant act will enter into force on 1 January 2025.

The new regulations will apply to international and domestic capital groups with a combined annual turnover of at least EUR 750 million in at least two out of four tax years immediately preceding the tax year under review.

The global minimum tax payable will be the difference between the 15% minimum rate and the effective tax rate ("ETR") calculated for a given jurisdiction. If ETR in the given jurisdiction is not less than 15%, the mechanism will not apply.

The legislative process should be carefully monitored and then analysis whether the global minimum tax will apply to a given entity should be performed.

Real Estate Tax – changes being processed and planned SAC resolution

Real Estate Tax ("RET") is a local property tax which applies to land, buildings and structures (i.e. certain objects other than buildings such as roads, car parks, etc.).

Legislative amendments are currently being processed to change the definitions of structures and buildings, which are crucial for the purposes of RET taxation. At this time, it is assumed that the relevant amending act will enter into force on 1 January 2025.

We also draw attention to the SAC resolution that is scheduled for 21 October 2024. SAC is to decide which RET rate is applicable in reference to residential buildings that are rented out for residential purposes as part of the owner's business activity i.e. (i.) RET rate for residential buildings; or (ii.) RET rate for residential buildings occupied for the purpose of conducting a business activity. For reference, in 2024, the maximum annual RET rate for a residential building is PLN 1.15 per square meter, while the maximum rate for business-related buildings is PLN 33.10 per square meter, almost 30 times higher.

The legislative process and the SAC resolution should be monitored.

Limitation on tax depreciation of buildings – waiting for the SAC verdict

Tax depreciation write-offs recognised in relation to buildings cannot be higher than depreciation write-offs made for accounting purposes. In practice this may mean that if a given entity does not depreciate the building for accounting purposes (but rather revaluates it to the fair market value) tax depreciation of such a building should be excluded.

In some recent judgments of the Polish administrative courts (please note that there are also contrary judgements) it was pointed out that the restrictions on tax depreciation on buildings:
(i.) apply only to a situation in which – for accounting purposes – the buildings are treated as fixed assets on which depreciation is made,
(ii.) do not apply to buildings recognised as investments for accounting purposes (which is often the case).

Further monitoring of the tax practice (especially interpretation of the regulations adopted by the SAC).

KSeF (National e-invoice System) – postponed to 2026

The obligation to use KSeF (National e-invoice System) and to issue the so-called "structured invoices", has been postponed to 1 February 2026 for taxpayers whose turnover exceeded PLN 200 million in the previous year and to 1 April 2026 for other taxpayers.

JPK-CIT (SAF-T for CIT purposes)

The regulations imposing obligations concerning JPK-CIT (SAF-T for CIT purposes) come into effect on 1 January 2025. The largest CIT taxpayers (taxpayers with revenues exceeding EUR 50 million per year) and tax capital groups will be the first to be obliged to submit the JPK-CIT including electronic accounting records for the tax year starting after 31 December 2024.

The accounting processes and systems will have to be adapted to the new reporting obligation.

Other changes to be introduced – potential changes to CIT and the Polish version of REIT (Real Estate Investment Trust)

On 12 August 2024, the general assumptions of the draft act amending i.a. the CIT Act were published. As of now, the draft bill has not yet been published. According to the assumptions, the changes will concern, among others:
- clarification and amendment of certain provisions on the taxation of a controlled foreign company (CFC),
- changes concerning the principles of determining revenues and costs in the case of a merger of companies without the allocation of shares.
- amendments concerning restructuring activities, i.e. transformation of entities, as well as concerning the reduction of the value of shares (stocks) or the exchange of shares,
- clarification of certain provisions on transfer prices.

In March 2024, the Ministry of Development and Technology presented the initial assumptions regarding the law that aims to introduce real estate funds ("S.I.N.N."), i.e. companies investing in real estate, equivalent to foreign REITs, into the Polish legal system. The main premise of this form of investing is participation in profits from real estate investments without the need for direct purchase. Most of the generated profits will be allocated to regularly paid dividends.

Currently, a working group within the MF is working on the details of the planned regulations. At this point, no draft bill has been prepared yet.

Further monitoring of the legislative processes.

Additional note

Note that – except the key issues described above – the Polish tax law contains a bunch of filing / payment / reporting obligations, as well as provisions which should be taken into account for real estate investors/structures, relating i.a. to:
- the rules of CIT taxation of the on-going operations of the entities holding real properties – including i.a. revenue basketing, deductibility limitations of certain costs (i.a. EBITDA-based deductibility limitations of debt financing costs, ATAD 2 provisions), rules of utilisation of the tax losses, applicable tax rates, general depreciation rules and limitations (such as tax depreciation exclusion in relation to residential buildings and apartments, irrespective of their accounting treatment);
- obligation to file annual CIT returns and settling the tax due (if any);
- obligation to report real estate structures by the so-called “real estate companies” (in short: entities deriving their value mainly from Polish real properties and meeting certain other, additional criteria) and their shareholders (deadline: as a rule: 3 months after the end of the tax year of the real estate company);
- diverted profit tax;
- WHT filing and payment deadlines, as well as due care;
- VAT taxation of the on-going operations of the entities holding real properties;
- taxation of real estate transactions (asset deals / share deals) – CIT, VAT, CLAT (including 6% CLAT on the purchase of the sixth and subsequent residential premises constituting separate units) etc.;
- transfer pricing obligations;
- Mandatory Disclosure Rules (MDR);
- anti-abuse regulations.

17 Portugal

Losses carried forward

The carry forward of tax losses is no longer subject to a time limitation (although carry back is still not allowed). The deduction of tax losses is limited to 65% of the taxable profit of the year (formerly, 70%), with the possibility of carrying forward the remaining 35% to future years.

This rule has been in effect since tax years starting on or after 1 January 2023. It also applies to tax losses assessed in tax years prior to 1 January 2023, for which the period for deduction is still running.

Tax losses assessed in 2020 and 2021 continue to benefit from an additional deduction of 10% against the taxable profit.

These losses can be used to offset net operating income and capital gains realised on the sale of property located in Portugal.

There is no need to request authorisation from the Ministry of Finance for the maintenance of tax losses in case of a change of ownership of more than 50% of the share capital or of the voting rights, as long as the operation does not have tax evasion as its main or one of its main purposes, e.g., when the operation is carried out for valid economic reasons.

Dividends distribution

Dividends distributed by Portuguese companies can be exempt from WHT under the application of the domestic participation exemption regime, if the following conditions are met:

- The Portuguese company is subject and not exempt from CIT and it is not subject to the tax transparency regime;
- The beneficial owner of the income is an entity resident i) in other EU member country, ii) in other EEA member country (provided such EEA member country is bound by an agreement for tax cooperation within the scope agreed within the EU), or iii) in a country that has a DTT concluded with Portugal that foresees the exchange of information;
- The beneficial owner is subject to and not exempt from a tax mentioned in the EU Parent-Subsidiary Directive, or a tax of a similar or identical nature to Portuguese CIT (for non-EU cases) and it cannot be 60% lower of the Portuguese CIT rate, i.e., currently, 12.6%;
- The entity that pays the dividends cannot be resident in a blacklisted
- jurisdiction;
- Minimum shareholding held for a consecutive period of one year; and
- Shareholding threshold of at least 10%.

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

Despite the above, the WHT exemption on dividends is not applicable in case of structures or constructions that are mainly or exclusively tax driven, i.e., aimed to reduce, defer or avoid taxation which would be due otherwise and do not have a business purpose or economic rationale.

Transfer pricing

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

Taxpayers with total revenues above EUR 10,000,000 (formerly EUR 3,000,000, for tax periods 2020 and earlier) with reference to the tax year to which the obligation concerns, are required to prepare and organize the transfer pricing documentation file.

Taxpayers with total revenues below EUR 10,000,000 are not required to prepare transfer pricing documentation in respect of transactions with related parties whose amount in the year concerned does not exceed, per entity, EUR 100,000, and EUR 500,000 in total, considering the respective market value.

The arm's length principle should be duly followed and documented. Taxpayers are only required to deliver the transfer pricing documentation upon request of the Portuguese Tax Authorities (exceptions apply to large taxpayers and taxpayers under the special tax regime of group taxation).

Interest capping rules

Net financial expenses (NFE)'s deduction is capped at the higher of a fixed cap of EUR 1,000,000 or a variable cap of 30% of the sum of the tax result (either profit or loss) plus NFE and allowed depreciation and amortisation of the year. This rule covers indebtedness with both related parties and independent parties, as well as between resident and non-resident entities.

The concept of NFE includes, among others, the depreciation or amortisation charge related to interest capitalised in the acquisition or construction cost of the assets.

The part of the NFE that is not deductible can be carried forward over a period of five tax years, as long as the capping is complied with. When the amount of the NFE considered CIT deductible is lower than the 30% cap, the immediate and successive carry forward of the unused limit is allowed to be added for the calculation of the 30% cap for the following five tax years, until the total amount is used.

It is possible to carry forward NFE that were not deducted in previous tax years in cases of a change in the ownership of more than 50% of the share capital or the majority of the voting rights of the taxpayer. This rule applies only if the transaction does not have tax evasion as its main or one of its main purposes, which happens if the transaction is conducted for valid economic reasons.

Cross-border financing

As a general rule, interest due or paid to non-resident entities is subject to WHT in Portugal. Reduced WHT rates may apply if the beneficiary can benefit from a DTT and a WHT full exemption may be available under the provisions of the Interest and Royalty Directive, provided that all the requirements foreseen in the directive are met.

Financing transactions is also subject to stamp duty, although certain exemptions may apply. Alternative financing structures can be arranged to mitigate the impact of WHT and/or stamp duty on cross-border financing.

It is advisable to conduct a thorough analysis of the tax implications of different financing options, e.g., equity, loans, bonds.

Real estate transfer taxes (IMT)

The acquisition of at least 75% of the share capital of a private limited company, general partnership, limited partnership (Portuguese Lda) or non-listed joint-stock company (Portuguese SA) which owns immovable property located in Portugal, is deemed to be an acquisition of the underlying immovable property, and therefore, subject to IMT.

This rule applies in case of companies whose assets consist of more than 50% of real estate located in Portugal. An exception applies in case the real estate is allocated to a commercial, industrial or agricultural activity (except real estate buy-sell activity).

Nonetheless, the acquisition of immovable property located in Portugal by companies resident or domiciled in a tax haven or companies that are directly or indirectly controlled by another entity resident or domiciled in a tax haven, according to the relevant “black-list”, is always subject to a 10% rate, and not entitled to any applicable IMT exemption.

The More Housing ("Mais Habitação") Law Package, in force since October 2023, changed the IMT exemption applicable to the real estate buy-sell activity, reducing the period to resell the property from three to one year; and applying late assessment interest counting from the purchase date in case the properties acquired for resale (i) are allocated to another activity (that not the real estate buy-sell activity); (ii) are not resold within the period of one year or (iii) are resold again for resale.

The first real estate acquisition intended exclusively for own and permanent habitation is exempt from IMT and stamp duty, provided that it is the first purchase of a property for this purpose up to EUR 316,272, by taxable persons up to 35 years of age who are not considered dependents for Personal Income Tax purposes in the year of the transaction. For properties whose taxable value is higher than EUR 316,772 and up to EUR 633,453, a marginal IMT rate of 8% applies. Regarding stamp duty, a deduction is applied, limited to the application of 0.8% to the upper limit of the first IMT bracket (EUR 316,772).

Real estate municipal taxes (IMI)

IMI is due by the real estate owner on 31 December of each year (and paid in the following year). IMI rates range between 0.3% and 0.45%, for urban properties, and 0.8% for rural properties.

However, IMI rate will be 7.5% for real estate held by entities resident in a blacklisted jurisdiction, as well as to all immovable properties located in Portugal that are indirectly controlled by a company resident or domiciled in a blacklisted jurisdiction.

Municipalities can increase the IMI rate applicable to urban real estate properties, vacant for over a year, degraded buildings and land for construction intended for residential purposes, when located in designated areas of urban pressure. In this situation, the IMI rate can be increased ten times. An additional increase of 20% in each of the following years is also possible, however, it is capped at 20 times of the applicable IMI rate. Despite the above, the 20 times cap can be increased by (i) 50% in the case of residential urban building or unit.

In case a direct investment (i.e., asset deal) is completed before the end of 2024, it should be taken into consideration that the owner of the real estate is responsible for the payment of the amount for the entire year (and not only from the period after the real estate is acquired) on 31 December 2024.

Value-added tax (VAT) claw-back rules

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

Under the VAT claw-back rules, it is also required to pay VAT back to the Revenue whenever real estate is vacant for a period of more than five years. However, in February 2018, the ECJ ruled that this rule is against the VAT Directives to the extent the taxpayer is able to demonstrate its intention to lease the property. Although the Portuguese legislation has not been changed to reflect this decision, companies can consider following such court decision.

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

Capital gains

Capital gains realised by non-resident entities with the sale of shares in a Portuguese company whose assets are comprised in more than 50% by real estate located in Portugal, are subject to tax at 25% therein.

Are also liable to tax at 25% in Portugal the capital gains, whenever they result from the transfer of share capital or similar rights in any entity (non-resident in Portuguese territory) when, in any given time in the past 365 days, the value of those shares or rights result, directly or indirectly, in more than 50% of immovable property or rights in rem over immovable properties located in Portugal, excluding agricultural, industrial and commercial activities but not buy-sell of real estate.

It is recommended to explore structuring alternatives where you intend to sell shares in real estate companies or to reorganise your corporate structure.

Foreign Collective Investment Undertakings

As a general rule, Portugal exempts dividends, rents and interest paid to Portuguese collective investment undertakings from CIT. Distinctly, non-resident collective investment undertakings operating in Portugal are subject to CIT (withheld at source) on their Portuguese-sourced income.

According to the Court of Justice of the European Union (ECJ) case no C-545/19, there is a restriction to the free movement of capital if a Member State's tax law provides taxation to non-residents less favorably than to residents, as such treatment may deter non-resident entities from investing in that Member State.

Taking into account the merit of the referred ECJ case, foreign collective investment undertakings may be able to claim an exemption from Portuguese taxation on income obtained in Portugal and request a refund of CIT supported in previous years.

18 Romania

Exceeding borrowing cost capping rules

Interest limitation rules apply, with a cap at EUR 1 million plus 30% of adjusted tax profits irrespective of whether there is a negative/positive computation base.

Moreover, the computation base (adjusted fiscal profits) is determined as revenues minus expenses recognised as per accounting rules, minus non-taxable revenues, plus the corporate income tax ("CIT") expense, exceeding borrowing costs and deductible tax depreciation.

Starting with 1 January 2024, the deductibility of exceeding borrowing costs resulting from transactions/operations with affiliated entities, which do not finance the acquisition/production of fixed assets under construction/assets established by order of the Ministry of Finance, will be limited to EUR 0.5 million threshold. The limit of EUR 0.5 million does not apply to credit institutions, Romanian branches of credit institutions, non-banking financial institutions, Romanian branches of non-banking financial institutions and investment companies.

Holding legislation

Although there is no Romanian holding legislation, specific holding tax incentives (i.e. participation exemption rules) apply in Romania.

Dividend income obtained by a Romanian holding company from a Romanian subsidiary is non-taxable (no condition). The same incentive applies if the dividend income is obtained by the same Romanian holding company from a non-resident subsidiary situated in an EU/ non-EU member country based on a Double Tax Treaty ("DTT") if some holding conditions are met (e.g. minimum 10% stake held directly for at least one year).

Capital income or liquidation income derived by a Romanian holding company from the disposal of shares in a Romanian/DTT state-based subsidiary, as well as, in the case of the capital income, by a non-resident located in a state Romania has a DTT with, are also non-taxable if the above participation exemption criteria is met.

Withholding tax exemption

External payments (e.g. interest, royalties, commission fees for services rendered in Romania or for specific services irrespective of the rendering place, etc.) performed to non-resident companies are generally subject to the 16% standard withholding tax ("WHT") rate, while dividends paid to non-residents are taxed at a rate of 8%.

The domestic rate (16%/8%) can be reduced based on the provisions of the EU Directives implemented into the Romanian tax legislation or the ones of DDT concluded between Romania and the residency country of the beneficiaries of the payments.

In order to apply the more favourable provision of a DTT, the non-resident deriving the income (e.g. dividend, capital gains etc.) should provide a valid tax residency certificate for the period when the income was obtained or a statement of own responsibility in the case of applying the EU law indicating that it is the beneficial owner of the income which certified that certain specific conditions are fulfilled .

General anti-abuse rule (GAAR)

The provisions of a DTT or of the EU law generally prevail over the domestic legislation, if more favourable. There are general anti-abuse rules consisting in the substance over form principle, anti-base erosion, transfer pricing aspects, as well as mandatory exchange of information.

The substance over form rule implies that the tax authorities may disregard a transaction which does not have an economic purpose, by adjusting its tax effects, or they may reclassify the form of a transaction/activity in order to reflect its economic content. The principle also includes the definition of cross-border artificial transactions, which are excluded from the application of DTT.

DAC6

The reporting obligation of DAC6 Directive has been implemented in Romanian legislation. Intermediaries are obliged to maintain professional secrecy and may only report cross-border arrangements with the relevant taxpayer's prior written consent-in the absence of this consent, they have to notify any other intermediaries/taxpayers.

MLI

The Multilateral Instrument (MLI) was developed further to Action 15 of BEPS Action Plan which supplements and 'modifies' existing bilateral or multilateral tax conventions (not override nor substitute for them). Romania has signed and ratified the MLI and may produce effects for most DTTs concluded by Romania.

Losses carried forward

Starting with 1 January 2024 or the first day of the modified fiscal year starting in 2024, the annual tax losses are recovered from the taxable profits made, up to the limit of 70% of such profits, in the next five consecutive years.

The annual tax losses related to the years preceding the year 2024, remaining to be recovered as at 31 December 2023 are recovered from the taxable profits made as of the year 2024, up to the limit of 70% of the respective taxable profits, for the remaining period of recovery from the seven consecutive years following the year of recording those losses.

The recovery of the annual fiscal losses is made in order of their registration, at each payment term of profit tax.

Tax credits/avoidance of double taxation

Romanian taxpayers (e.g. Romanian tax residents and/or Romanian permanent establishments) that are subject to CIT both on the territory of Romania and in the foreign state with which Romania concluded a DTT (e.g. via a permanent establishment, or WHT) have the right to deduct from CIT due in Romania the CIT and/or the WHT paid abroad, if the DTT agreement provides as a method of avoidance double taxation the credit method. Specific conditions shall be met.

Tax prepayments

CIT is generally declared and paid on a quarterly basis, with annual reconciliation. The current CIT rate is 16%, but for certain businesses, such as gambling activities, nightclubs and casinos, the tax due is 5% of the revenues.

Taxpayers who apply the tax prepayments system determine the quarterly advance payments in the amount of a quarter of the CIT due for the previous year updated with the consumer price index.

Minimum turnover tax ("IMCA")

Starting with 1 January 2024, a minimum tax on adjusted turnover was introduced for taxpayers with a turnover exceeding EUR 50 million in the prior year. The companies that qualify will pay the maximum between IMCA and CIT, whichever is higher. The tax is calculated as 1% of the total revenues with certain adjustments (e.g. certain revenues are deducted, investments in certain assets are deducted, etc).

Pillar 2 – Minimum global tax

Romania has implemented the provisions of Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

Thus, as of 1 January 2024, multinational companies with consolidated turnover of more than EUR 750 million within 2 of the last 4 financial years, will need to have an effective tax rate at the level of their Romanian subsidiaries of at least 15%, otherwise, top-up tax would be due in Romania.

Accounting and fiscal period

The standard accounting and fiscal period is the calendar year. However, companies may opt for a fiscal year that is different from the calendar year, if the parent has a different year by communicating to the territorial fiscal authorities the change in the fiscal year at least 15 calendar days after the start of the amended fiscal year.

Tax consolidation

The fiscal consolidation system for CIT has been included in Romanian legislation starting 1 January 2021. A tax group may consist only of Romanian legal entities and/or persons which must be CIT payers with their registered office in Romania.

The system is optional and the ownership condition requirement to hold, directly or indirectly represents at least 75% of the value/number of participation titles or voting rights for an uninterrupted period of at least one year prior to the beginning of the consolidation. If applied, it is mandatory to be kept for at least 5 years.

One of the members is designated as the responsible legal entity that will calculate, declare, and pay the CIT for the group, with the tax determined by summing the individual calculations of each member

Tax reductions for maintained or increased equity

Tax incentives

Romanian entities that are CIT payers, subject of micro-company tax regime or subject to specific tax shall benefit from certain tax reductions (2%, 3% or between 5% and 10%) if a minimum level of equity is maintained or if equity is increased with a certain percentage. Thus, the taxpayers can apply the tax reduction starting with tax year 2021, until tax year 2025 and for the taxpayers having the tax year different from the calendar year until the fiscal year that ends in 2026.

Tax incentives for the real estate sector

Entities in the real estate sector with expressly mentioned NACE codes (e.g. developers, constructors, architects, etc.) and acting as employers may benefit during 1 January 2019 – 31 December 2028, from 10% income tax exemption and partial social security charges exemption in respect to minimum gross wage of (currently) RON 4,000. Based on existing draft law it is intended that the income tax exemption remains however the social security exemptions will be partly eliminated.

Exemption of reinvested profits

Reinvested profits in certain assets (i.e. new technological equipment, computers and peripheral equipment, software etc.) that are used for business purposes is CIT exempt by following specific conditions.

Tax amnesty and bonification for corporate income tax payment

A bonification of 3% from the payable CIT is granted to taxpayers that meet their filing and payment obligations in due time.

Also, tax amnesty in relation to late payment penalties and interest is granted to taxpayers for the tax liabilities outstanding prior to 31 August 2024, under certain conditions.

Depreciation methods for movable fixed assets

Buildings can only be depreciated using the straight-line method. Their useful lives usually vary between 40 and 60 years (i.e. depreciation rates between 2.5% and 1.66%).

Machinery can be depreciated using mainly the straight-line method, but also the reducing balance method or the accelerated method may be used. Under the accelerated method (modelled for our purposes) the depreciation in the first year is up to 50% of the acquisition costs. The straight-line method is used for the remaining 50% of the remaining useful life of the asset.

Revaluation of real estate property

Revaluations are recognised for tax purposes, unless they generate value decreases below initial recognition value Companies are required to treat part of the revaluation reserve built by revaluations as a taxable item together with each depreciation of revaluation surpluses (quarterly) or with the asset expense (if the asset is sold or written off).

Property taxes

Building tax will follow property status (residential vs. non-residential properties or mix purpose building based on specific percentages that shall be applied. For non-residential buildings, the taxpayer may revalue the property every five years by commissioning an interdependent authorised valuator. Not exercising the right to revalue the assets will result in higher taxation percentage, i.e. 5%.

Land tax is a fixed value per square meters, which is set by the local council depending on various factors (e.g. surface, type of settlement, rank, location, etc.).

Transfer pricing rules

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

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

Transfer of business

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

Also, transfers carried out during a partial spin-off will be neutral for CIT purposes only if a transfer of a going concern takes place, the transferor maintains at least one line of activity and shares are issued in exchange; certain specific conditions apply and must be observed.

Micro-company tax regime

As of 1 January 2023, the micro-enterprises tax regime has become optional and can be applied by a company having a turnover of less than EUR 500k per year. Certain other conditions need to be fulfilled (e.g. at least one employee). Micro companies are taxed on their turnover, at a rate of 1% if the turnover is under EUR 60k and do not undertake activities under specific NACE Codes, or at a rate of 3% if the turnover is higher than EUR 60k or activities under specific NACE Codes are carried out (e.g. NACE Code 5510 – Hotel service, etc.).

VAT treatment on immovable property

Under the current Romanian VAT legislation, rental/leasing of real estate property is deemed as a VAT exempt operation without deduction right. However, the landlord/lessor has the option to apply VAT for any such operations, by way of submitting a notification for taxation to the tax authorities.

The Romanian VAT legislation provides, as a rule, that the sales of plots of non-buildable land, based on the town planning certificate and of buildings qualifying as old from a VAT perspective are subject to the VAT exemption without deduction right. Thus, the VAT exemption is not applicable for building land and new buildings.

Depending on their nature of the immovable and the status of the buyer, the VAT treatment applicable for the sale of immovable assets shall be exempt from VAT, taxable under the normal taxation regime with 19%, 9%, 5% or taxable under the reverse charge mechanism (19%).

Real estate investors should assess the correct VAT treatment related to the supply/rental of real estate properties in order to mitigate any potential VAT issues.

The supply of photovoltaic panels, heat pumps are also subject to the reduced rate of 9% VAT, if destined for residential buildings or public administration buildings.

Also, tax incentives in the form of fit out contributions, periods of rental services granted free of charge granted to lessees (e.g. anchor tenants) should be analyzed on a case-by-case basis in order to determine the applicable VAT treatment.

VAT deduction right

Any taxable person registered for VAT purposes in Romania has the right to deduct the VAT related to its acquisitions of immovable properties, if such acquisitions are performed for the purposes of performing taxable transactions.

Input VAT adjustment for capital goods

Where the landlord/lessor does not opt to tax the rental fees/lease instalments, or to tax the sale of the immovables while the input VAT was deducted on acquisition/construction of the real estate property, VAT should be adjusted accordingly within the adjustment period of 20 years.

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

VAT transfer of business

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

Established businesses in Romania

VAT refund

As a general rule, VAT is refunded with subsequent tax audit (with specific conditions under which the VAT is refunded with prior tax audit). The legal deadline of solving a VAT refund request is 45 days – or 90 days, if a prior tax inspection is carried out, however, delays should be expected in practice. Also, the timeline for the effective refund of the money highly depends on the available funds at the level of the State Budget.

Non-Romanian businesses

A company established in another EU member state could claim a refund from the Romanian tax authorities of the VAT paid for goods/services acquired in Romania, based on the 9th EU Directive (VAT refund for taxable persons established in the EU). In addition, a non-EU business will be entitled to benefit from a VAT refund, under the 13th EU Directive, for the VAT paid on goods/services purchased in Romania, provided that a reciprocity agreement would be put in place between states. The VAT refund is granted under certain conditions and if the operations performed by the company in Romania do not entail a VAT registration requirement or a fixed establishment of the company in Romania. However, this is a much lengthier process than the VAT refund procedure followed by entities registered for VAT in Romania.

Digitalisation measures

Certain mandatory digitalisation measures have been implemented recently in Romania, such as SAF-T (Standard Audit File for Tax), RO e-factura (mandatory electronic invoicing), RO e-transport (mandatory monitorization of national and international transports) and the pre-filled in VAT returns.

19 Spain

Corporate income tax (CIT)

According to the Spanish CIT Act the standard tax rate is 25%.

Other rules such as the disallowance of real estate impairments, the definition of mere holding entities, the domestic-participation exemption regime, the restrictions on the utilisation of carry-forward tax losses, financial expenses capping-rule, etc. may be relevant for real estate investors. Taxpayers shall pay special attention to these rules as well as to the interpretation made by the Tax Authorities by means of binding tax rulings.

To be noted that the Spanish CIT Law shifted from a full domestic participation exemption regime to a 95% cap on domestic participation exemption for dividends and capital gains derived from the transfer of shares (foreign and domestic, including a Spanish tax group) for fiscal years starting after 1 January 2021. This would result in 1.25% effective tax for companies subject to the standard 25% CIT rate.

As well, new anti-hybrid rules came into force with effects from FY21 onwards.

It is recommended to analyse the impact that these rules may have in the investors' structures as well as the guidelines provided by the tax authorities.

CIT payments on account

According to CIT payments on account rules, the rate for payments on account for companies with a turnover of EUR 10 million or over is 24% and a minimum payment on account rate of 23% of accounting profits is applicable for companies which exceed this threshold.

We highly recommend planning when to carry out operations which generate tax-exempt income (distributions of dividends, sales of shares, etc.) as payments on account are made over these types of income. As well, the calculation method should be revisited.

Domestic withholding tax rate

Domestic withholding taxes applicable is 19%. It will be due unless an exemption or reduced rates are applicable to the case at hand.

Tax losses carried forward

Tax losses (NOLs) may be carried forward with no time limitation. According to the CIT Law, NOLs generated by Spanish companies, if any, can only be used to offset up to 70% of tax adjusted income (with a EUR 1 million threshold that can be utilised in any event). However, if the company's turnover in the twelve preceding months is higher than EUR 20 million additional limitations apply (50% for companies with turnovers of at least EUR 20 million but below EUR 60 million, 25% for companies with turnovers of at least EUR 60 million). The legal procedure/instrument used to implement the NOLs utilisation caps for companies with a turnover above EUR 20 million has been recently declared as unconstitutional. However, we would expect the government to reintroduce again the same or similar measures (i.e. more restrictive caps for the utilization of NOLs for companies with a turnover higher than EUR 20 million).

These limits would not be applicable in the period in which the company is wound up and will be computed on a group basis under tax consolidation. With effect for the tax periods that begin in 2023, when aggregating the individual tax bases in order to calculate the tax group base (under tax consolidation), only 50% of the negative tax bases will be computed (new temporary measure). The 50% of non-utilized tax bases will be recaptured on a straight-line basis during the following 10 years starting as from 2024 (to be monitored if a similar rule will be implemented for FY24).

Transfer pricing

Related party transactions must be arm's length. Generally, taxpayers are obliged to prepare transfer pricing documentation for transactions exceeding certain thresholds. Failure to comply with the documentation obligations may result in penalties being imposed. In addition, it must be noted that tax form No 232 must be filed to declare transactions carried out between related parties.

This tax form must be filed during the month following the ten months after the end of the tax period which the information to be provided refers to. That is, for fiscal years ending 31 December 2023 the tax return should be filed between 1 November and 30 November 2024.

Prepare a transfer pricing study covering the relevant transactions carried out with related parties in the period in accordance with the applicable regulations. File the tax form 232 in November.

Country-by-country report (CbCR)

From 2016 certain entities are required to file a country-by-country report (CbCR). The report should be filed electronically and should contain aggregate information in Euros relating to the tax year of the controlling company of the group and with respect to each country or jurisdiction in which the group operates.

This CbCR must be filed electronically through the tax form No 231 within 12 months of the end of every tax period. Note that, unlike the master file and local file that will need to be 'at the disposal' of the tax administration, the CbCR has to be filed every year.

We recommend analysing if the CbCR obligation is applicable and prepare the relevant report, if necessary, in accordance with the applicable regulations.

Residence certificates

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

On the other hand, withholding tax exemptions based on the EU residence of the payment's recipients should be reviewed from a beneficial owner perspective, considering the most recent EU and Spanish case law in this respect.

Request and collect the corresponding residence certificates.

Real estate investment trust

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

To be noted that the SOCIMI regime has been amended. From 2021 onwards, profits obtained in the year that are not distributed will be subject to 15% special tax, insofar as they derive from income that has been taxed at 0% rate and not qualifying for the reinvestment period.

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

Value-added tax (VAT)

Large companies (whose turnover for the prior year will have exceeded EUR 6m) and any other companies which file monthly VAT returns are required to provide their invoicing records and VAT books for issued and received invoices to the Spanish tax authorities in real time.

It must be noted that this obligation, which implies that companies will need to adapt their accounting and invoicing systems, accordingly, has multiplied the information, which the Spanish tax authorities have access to.

Business Activity Tax (BAT)

BAT is an annual tax payable depending on the specific business activity carried out. The turnover of the company may be relevant for exemption purposes. Indeed, entities with a turnover of less than one million euros are exempted from BAT purposes. As per an amendment of the Spanish regulation, as of 2022, it would be considered the turnover of the group companies (only Spanish companies) regardless of the accounting consolidation obligation.

Review of the BAT position for Spanish companies belonging to a corporate group is advisable.

Real Estate Transfer Tax (RETT) and Stamp Duty

A new value to be determined by the Tax Administration will be considered for the calculation of the taxable base in real estate transactions for RETT and Stamp Duty purposes (so-called “cadastral reference value”). In this regard, as of 2022, said value is considered as the minimum value for tax purposes (taxable base) in case that the price agreed in the transaction would be lower.

We recommend monitoring the assignment of a reference value for the properties located in Spain to properly determine the taxable base for RETT and Stamp Duty purposes. In particular, this should be checked in advance of any acquisition.

Solidarity Tax and Net Wealth Tax

By the end of 2022 a new Solidarity Tax on Large Fortunes and some amendments on the existing Net Wealth Tax (NWT) were passed in Spain. According to the amendments included in the NWT, regarding non-resident taxpayers (individuals) subject to NWT, securities representing holdings in the equity of entities, not traded on organized markets, would be deemed to be located in Spain where at least 50% of their assets, directly or indirectly, consist of property located in said territory.

On the other hand, the new Solidarity Tax on Large Fortunes is very similar to the NWT and it is shaped as a supplementary tax to the NWT for taxpayers with a net worth higher than EUR 3 million. In this respect, generally the main purpose of this new tax is to limit the 100% exemption on the NTW applicable in certain Autonomous Regions (for instance, Madrid).

Finally, it must be noted that, notwithstanding the above, certain double tax treaties could prevent Spain from applying these taxes.

Based on the above, non-resident individuals which could directly or indirectly hold Spanish properties should analyze if these new rules could impact them.

20 Sweden

Corporate tax rate

The corporate tax rate is 20.6%.

Limited of deductions on capital loss

Deduction of capital losses on real property is limited to capital gains from real property. Companies with capital losses due to the sale of real property can hence not deduct the loss against income from other sources. The loss may however be transferred within a consolidated group. Capital losses on real property may be carried forward indefinitely if not utilized.

If capital losses on real property are to be deducted, ensure that capital gains on real property exist in the same fiscal year. Carry forward possibilities do exist.

Group taxation

To benefit from Swedish group consolidation for tax purposes, the companies giving and receiving the group contribution must have been part of the same group (i.e., exceeding 90% ownership requirement) for the entire fiscal year. Notwithstanding this, newly started businesses and off-the-shelf companies can exchange group contributions with other Swedish group companies from the day they commence conducting business.

Ensure that any acquisition is completed before the end of the current fiscal year to benefit from the group contribution rules the following fiscal year. As group contributions need to be recognized in the accounts, make sure to discuss the possibilities before closing the accounts.

Tax losses carried forward

Mergers and acquisitions which imply a change of control (even if the indirect ownership does not change) over a company can limit the possibility to utilize tax losses carried forward in the following years. Tax losses from the year before the change of control may be forfeited and/or restricted in time. Exemptions may apply in case the companies were part of the same group before as well as after the acquisition or reorganization.

A proposal was made in the budget bill to increase the maximum amount of tax losses being carried forward from 200% of the acquisition fee to 300% as of 1 January 2025. The proposal is however not yet implemented but is expected to pass in December 2024.

Verify if any limitations are applicable in the specific case and be cautious in cases where tax losses carried forward are utilized against group contributions received.

Tax allocation reserve

Companies can delay tax payments for up to six years on 25% of the annual profit by means of a tax allocation reserve. This can benefit liquidity and balance out occasional annual losses since the latent tax debts can be used against future losses for the upcoming six years. Companies using this reserve are taxed annually on a hypothetical income/interest. The income/interest is calculated by multiplying the reserve by the interest rate on governmental loans.

The government bond yield can never be lower than 0.5% for the purpose of this calculation. The rate for November 2023 was 2.62% which is the rate to be used for the tax year 2024. Lastly, following the corporate tax rate being lowered in two stages (to 21.4% in FY 2019 and 20.6% in FY21), a tax allocation reserve in a year with lower tax rate than when it was offset, must be increased in order to have a tax impact correlating to the tax rate when it was offset.

Cash flow models and profit forecasts should be checked to assess the situation. As tax allocation reserves must be recognized in the accounts, make sure to discuss the possibilities before closing the accounts. Any reversals attributable to reserves made before FY 2019, must be increased to 106% of the nominal amount. If it is attributable to reserves made after FY 2018 but before FY 2021, the reversal must be increased to 104% of the nominal amount.

Capitalisation of investments

Investments made on a property can be allocated to either e.g. building, building equipment or land improvements. Depending on the classification, the depreciation rate varies quite significantly. In addition to this, in some cases there is a possibility to deduct the entire investment cost directly for tax purposes should the investment be considered as a tenant improvement for tax purposes. Given this, there is often an opportunity to identify what the investment cost relates to in order to obtain a correct and faster depreciation plan than what would have been the case should investments only be capitalized as building. Part of this area does not need to comply with the accounting, why it can be very beneficial to analyze the possibility to directly deduct the cost for tax purposes when the investments are capitalized in the accounts.

A so-called primary deduction applies for all rental buildings (residential and commercial) for costs incurred in new construction, in making additions to existing buildings and in the reconstruction of buildings. For these costs, depreciations can be made with an additional 12% in total during the first six years from the time the construction work was completed. If a rental building is acquired by way of an asset deal within six years from completion, the purchaser shall make a primary deduction for the remaining part of the six-year period, which is then calculated based on the acquisition cost. However, it will only be possible to acquire the right to primary deduction for cost incurred in new constructions and not cost attributable to additions or reconstructions of existing rental buildings.

Consider carefully what kind of investments that have been made and what asset types the investment should relate to and corresponding depreciation and deductions that are made available.

Removed government support for onshore wind turbines

There is a proposal in the budget bill to remove government support for onshore wind turbines starting on 1 January 2026. Previously there were certain onshore wind turbines that were only subject to a 0.2% property tax. The new proposal will result in all onshore wind turbines being subject to a 0.5% property tax.

Investigate whether your transactions will be subject to the increased property tax.

Stamp duty

Stamp duty is the tax that needs to be paid when buying property or plot of land. For legal entities the tax rate is 4.25% and for private individuals it is at 1.5% of the highest amount of the purchase price and the tax assessment value.

Limitation of interest deduction

Sweden has two interest deduction limitation rules:
1. A strict deductibility limitation on interest expenses on loans to affiliated companies but with explicit exemption (the 'Targeted Rule').
2. A general rule for so-called negative net interest (the 'General Rule').

According to the Targeted Rule interest expenses to a group company are only deductible under certain circumstances relating to the final recipient of the interest. The general interest deduction limitation rule is applicable on both internal and external loans and the right to deduct any negative net interest will be based on a so-called EBITDA rule or a simplification ('Safe Harbour') rule. The EBITDA rule means that a company's negative net interest is deductible up to 30% of the tax adjusted EBITDA result. The negative net interest exceeding 30% of the taxable EBITDA is reversed and taxed with a flat tax rate of 20.6%. The Safe Harbour rule, states that it will be possible to deduct negative net interest up to a maximum of SEK 5 million. For affiliated companies the total deductions for negative net interest may not exceed SEK 5 million if any of the companies makes use of this rule.

The rules have however been subject to an overview, with a possible implementation by 1 January 2026. The current proposal suggests increasing the maximum limit for the Safe Harbour rule to SEK 25 million instead of SEK 5 million, as well as abolishing the time limit for the right to deduct remaining negative net interest, which is currently six years. The proposal also aims to simplify deduction within a group by implementation of a group-wide calculation of deduction basis and net interest income. These proposals are not final and will likely be revised. Our assessment is however that it is likely that this will pass in some version.

To be able to optimize the interest deductions, the company's interest deduction situation should be reviewed before the closing of the accounts. The tax optimization should be coordinated together with the review of tax losses carried forward, group contributions, tax depreciations etc.

Withholding tax rules

In 2022 new rules for withholding tax on dividends were presented. The new rules were meant to be applied on dividend payments on non-Swedish tax residents receiving dividends from Swedish issuer shares. The tax rate was still suggested to be 30%, but could however, still be decreased either by relief at source or by a refund application. If a double tax treaty is at hand, it will also still be possible to decrease the tax rate.

There are several differences between the current legislation and the proposed changes. The most significant ones are that a reduced tax rate at source will demand detailed information about the beneficiary and that a so-called "approved intermediary" may take over the responsibility for containing, reporting and paying withholding tax on dividends form the issuer. Further, withholding tax on dividends would also be subject to the provisions of the Tax Avoidance Act (Sw. Skatteflyktslagen).

The proposed changes were however put on hold due to the FASTER directive being enacted within the EU. The proposal is expected to be reviewed again to ensure alignment with the FASTER directive. There is no information on when the new proposal will be presented.

21 Switzerland

Changes in Tax Rates

In Switzerland, there are two different kinds of taxation of capital gains on real estate. The Swiss Federal level as well as the so called "dualistic" cantons apply the ordinary income tax on real estate capital gains, whereas other cantons, the so called "monistic" cantons, apply a special real estate capital gains tax on real estate capital gains.

- The changes in income tax rates will have an impact on the deferred tax position in cantons that apply the ordinary income tax on real estate capital gains.
- On the other hand, the special real estate capital gains tax is not impacted by changing corporate income tax rates, meaning that in these cantons the deferred tax position is not affected by changing corporate income tax rates.

Recaptured depreciations and value adjustments on real estate are subject to ordinary income tax on a Swiss Federal level as well as in all cantons.

For FY2024, the following changes in corporate income tax rates may impact Swiss real estate investors (overall ETR in the capital city of each canton for illustration):

Canton	FY2023	FY2024
Aargau	16.26%	15.07%
Bern	21.04%	20.54%
Genf	14.00%	14.70%
Glarus	12.31%	12.32%
Jura	16.01%	16.00%
Luzern	12.19%	12.09%
Schaffhausen	13.80%	15.05%
Ticino	19.16%	19.32%
Zug	11.82%	11.85%
Zürich	19.65%	19.61%

The applicable real estate capital gains tax rates depend on various factors, such as the holding period of the real estate and the canton and commune where the property is located. For FY2024, there have been no significant changes in real estate capital gains tax rates as compared to FY2023.

Changes in Safe Harbor Interest Rates on Intercompany Loans

For the assessment of appropriate interest rates on intercompany loans, the Swiss Federal Tax Administration publishes safe harbor rates. The published safe harbor rates for intercompany mortgage from related parties denominated in CHF have remained unchanged in FY2024 as compared to FY2023:

Intercompany Mortgage in CHF	Safe harbor interest rate 2023	Safe harbor interest rate 2024
Max. rate on IC mortgage in CHF for housing and farming up to <2/3 LTV	2.25%	2.25%
Max. rate on IC mortgage in CHF for other real estate as of >2/3 LTV	3.00%	3.00%
Max. rate on IC mortgage in CHF for industry and production up to <2/3 LTV	2.75%	2.75%
Max. rate on IC mortgage in CHF for industry and production as of >2/3 LTV	3.50%	3.50%

The published safe harbor rates for intercompany mortgage from related parties denominated in EUR and USD do not differ between type of real estate or LTV and have changed in FY2024 as compared to FY2023 as follows:

Intercompany Mortgage in EUR and USD	Safe harbor interest rate 2023	Safe harbor interest rate 2024
Max. rate on IC mortgage in EUR	3.00%	2.50%
Max. rate on IC mortgage in USD	3.75%	4.25%

Note that for operational loans which use real estate as collateral, the safe harbor rate for mortgages is not applicable and the safe harbor rate for operational loans must be used instead.

Assessment Basis for Capital Tax for Real Estate Funds

The Federal Act on Collective Investment Schemes (CISA) mandates real estate funds to record property values based on independent market estimates, while some cantons determine property values based on rental income and capitalization rates, resulting in tax values often exceeding market values. In a recent judgement, the Federal Supreme Court ruled that the tax law's goal of assessing economic performance differs from CISA’s goal of protecting investors. This permits cantons to use tax values based on capitalization rates for capital tax purposes, even if tax values may surpass both book and market values.

Loss Offsetting in the Swiss Intercantonal Context Relating to Real Estate Gains Taxation

According to Swiss intercantonal tax allocation rules, real estate is exclusively taxed by the canton in which the real estate is located ("Location Canton"). In a recent judgement, the Federal Supreme Court allowed losses from other cantons to be offset against real estate gains in the Location Canton, even across different types of taxes (i.e. losses for corporate income tax purposes in one canton can be recognized for real estate capital gains tax purposes in a different canton). This is a significant development for entities operating in multiple cantons and applying different real estate taxation regimes within Switzerland, allowing for a more holistic view on a company's Swiss wide overall tax situation incl. real estate.

Change of Geneva Tax Practice for Real Estate Investment Foundations

In a recent judgement, the Federal Supreme Court found the Canton of Geneva's practice of applying ordinary profit tax to real estate capital gains for investment foundations in Geneva to be impermissible. Instead, the court decided that tax-exempt investment foundations should be subject to real estate capital gains tax. This decision has profound implications for tax-exempt investment foundations in Geneva, particularly regarding the tax burden associated with varying holding periods. Short-term holdings under 10 years face a higher tax rate, while longer-term holdings may benefit from reduced rates or similar burdens. Tax-exempt investment foundations in Geneva may need to consider changing their approach in calculating the deferred taxes.

Change in the Management of Real Estate Funds

In a recent judgement about the change of the management company in a contractual real estate fund, the Administrative Court of Geneva disagreed with the Geneva Tax Administration and confirmed that transactions, which are related to the fiduciary holding and in which the funds, or more specifically the investors, remain the economic owners, are not subject to real estate transfer tax (RETT). The decision made by the Administrative Court of Geneva can be seen in the context of a recent decision made by the Vaud Administrative Court, which had indicated in one of its recitals that the change of management should not trigger the Vaud RETT as in Geneva. These decisions mean that contractual real estate collective investments are no longer captive of a management company and therefore changing it should not trigger RETT, whereas other cantons may apply another tax practice until a court decision by the Federal Supreme Court is issued.

22 Turkey

Corporate tax

Resident companies in Turkey are subject to corporation tax on their worldwide income. The standard corporate tax rate is 25% (for FY24). On the other hand 5% discount (capped with TL 6.9 million for 2024) is provided to the compliant taxpayers (who submit their tax returns on time, and have no outstanding tax liability, etc.). Corporate income tax law states exemptions which can be beneficially utilized by corporations (upon meeting certain conditions), such as dividend income received from resident or non-resident companies, earnings of corporations derived from their foreign establishments of representatives, 25% of capital gains derived from the sale of property (for the properties acquired before 15 July 2023) or 75% of participation shares which are held by corporations for more than two years.

When filing the corporate tax return, it should be ensured that the taxpayers can benefit from such tax-exemptions, and that CIT law requirements are fulfilled.

Transfer pricing

If a taxpayer enters into transactions regarding the sale or purchase of goods and services with related parties, the parties should follow the arm's length principle. Transfer pricing regulations stipulate documentation requirements for taxpayers, who should complete the transfer pricing form every year and submit it as an appendix with the corporate tax returns. Taxpayers are also required to prepare an annual transfer pricing report including supporting documents for their international and/or domestic related-party transactions. Furthermore, OECD's Base Erosion and Profit Shifting Action Plan ("BEPS Action Plan") documentation requirements are introduced. The recommended three-layered documentation model outlined in BEPS Action 13 is being integrated to the Turkish transfer pricing regulations. Accordingly, master file preparation, annual transfer pricing report preparation and country-by-country report (CbCR) filing, which is to be submitted electronically, are applicable for entities operating in Turkey, along with notification submissions to the tax authorities.

Thin capitalization rule

If the ratio of the borrowings from related parties exceeds 3 times the shareholders' equity of the borrower company, the exceeding portion of the borrowing will be considered as thin capital. Interest and other payments relating to thin capital and the related foreign exchange losses are non-deductible expenses while calculating the corporate tax base. For loans received from related party banks or financial institutions that provide lending also to third parties, the debt/equity ratio will be considered 1/6 instead of 1/3. The shareholders' equity represents the total shareholders' equity at the beginning of the given fiscal year.

A thin capitalization analysis should be made by the taxpayer.

Controlled foreign company (CFC)	Corporations that are established abroad and are at least 50% controlled directly or indirectly by tax resident companies are considered controlled foreign companies when certain requirements are met, such as being subject to an effective income tax rate lower than 10% in its home country, having a gross revenue more than TRY 100,000 in the related period and having passive income (at least 25% of gross revenue). CFC profits would be included in the corporate income tax base of the controlling resident corporation irrespective of whether it is distributed or not. CFC profits should be included in the tax base of the Turkish resident company if the foreign corporations meet the conditions of being a CFC.
Depreciation	Depreciation may be applied by using either the straight-line or declining-balance method at the discretion of the taxpayer. The rates are determined by the Ministry of Finance. The maximum applicable rate for the declining-balance method is 50%. With the new amendments taxpayers are allowed to calculate depreciation expenses on a daily basis. A longer useful life may be used as long as it does not exceed two times the useful life (determined by the MoF) and 50 years. The calculation method for these fixed assets cannot be changed. Interest and foreign exchange costs regarding the financing of fixed assets should be added to the cost of fixed assets until the end of the year in which assets are taken into account. The depreciation method should be selected for the fixed assets which are purchased in the related year.
Foreign currency revaluation	Assets and liabilities denominated in foreign currency are revalued at year end and each quarter based on the exchange rates announced by the Ministry of Finance.
Doubtful receivables	Receivables which are relevant to the acquisition of commercial income and at the litigation stage or administrative action can be written as doubtful receivables in the year that the litigation process started. Provisions may be accounted for the doubtful receivable at the disposable value on the day of valuation. Receivables lower than TL 14,000 (for FY24) can be written as doubtful receivables without litigation process if they are requested more than one time via mail, etc. It should be determined whether the conditions are met.
Bad debts	Account receivable whose collection is no longer possible, based either upon a judicial decision or upon other substantiated documents can be considered as bad debt. The bad debt amount can be regarded as an expense item in the related period. Furthermore, the legislation provides for VAT relief for uncollectable receivables that become worthless in accordance with the above-mentioned regulation. It should be determined whether the conditions are met.

Title deed fee

Title deed fee is calculated according to the ‘Fee Law’ for the transactions concluded at the title deed registry such as property buying/selling, registration of rental contract, annotations of any transaction made at registry etc. At the time of acquisition, title deed fee at the rate of 2% is applicable over the sales price for buyer and seller separately.

Fee has to be paid to the tax office before the transaction made at the registrar.

Value-added tax (VAT) rate for the residential units

The determination of the VAT rate to be applied (1%, 10% or 20%) on the deliveries of houses starting from the year 2013 will vary based on several different factors such as; Building license obtaining date, Construction class of the building, Square meters of the house, etc.

For the units with the building license obtaining date is after 1 April 2022; parts which is up to 150m^2 of the residences will be subject to 10% VAT, exceeding part of 150m^2 will be subject to %20 VAT.

Furthermore, the VAT Law provides VAT exemptions for deliveries to non-resident individuals with valid work and residence permits, as well as Turkish citizens who work abroad for more than six months. This exemption is applicable for the first sale of new buildings built as residences or workplaces. Additionally, foreign currency should be brought to Turkey for this purpose. Please also note that there are other certain conditions to be fulfilled for the application of the exemption.

Taxpayers should pay closer attention while deciding the correct VAT rate to be calculated, as all the above-mentioned criteria should be considered at the same time.

Stamp tax

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Agreement that states a monetary value is subject to stamp tax at a general rate of 0.948%. Lease contracts are subject to stamp tax at a rate of 0.189% of the rental amount. Stamp duty rate to be applied on several agreements, which are specifically related to the real estate industry, has been reduced to 0% (zero) in 2017; such as officially drafted construction agreements on flat for land basis or revenue sharing etc.

Stamp tax is capped at TRY 17.006.516,30 (approximately EUR 454.5k under the current foreign exchange rate, subject to annual revaluation) for the year 2024. All signatory parties are jointly held liable for the stamp tax payment.

Resource utilization support fund (RUSF) rates

RUSF rates are to be applied on foreign loans obtained by Turkish resident individuals or legal entities (except for banks or financial institutions) in terms of foreign currency or gold (except for fiduciary transactions) was restructured based on the average maturities as follows;

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

Financial expense restriction

As per the concerned rule the limitation on financial expenses applies only in situations where the amount of external financing of the taxpayer exceeds the taxpayer's equity. The non-deductible portion of the financial expenses is capped at 10%. Credit institutions, financial institutions, financial leasing companies, factoring companies and financing companies are excluded from the application of financial expense restriction. Restrictions shall not apply to interest rates and similar payments added to investment costs.

The concerned 10% portion will be treated as a non-deductible expense starting from 1 January 2021.

Deemed interest deduction on cash injection as capital

According to the arrangement Turkish resident companies (except for those that operate in banking, finance and insurance sectors and public enterprises) would be able to benefit from a deemed interest deduction that is equal to 50% (re-determined between 0% – 100% for various situations) of the interest calculated on the cash capital increase in the registered capital of the existing corporations or cash capital contributions of the newly incorporated corporations based on the average interest rate by the Central Bank of Turkey for TL denominated commercial loans, from their corporate tax base of the relevant year.

Companies can benefit from a deemed interest deduction for the year of cash injection and following four years. Certain companies operating in real estate industry especially the ones earning rental income and making land investments may not utilize the above-mentioned interest deductions.

Inflation Accounting

The financial statements of 2024 (including 2nd and 3rd quarters except for the taxpayers whose gross sale was less than TL 50 million by the end of FY23) will be restated for inflation. Net gains from the restatement of 2024 financials will be included in taxable income. Likewise, if the restatement of 2024 financials result in loss, such losses will not be tax deductible.

Note that net inflation adjustment gain or loss will not be included in taxable income for Real Estate Investment Companies (REICs) in FY24. Real Estate Investment Funds (REIFs) are exempt from inflation adjustments in FY24.

Inflation adjustment will be applied for the end of FY24.

Pillar Two

Similar to the OECD Model Rules and the Pillar Two Directive, the Turkish Pillar 2 legislation will apply to constituent entities that are members of a multinational enterprise group that has annual revenue of Turkish equivalent of EUR 750 million or more in the consolidated financial statements of the ultimate parent company in at least two of the four fiscal years immediately preceding the tested fiscal year.

In general, the Turkish Pillar Two provisions do not differ significantly from the EU Minimum Tax Directive. Very briefly, the Turkish Pillar Two regulations introduce the global minimum top-up taxation rules by providing for the main interlocking measures, i.e. the Income Inclusion Rule (IIR) and the Undertaxed Payment Rule (UTPR) as well as a Qualifying Domestic Top-Up Tax (QDMTT) under the safe-harbor OECD standards.

The new rules are effective for fiscal years starting from 1 January 2024, except for the UTPR provisions which apply to fiscal years starting from 1 January 2025.

Domestic Minimum CIT regime

Law number 7524, published in the Official Gazette on 2 August 2024, introduces a domestic minimum tax regime that aims to ensure the corporate tax is not less than 10% of corporate income before certain exemptions and deductions. Under the new rule, the corporate taxpayers will compute their tax liability under both the standard regime (i.e. 25% tax on taxable income after deductions and exemptions) and under a parallel regime (i.e. 10% tax on taxable income before certain deductions and exemptions). The larger amount is then payable.

The domestic minimum tax regime will apply to fiscal years starting from 1 January 2025. Earnings from immovables of REICs and REIFs will not be regarded as exemption from the minimum CIT base.

23 United Kingdom

For UK tax purposes, the period of assessment depends on whether the investor is subject to corporation tax or income tax.

Non-UK resident companies are within the charge to corporation tax on UK property rental income, and the period of assessment under corporation tax will usually be the same as the company's accounting period unless that period exceeds 12 months. Non-resident companies are also within the charge to corporation tax on direct and certain indirect disposals of UK property. Where such companies are not otherwise within the charge to corporation tax (eg because they do not have any rental income), this may result in a one-day period of assessment.

Non-resident investors which are not companies are required to submit a UK income tax return for the fiscal year which runs from 6 April to 5 April, which is unlikely to correlate with the fiscal year. This guide deals with the position for companies only.

For companies, it is important that the following issues are considered in relation to existing investments in UK real estate on at least an annual basis.

The main rate of corporation tax is currently 25% on profits over GBP 250,000 (19% pre-1 April 2023).

Rental income subject to corporation tax

As noted above, non- UK resident companies are within the charge to corporation tax on UK property rental income although withholding at the basic rate of income tax (20%) may apply unless the company is registered with the UK tax authority as a 'non-resident landlord'. As a result of the increased rate of corporation tax of 25%, non-UK resident companies may find that the income tax withheld is not sufficient to discharge their UK corporation tax liability and that an additional payment may be required.

There are restrictions for companies on the deductibility of interest (see further detailed comments below), deductions related to hybrid mismatches and on the amount of losses brought forward from earlier periods that can be offset.

The hybrid mismatch rules which implement the OECD BEPS Action 2 proposals can deny relief for any payments to hybrid entities, and to payments in respect of hybrid instruments.

The loss restriction limits to 50% the amount of profit against which brought forward losses in excess of GBP 5 million can be offset.

For property investors, there is no ability to carry back property business losses and offset these against taxable income in earlier accounting periods.

The non-UK corporate landlord is subject to UK corporation tax filing and payment rules, which includes (except for the first corporation tax accounting period), the quarterly instalment payments (QIPs) regime. Also, there are group relief provisions in respect of profits/losses of such non-UK tax resident companies that fall within the charge to corporation tax.

Financing costs

In calculating the profits subject to corporation tax for non-resident companies with a UK property business, this will include debits/credits in relation to loans or derivative contracts which the company is party to for the purposes of that business.

Shareholder financing in relation to a UK property investment business should be provided on arm's length terms to comply with the UK transfer pricing rules (which also apply where a third-party loan is subject to a shareholder guarantee) in order to be tax deductible (in addition to the restrictions referred to below).

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

The 'corporate interest restriction' (CIR) rules were introduced in accordance with the OECD's BEPS project and their starting point, in broad terms, is to restrict finance cost deductions to 30% of taxable profits before interest and capital allowances in addition, the net interest deduction of the UK group cannot exceed the net interest shown in the worldwide group's consolidated financial statement. There is also a GBP 2 million de minimis (per group) and the option of using an alternative group ratio or a public infrastructure exemption if this will provide a better result.

There are other ways in which interest deductions can be restricted. These include:

- The hybrid mismatch rules which, as noted above, can deny interest relief;
- Reclassification of interest as a distribution where the debt has certain equity characteristics; and
- Denial of relief where a loan relationship of a company has an 'unallowable' purpose (broadly, a purpose that is not within the business or commercial purposes of the company).

The public infrastructure election, if relevant, must be made by the year end. There are also finance cost related filings and elections which must be made within 12 months of the year end, including the nomination of the reporting company for corporate interest restriction return, the group ratio election, and the 'disregard' election in respect of certain derivatives.

Capital allowances

Capital allowances are the mechanism under which tax relief is obtained for capital expenditure. Allowances are available for capital expenditure on plant and machinery in UK properties at 18% per annum on a reducing balance basis for loose plant and machinery, or 6% for integral features (unless more generous full expensing is available, see further below). Providing certain requirements are met, relief is also available at 3% per annum on a straight line basis for the cost of the construction, conversion and renovation of certain buildings ('Structural Buildings Allowances').

From 1 April 2023, companies investing in qualifying new plant and machinery assets benefit from a 100% first-year capital allowance rather than the existing 18% writing down allowance, and 50% first-year allowance for qualifying special rate (including long life) assets rather than the existing 6%.

Companies are also entitled to an annual 100% allowance for investment in most plant and machinery up to the annual limit of GBP 1 million per annum (AIA). One AIA is available per company or group of companies if relevant.

Each UK property investment should be reviewed to ensure the maximum entitlement to capital allowances is being claimed, and that the relevant data is being captured.

Disposals by non-residents

UK tax is charged on capital gains made by non-residents on direct and certain indirect disposals of all types of UK immovable property.

The indirect disposal rules apply where a person makes a disposal of a company (or an entity deemed to be a company) in which it has at least a 25% interest where that entity derives 75% or more of its gross asset value from UK land. Where the disposal is of an interest in certain collective investment vehicles (which includes certain holdings in UK REITs and PAIFs), the 25% interest requirement is disapplied so that non-residents making disposals of interests in these vehicles do not have to have a stake of 25% or more to fall within the charge, or, in certain limited circumstances, replaced with a 10% threshold. The 25% ownership test applies where the person holds at the date of disposal, or has held within two years prior to disposal, a 25% or more interest in the property-rich company. This holding may be directly, or through a series of other entities, or via connected persons.

The 75% ‘property richness’ test looks at the gross assets of the entity being disposed of. Where a number of entities are disposed of in one arrangement and certain other conditions are met, their assets will be aggregated to establish whether the 75% test is met.

The gain or loss is generally calculated using the market value of the asset as at April 2019 but there is an option to calculate the gain or loss on a disposal using the original acquisition cost of the asset. The April 2015 value replaces the April 2019 value in the case of direct disposals of UK residential property that would previously have been within the charge to UK tax prior to 6 April 2019. Where the option to use the original acquisition cost is taken in the case of an indirect disposal, and this results in a loss, this will not be an allowable loss.

There is a trading exemption, so that disposals of interests in property-rich entities where, broadly, at least 90% of the UK land (by value) is used in a qualifying trade are excluded from the charge, and existing reliefs and exemptions available for capital gains continue to be available to non-UK residents, with modifications where necessary. Those who are exempt from capital gains for reasons other than being non-UK resident continue to be exempt (for example, overseas pension schemes).

In addition, the provisions of any relevant double tax treaty need to be considered.

Losses arising to non-UK residents under the rules are available. However, the offset by companies of carried forward capital losses is limited to 50% only of the capital gains arising in a later accounting period, subject to a GBP 5 million de minimis applied on a group basis (which includes income losses).

It may be possible for a group company to elect for gains (or losses) to be treated as arising in another group company. This can impact on the ability to offset gains and losses and also the date on which any tax is due. The election must be made within 2 years of the end of the period of assessment/accounting period in which the gain arises.

Accounting changes

A non-resident company is required to calculate the profits of its UK property rental business in accordance with UK GAAP if it does not already prepare accounts under UK GAAP or IFRS. Otherwise it is the company's UK GAAP/IFRS accounts which are used to calculate the profits of the UK property rental business.

It may therefore be necessary to keep up with any changes in UK GAAP and investors should consider the implications for their UK tax liability.

Asia Pacific

1 Australia

Tax on distribution of trust income to non-residents

Withholding Managed Investment Trust (MIT)

Trusts that meet the requirements of a withholding MIT are eligible for a concessional 15% final withholding tax rate (10% for MITs that are invested in certain energy efficient buildings via a 'clean building MIT') on MIT fund payments distributed to residents of exchange of information (EOI) countries or 30% for residents of non-EOI countries. To the extent the MIT fund payment comprises non-concessional MIT income (NCMI), then the MIT fund payment will be subject to a 30% final withholding tax rate. NCMI broadly includes income relating to cross staple arrangements, trading activities and residential and agricultural assets.

The MIT rules are an ongoing area of focus for the Australian Taxation Office (ATO). It is therefore critical that taxpayers confirm MIT eligibility on an annual basis. MITs must make sure that they are aware of their compliance obligations and provide appropriate statements to investors containing the required information by the due date.

Announced Build-to-Rent (BTR) measures

In response to Australia's housing crisis and to encourage foreign investment in the BTR area, on 5 June 2024 the Australian Government introduced legislative amendments into Parliament to give effect to the 2023-24 Federal Budget announcement to provide accelerated tax deductions for construction costs and to reduce the MIT withholding tax rate (currently 30% as NCMI as outlined above) to 15% for both net rental income and capital gains in respect of eligible BTR investments.

In accordance with the proposed legislation, eligible BTR developments are those in which satisfy a certain set of criteria, including when construction of the project commenced, number of dwellings/apartments in the project, lease terms offered to tenants and the affordable housing requirement. Meeting these criteria may not be straightforward and will require careful planning to ensure the concessions can be accessed.

The announced BTR measures are still undergoing consultation and are subject to change. Taxpayers should monitor these changes closely if they intend on relying on the concessional BTR measures.

Distributions by trusts that are not withholding MITs

Where trustees of non-withholding MITs make distributions to non-resident investors, they are assessable on the distributions at a rate of 30% where the non-resident investor is a company, and at a rate of 45% where the non-resident investor is an individual or trustee. The tax due is generally deducted from the distributions paid to the non-resident investors as a 'non-final withholding tax'. The non-resident investors are subject to Australian income tax in respect of the distributions they receive, must lodge an Australian income tax return, but may be able to deduct any expenses relevant to the Australian investment, and also receive a credit for any non-final withholding tax paid by the trustee of the non-MIT.

Non-resident investors need to make sure they are aware of their compliance obligations if they invest into non-withholding MITs.

Attributed Managed Investment Trust (AMIT)

A MIT can elect to be treated as an AMIT. Broadly, the AMIT regime applies an attribution model to the taxation of unitholders rather than the current system of present entitlement. AMITs provide for fixed trust status for Australian tax purposes, allow cost base increases and decreases of the member's units in the trust and also allow for multiple classes of membership interests.

The advantages and disadvantages of electing into the AMIT regime should be considered prior to making such election. Becoming an AMIT may require changes to systems, documentation (including trust deeds) and processes.

Taxation of trading income

Public trading trust

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

The activities of a trust should be monitored on an ongoing basis to ensure that the trust's activities do not constitute a trading business and the flow through status of the trust is retained. This is an ongoing focus area for the ATO.

Taxation of foreign tax-exempt investors

Withholding tax exemption for foreign superannuation funds

The dividend and interest withholding tax exemption for foreign superannuation funds is restricted to portfolio like investments (i.e. less than 10%) as from 1 July 2019 (subject to transitional rules). Specified additional conditions also need to be satisfied before the exemption can be applied. Note that this exemption does not generally apply to MIT fund payments.

Foreign pension funds that have established captive trusts to house their Australian real estate investments should consider whether they qualify for the withholding tax exemption.

Access to sovereign immunity exemptions

From 1 July 2019 (subject to transitional rules), the tax treatment of sovereign wealth funds has been codified in the tax legislation. An entity that meets the definition of a sovereign entity will only be exempt from tax on ordinary or statutory income that is derived from portfolio-like investments in Australian companies and managed investment trusts. The portfolio level interest must be measured by reference to a sovereign entity group (entities are grouped according to whether they are federal, state or provisional level government entities).

Sovereign entities will need to consider whether they meet the eligibility tests for the sovereign immunity exemption (which may include gathering information on investments held by other group members).

Tax on capital gains

Taxable Australian property and taxation of capital gains for foreign residents

A non-resident is subject to tax on capital gains in respect of taxable Australian property (TAP). TAP assets broadly include Australian real property and non-portfolio (generally, 10%+) interests in entities whose assets are predominantly real property at the time of disposal (i.e. indirect Australian real property interests or IARPIs).

Different tests apply to determine if a gain in respect of an asset is taxable where it is held on revenue account (e.g., an asset acquired for re-sale at a profit in the short term).

Broadly, non-residents disposing of TAP will have 12.5% of the purchase price of the asset withheld by the purchaser and remitted to the ATO under the foreign resident capital gains withholding (FRCGW) regime. The non-resident is then required to prepare and file an Australian tax return, whereby the 12.5% withholding tax remitted to the ATO by the purchaser should be creditable to the non-resident.

Foreign residents should be aware of their Australian filing obligations in the even they are investing in or disposing of TAP assets.

Changes to the taxation of capital gains for foreign residents

Consultation has commenced on the Australian Government's proposal to amend the capital gains tax (CGT) rules which apply to foreign residents. This includes a consultation paper with a proposal to strengthen the rules for CGT events occurring on or after 1 July 2025. These rules will clarify and broaden the types of assets on which foreign residents are subject to CGT, amend the existing 'point-in-time' principal asset test to a 365-day testing period and require disclosure to the ATO by foreign residents disposing of membership interests that the foreign resident is declaring is not an IARPI (i.e. not a 'land rich' entity) exceeding AUD 20 million in value.

Draft law has also been introduced to give effect to the proposal to increase the FRCGW tax rate and reduce the withholding threshold that currently applies to real property interests. From 1 January 2025, the FRCGW rate will be 15% (from 12.5%) and the threshold exemption will be reduced to nil (from AUD 750,000).

Foreign residents investing in Australia should consider the impact of the changes to the CGT regime and whether any action is required before the introduction date.

Debt deductions

Thin capitalisation

The Australian thin capitalisation rules can restrict the deductibility of interest expense for general class investors (broadly foreign controlled Australian entities or Australian entities that control a foreign entity). From 1 July 2023, the three tests include the fixed ratio test, the group ratio test and the third-party debt test. Other tests may apply to certain types of authorised deposit-taking institutions (ADIs) and financial entities (non-ADIs).

The new Debt Deduction Creation Rules (DDCR) will also apply to taxpayers for income years commencing on or after 1 July 2024 and can affect debt deductions arising from both existing and new debt arrangements. The DDCR will apply to general class investors and entities that apply the third party debt test will be exempt from the operation of the DDCR. Arrangements that fall within the DDCR include related party debt used to fund the acquisition of CGT assets or legal or equitable obligations from associates (Type 1) and related party debt used to fund certain payments and distributions to associates (Type 2). The DDCR will apply before the operation of the new three tests and will deny debt deductions to the extent Type 1 or Type 2 applies.

Taxpayers should consider the impact of these rules on any existing and proposed funding structures for Australian investments.

Transfer pricing

Australian transfer pricing rules apply when an entity receives a ‘transfer pricing benefit’, which is when the actual conditions relating to its cross-border dealings differ from the arm’s length conditions, and had the arm’s length conditions operated, the entity’s taxable income or withholding tax liability would have been greater, or losses or tax offset would be less.

As a result of amendments to the transfer pricing rules effective for income years commencing on or after 1 July 2023, general class investors will be required to ensure that their quantum of cross-border related party borrowings is consistent with arm’s length conditions. This will involve additional arm’s length analysis not previously required to be undertaken by taxpayers that have relied on the old thin capitalisation tests to support their debt quantum.

If an entity has an amount of cross-border related party debt deductions that exceeds an arm’s length amount, which may arise if the debt quantum is not arm’s length, it will be required to self-assess a disallowance of the non-arm's length debt deductions when preparing its income tax return. This will apply even if the entity is paying an arm’s length rate of interest and its net debt deductions are less than the threshold under the fixed ratio or group ratio rules (i.e. these tests are not safe harbours).

The ATO is conducting a targeted stakeholder consultation on updates to its existing transfer pricing public advice and guidance to address these new rules, including potential updates to PCG 2017/4, which relates to cross-border related party financing arrangements.

Detailed questions regarding intra-group financing arrangements are requested as part of Foreign Investment Review Board approvals.

The transfer pricing rules should be considered by all Australian entities with cross-border related party dealings and consider the implications of the documentation requirements.

Taxpayers with cross-border borrowings will now need to conduct an analysis to determine whether the quantum of their borrowings is arm's length under the expanded transfer pricing rules.

Hybrid mismatch rules

Australia has statutory 'hybrid mismatch' rules in Division 832 of the Income Tax Assessment Act 1997. These rules generally took effect for income years commencing on or after 1 January 2019.

Division 832 gives effect to the OECD's recommended hybrid mismatch rules to prevent entities obtaining a tax benefit from hybrid mismatch arrangements. In addition, Australia introduced an integrity measure, designed to prevent multinational groups from debt funding Australia via interposed conduit type entities that are effectively subject to low (10% or less) or nil tax rates.

Broadly, hybrid mismatches arise from differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions, which result in either a deduction/deduction mismatch (whereby a taxpayer obtains a deduction in two countries for the same payment) or a deduction/non-inclusion mismatch (whereby a deduction is provided for payment in one country (i.e. Australia), but the corresponding income is not included in the assessable income in the recipient country). Australia also has a broad 'imported' hybrid mismatch rule where a deduction may be denied for payments made from Australia which may not directly be related to a hybrid mismatch but may be taken to fund an offshore hybrid mismatch between non-resident group entities.

The hybrid mismatch rules are amongst the most complex set of tax rules enacted in Australia in recent years. These rules also have wide-ranging application, with no de minimus threshold for small and less complex operations. Taxpayers will therefore need to gather detailed information of the foreign income tax treatment of related entities and instruments. Any restructuring will need to be carefully evaluated, due to the interaction with other areas of the business (accounting, operational and legal/regulatory issues).

Other

Loss recoupment tests

Any change in direct or indirect interests in an entity (e.g. in the course of restructurings) may lead to a partial/total forfeiture of tax losses at the Australian entity level. Broadly, trusts and companies must maintain 50% or more continuity of ownership to be able to deduct carried forward tax losses. Companies may also rely on the same business test (or similar business test) in order to recoup its tax or capital losses.

The tax loss rules must be considered prior to the recoupment of prior year and current year losses. The tax loss rules should also be considered where there are transactions that result in significant changes to ownership.

Country-by-Country reporting (CbCR)

Australia has a comprehensive reporting and penalty regime including CbCR transfer pricing reporting standards, FATCA and tax transparency.

Currently, the CbC statements that are submitted to the ATO are confidential. These statements include a 'CbC Report', 'Master File' and 'Local File'.

Recently, significant changes to the Australian CbCR standards have been announced by the Government. In particular:

- The ATO has announced material changes to the 'Short Form' (which is a component of the Local File submission under the existing 'confidential' CbCR regime). These changes will apply to periods commencing on or after 1 January 2024. If these announced changes are formally implemented, taxpayers will need to provide significantly more information than what is currently required, including additional information relating to restructures or new arrangements involving intangibles, and more detailed reporting of the entity's organisational structure. The changes also incorporate the short form section into the Message Structure Table (MST) of the local file and master file XML schema, which was developed by the ATO for lodgment of CBC statements. New instructions will be issued to set out key definitions and instructions on how to complete the form prior to December 2024. A draft version of the guidelines was released as a part of a public consultation process in August 2024.
- A Bill containing proposed 'public' CbCR rules was introduced into the Federal Parliament on 5 June 2024. The public CbCR regime will be an additional requirement to the existing 'confidential' CbCR regime. Once enacted, the public CbCR regime will apply to years beginning on or after 1 July 2024 and require large multinational groups with an Australian presence to publicly disclose certain tax information on a country by country basis and a statement on their approach to taxation. The disclosures are required to be provided to the ATO for publication on a government website.

Once enacted, these rules must be considered as there could be significant adverse outcomes for non-compliance.

2 China

Preferential Deed Tax policies for corporate transformation and restructuring are extended for four years.

The Ministry of Finance ("MOF") and the State Taxation Administration ("STA") issued the Public Notice on the Continued Implementation of Deed Tax Policies Related to Restructuring and Reorganization of Enterprises and Institutions("PN [2023] No.49) on 22 September 2023, extending the reduction/exemption treatment of Deed Tax for the following types of corporate transformation and restructuring in Circular [2018] No.17, including: transformation of enterprises and public institutions, merger, spin-off, bankruptcy, asset assignment, debt-to-equity swap, equity (share) transfer.

The valid period of PN [2023] No.49 is from 1 January 2024 to 31 December 2027.

Preferential Land Appreciation Tax policies for corporate transformation and restructuring are extended for four years.

The MOF and the STA issued the Public Notice on Extending the Land Appreciation Tax (LAT) Policy for Corporate Transformation and Restructuring ("PN [2023] No. 51") on 22 September 2023, extending the provisional LAT exemption policy on corporate transformation as a whole, merger, spin-off, and investment with real property and continues to adhere to the non-applicability of this exemption policy to real property transfer transactions where either party to the transactions is a real property development enterprise. In addition, the requirements for "investors of the original enterprise to remain unchanged", "investors to be the same as those of the original enterprise" and "investors of the original enterprise to continue to exist" remain unchanged.

Meanwhile, PN [2023] No. 51 also clarifies the issue of LAT deductible amount of the transferee of the real property under three scenarios in corporate transformation and restructuring:

- Scenario 1. For the "amount paid for acquiring land use rights", the deductible amount is determined based on the price paid for acquiring the state-owned land use rights before the transformation and restructuring and the fees paid in accordance with the state-level unified regulation.
- Scenario 2. For state-owed land use rights received as a capital contribution by an enterprise upon approval, the deductible amount is the valuation value approved by the country-level and above natural resources authorities at the time of the capital contribution.
- Scenario 3. For the deductible amount determined based on the housing purchase invoice, the amount of the deductible item shall be calculated at an additional 5% of the amount indicated in the housing purchase invoice before the transformation and restructuring for each year from the year of the purchase to the year of transfer, i.e. the amount indicated in the invoice x (1 + the number of years after purchase x 5%).

The PN [2023] No.51 is effective until 31 December 2027.

Major Insights related to Real Estate Industry in the Resolution on further deepening reform comprehensively to advance Chinese modernization

During the 3rd plenary session of the 20th Central Committee of the Communist Party of China ("CPC") held in Beijing from 15 July to 18 July 2024, the Central Committee of the CPC reviewed and adopted the Resolution on further deepening reform comprehensively to advance Chinese modernization (hereinafter referred to as the “Resolution”). The Resolution states that the municipal governments will be given greater decision-making powers to regulate the real estate market, and based on local conditions, some cities will be permitted to scrap relevant standards for ordinary and non-ordinary housing.

According to the Provisional Regulations of the People's Republic of China on Land Appreciation Tax, taxpayers are exempted from land appreciation tax if they build ordinary standard residential houses for sale and the value-added amount does not exceed 20% of the amount of the deductible items, whereas the preferential policy is not available for non-ordinary residential houses or non-residential houses.

The Resolution allows for municipal governments to eliminate the standards for ordinary and non-ordinary residences. If the ordinary residential and non-ordinary residential standards are eliminated, housing will be uniformly divided into “residential” form LAT perspective. There may have an uncertain impact on the above LAT preferential policies.

3 India

Foreign investment framework in real estate sector in India

Non-residents are not permitted to acquire immovable property directly in India. Foreign investments are permitted in securities of Indian companies engaged in construction and development and other real estate related activities (subject to conditions).

Foreign investments (other than from countries sharing land border with India) are permitted without prior Government approval – subject to adherence of pricing guidelines and other sectoral conditions. A brief summary of the key regulatory conditions is provided below:

Foreign investment in construction/ development projects	Foreign investment in completed assets
Investments are subject to lock-in period of three years from date of receipt of each installment/tranche of investment.	Investments are subject to lock-in period of three years from date of receipt of each tranche of investment.
Lock-in shall not apply on completion of the project or after development of trunk infrastructure or in case of transfer between non-residents.	Permitted activities – Operating and managing Townships, Malls, Shopping Complexes and Business Centre, including leasing of properties.

Investment in the real estate sector can also be made by Foreign Portfolio Investors (FPI) by way of non-convertible debentures (subject to conditions) through following routes:

General Investment Route	Voluntary Retention Route
Investments are subject to minimum residual maturity of above one year and short-term investments are capped at 30% of the total investment of such FPI in corporate bonds.	No requirement for minimum residual maturity but investment to be retained in India for minimum period of three years (75% of committed portfolio size).
Single FPI (including related FPIs) cannot subscribe more than 50% of any issue of corporate bonds, subject to certain exceptions.	Concentration limits do not apply i.e. single FPI can subscribe to full issue.

Corporate tax

Indian companies engaged in real estate related activities are chargeable to tax either at 25.17% (if special incentives are not claimed) or 29.12%/34.94% (incentive claim and certain turnover criteria). Further in case where the incentives are claimed, it would also be liable to Minimum Alternate Tax at the rate of 17.47% if the accounting profits are higher than tax profits.

Real estate investment trusts (REITs)

REIT is an investment vehicle formed as a trust duly registered with the Securities and Exchange Board of India (SEBI). REITs are required to be listed on the stock exchange and hold completed and rent / income generating properties in India either directly or through holding company (Hold Co) or special purpose vehicle (SPVs) in India. Properties could inter alia include office buildings, shopping malls, industrial parks, warehouses, etc.

In a recent development, SEBI has introduced a distinct category of REIT called Small and Medium REITs (SM REITs) with a minimum asset value of INR 500 million. The maximum asset value for SM REITs is capped at INR 5,000 million, which is the minimum required asset value for traditional REITs.

Like traditional REITs, funds can be raised for the SM REIT from both Indian and foreign investors by issuing units, in accordance with any applicable conditions or approval requirements set by the Reserve Bank of India and the Government of India regarding foreign investment.

REITs are also subject to conditions, inter alia, including the condition that at least 80% (95% for SM REIT) of the value is invested in completed and rent / income generating real estate with a lock-in period of three years from the purchase date (lock-in not prescribed for SM REIT). REITs are prohibited from investing in vacant land or agricultural land or mortgages (with certain exceptions). Further, REITs are required to distribute at least 90% (100% for SM REITs) of their cash flows to their unit holders.

REITs have been accorded effective tax pass through status whereby interest, dividend (subject to conditions) from SPVs and rental income from property held directly (though direct holding not commercially attractive) is exempt in the hands of the REIT. Other incomes, including capital gains on disposal of REIT assets are taxable in the hands of the REIT.

Distribution by the REITs to unitholders in form of capital / debt repayment in excess of issue price of units is taxable at applicable rates in the hands of the unitholders. Distribution not taxed as above is to be reduced from the cost of acquisition of units.

Sale of units of the REIT is subject to a preferential tax regime (subject to payment of securities transaction tax on the sale transaction) as under:

a. Short-term capital gains – Effective tax rate[1] 16.38% (for units sold before 23 July 2024) and 21.84% (for units sold on or after 23 July 2024)
b. Long-term capital gains – Effective tax rate[2] 10.92% (for units sold before 23 July 2024) and 13.65% (for units sold on or after 23 July 2024)

Income characterisation (business income vs house property income)

The income of Indian companies engaged in 'construct and sell' model is characterised as business income and taxable at applicable rates on a net income basis. Development and borrowing cost incurred to develop the property is considered as part of inventory and allowed as deduction.

The characterisation of income of Indian companies engaged in 'construct, purchase and lease' model would largely depend on the facts and business objectives of the company. In a case where the primary objective of the company is to lease property together with provision of other related facilities/amenities, it should be characterised as business income and would be taxed in a manner similar to 'construct and sell' model.

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1 We have considered maximum applicable surcharge applicable to foreign company (non-resident)
2 ibid

In case, the company earns rental income only from leasing, such rental income is characterised as income from house property. In computing taxable income from house property, only standard deduction of 30% of rental income (net of property tax) and interest expense on borrowings is allowed as expense.

Tax incentives

Investment linked tax deduction (i.e., 100% deduction for capital expenditure) is available for certain asset classes (e.g. slum redevelopment or rehabilitation projects, affordable housing projects, certain category of hotels and hospitals etc. which meet the requisite certain criteria).

Quasi thin capitalisation rules

In summary, interest deductibility is capped to 30% of EBIDTA. These rules apply to interest deduction claimed on debt raised from non-resident associated enterprise or a debt raised from non-associated enterprise is guaranteed by an associated enterprise.

Anti-abuse provision (sale of immovable properties)

Sale of immovable properties for an inadequate or NIL consideration is subject to taxation at a deemed value (determined based on the values imputed for stamp duty purposes). However, no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than 10%.

Indirect taxes

Anti-abuse provisions (receipt of immovable properties)

Receipt of immovable properties for an inadequate or NIL consideration is subject to taxation at a deemed value (determined based on the values imputed for stamp duty purposes). The difference is taxable if the same exceeds:
- INR 0.05 million; and
- 10% of the consideration

Supplies to Special Economic Zone (SEZ) developers and units

Goods and/or services provided to SEZ developers and SEZ units for SEZ approved operations within an SEZ are zero rated under the GST law. Thus, goods and services can be supplied without payment of GST and supplier would be entitled to seek a refund of GST paid on items used for supply to the SEZ/ SEZ unit. Property rental services provided by a SEZ developer within an SEZ unit continues to be GST free.

Classification of Preferred Location Charges (PLC)

PLC are the charges collected by developer separately from the buyer of flat/ property for a preferred location in the Project such a scenic view or proximity to amenities. There was a controversy revolved around the rate of GST at which PLC will be charged. In a recent development, the GST Council has provided clarity on the applicable GST rate for Preferred Location Charges (PLC) within real estate projects. Previously, authorities considered PLC as a distinct service, subject to an 18% GST rate without the benefit of a one-third abatement. However, the Council now clarifies that PLC should be treated as part of a bundled package with the main construction service. Consequently, PLC will be taxed at the lower GST rate applicable to the principal supply.

Notably, the Council's clarification does not address whether this decision applies retrospectively.

Reverse Charge on Residential Dwellings

When GST was first introduced, the services by way of renting of residential dwellings was exempt. However, such provision was amended to the effect that such exemption applies only when the dwelling is used for residential purposes, except when it is rented to a registered person where such registered person is obligated to pay tax under reverse charge. Further, it is also clarified that if a registered person uses the residential dwelling for personal purposes and does not claim the rent as a business expense, GST will not be payable under the reverse charge mechanism (RCM).

ITC on Construction Services-Safari Retreats

The controversy surrounding the admissibility of input tax credit (ITC) on inputs and input services used for constructing immovable properties intended for taxable outward services has been addressed. Under GST Law, ITC on work contract services and goods or services used for constructing immovable property, other than plant and machinery, is largely restricted.

In a recent landmark judgment, the Honorable Supreme Court of India interpreted GST provisions to lay down key principles governing eligibility of ITC. The Apex Court held that if the construction of a building is essential for carrying out the activity of supplying service such as renting, leasing etc. then building could be held to be "plant" and hence eligible for ITC.

The Supreme Court also laid down the "functionality test" which should be satisfied for ITC to be eligible.

However, this remains a highly contentious area, with the Government contemplating filing a review petition against the Supreme Court's ruling.

Deduction of amount pertains to Land from value of supply in case of sale of Immovable Property

In case of sale of under construction property, the value of land is to be excluded while computing the taxable value of the underlying service as the sale of land is outside the purview of GST. In terms of the GST provision, the value of the supply of service and goods in the sale of under constructed immovable property should equal the total amount charged, minus the value of the land or undivided share of land. The provision mandates deducting one-third of the value towards the portion of the land from the total amount charged for the sale of immovable property.

However, in the landmark judgment of Munjal Manish Bhai Bhatt vs. Union of India, the Honorable High Court of Gujarat held that the mandatory one-third deduction of land value is ultra vires the GST Act provisions. The High Court stated that taxpayers have the option to either:

1. Claim a deduction of the actual value of the land from the total consideration, or
2. Ascertain the value of the construction service as per prescribed valuation rules.

This ruling provides more flexibility for taxpayers in determining the taxable value for GST purposes on the sale of immovable property. However, this position is prone to litigation.

GST on Long term Lease of Land

GST is a complex subject within the real estate industry. GST on long term lease of land is exempted only in specified circumstances (i.e., when the land is for the industrial use / situated in the financial district.

Under GST Law, sale of Land is not subject to GST. Although long term lease of land (which is generally for 99 years in India) is equated with sale of land, however, this is treated differently and hence subject to GST. This creates significant challenges for residential and commercial land leases under GST.

4 Korea

Extension of exemption from heavy acquisition tax for REF and PFV

Upon acquisition of real estate in Korea, the applicable tax rate is generally 4.6% (including surtax) and it may be increased to heavy acquisition tax of 9.4% if real estate located in Seoul metropolitan area is acquired by an entity to be newly established by an investor including a foreign investor. However, with respect to acquisition via a real estate fund ("REF") under the Capital Market Act and a project financing vehicle ("PFV") under Tax Preferential Control Act, heavy acquisition tax has not been applied under the sunset rule to be applicable until December 2024.

Under the recently announced proposal for tax amendment, this sunset rule has been extended to December 2027. Thus, a REF and PFV will continue to enjoy 4.6% acquisition tax regardless of the location of real estate if it is extended as proposed.

5 Malaysia

Taxation of real estate investment trusts (“REIT”)

Generally, the income of a REIT consisting of rental income, interest (other than interest which is exempt from income tax) and other investment income derived from or accruing in Malaysia will be taxable at the corporate tax rate currently at 24%.

Business tax deductions can include management fees, interest and property taxes and the REIT manager’s remuneration. However, trustee’s fees do not qualify for tax deduction since it is not seen to be wholly and exclusively incurred in the production of gross income.

Expenses incurred to set up an entity are generally not allowed as a tax deduction as these expenses are regarded as pre-commencement expenses. As a tax incentive, the Income Tax (Deduction for Establishment Expenditure of REIT or Property Trust Fund) Rules 2006 provide that the legal, valuation and consultancy fees incurred for establishing a REIT, which is subsequently approved by the Securities Commission Malaysia (“SC”), will be allowed as a tax deduction when the business of the REIT commences.

Where a listed REIT distributes at least 90% of its income, the tax transparency rules will apply so that tax will not be levied at the REIT level. Where a REIT, listed on Bursa Malaysia, intends to distribute 90% or more of its total income but has fallen short of 90% at the end of the basis period, the listed REIT is given a grace period of 2 months from the closing of its accounts to distribute the balance so that the tax exemption can still be applied at the REIT level.

If less than 90% of its total taxable income is distributed in a year of assessment (YA), the tax transparency system would not apply, and total taxable income of the REIT would be taxed at the current prevailing tax rate of 24%. Income, which has been taxed at the REIT level, will have tax credits attached when subsequently distributed to unitholders.

Unlisted REITs will not enjoy the above tax transparency treatment and will be taxed at 24%.

Exempt income

All dividends received from a Malaysian resident company are not subject to income tax in Malaysia.

Since REITs are unit trusts, certain income is exempt from income tax, including interest or discount from the following investments:

- Any savings certificates issued by the government.
- Securities or bonds issued or guaranteed by the Government.
- Sukuk or debentures issued in Ringgit, other than convertible loan stocks, approved or authorised by or lodged with the SC.
- Bon Simpanan Malaysia issued by Bank Negara Malaysia;
- Bonds and securities issued by Pengurusan Danaharta Nasional Berhad.
- Licensed bank under the Financial Services Act 2013 or Islamic Financial Services Act 2013 or a development financial institution prescribed under the Development Financial Institution Act 2002.

The exemption of Foreign Sourced Income ("FSI") received in Malaysia is only applicable to a person who is a non-resident.

FSI (e.g. dividends, interest, etc. from overseas) of a Malaysian resident REIT when received in Malaysia will be subject to income tax at the prevailing rate of 24%.

Such income from foreign investments may be subject to taxes or withholding taxes in the specific foreign country. Subject to meeting the relevant prescribed requirements, the REIT in Malaysia is entitled for double taxation relief on the foreign tax suffered on the income in respect of overseas investment.

Losses and capital allowances carried forward

Any unabsorbed tax losses and unabsorbed capital allowance for a year of assessment cannot be carried forward to set off against future rental income.

Cost of obtaining finance

Costs of obtaining finance (other than interest), including legal costs and stamp duty on new loan transactions, are generally not tax deductible. However, specific tax deduction is allowed for financing costs incurred in relation to the issuance of certain Islamic securities in Malaysia.

Tax transparency

Taxation of REIT unitholders

Where 90% or more of the listed REIT's total taxable income is distributed by the listed REIT, distributions to unitholders will be subject to tax based on a withholding tax ("WHT") mechanism at the following rates:

Unitholders	WHT[1] Rate
Individuals and all other non-corporate investors such as institutional investors (resident and non-resident)	10% (up to YA 2025)
Non-resident corporate investors	24%
Resident corporate investors	0%

[1] The WHT is a final tax and resident individuals and non-corporate investors will not be required to declare the income received from the listed REIT in their Malaysian tax returns.

No WHT is applicable on distributions to resident corporate investors. Resident corporate investors are required to report the distributions from the listed REITs in their normal corporate tax return and bring the taxable listed REIT distributions at the corporate tax rate, currently at 24%.

Distribution by unlisted REITs is not subject to WHT since an unlisted REIT has already paid income tax at 24%.

Distribution below 90%

Where less than 90% of the total taxable income is distributed, the listed REIT is not entitled to the tax transparency rules. The listed REIT will be subject to income on taxable income at 24% (normal corporate rate of tax). The distributions made by the REIT of such taxed income will have tax credits attached.

Resident individuals will be subject to tax at their own marginal rates on distributions and be entitled to tax credits representing tax already paid by the REIT.

Resident corporate investors are required to report the distributions from REITs in their corporate tax return and bring such income to tax at the corporate tax rate, currently 24%. Where tax has been levied at the REIT level, the resident corporate investors are entitled to tax credits.

No further taxes or WHT would be applicable to foreign unitholders. Foreign unitholders may be subject to tax in their respective jurisdictions depending on the provisions of their country's tax legislation and the entitlement to any tax credits would be dependent on their home country's tax legislation.

Distributions representing specific exempt income or gains on disposal of investments at the REIT level will not be subject to further income tax when distributed to all unitholders.

Transfer pricing

The Director General of Inland Revenue is empowered to make adjustments to transactions of goods and services between associated persons, including related companies. The transfer pricing audit framework has been issued by the tax authorities to ensure that controlled transactions comply with the arm's length principle, the Malaysian tax laws as well as administrative requirements.

If any understatement or omission of income is discovered during the transfer pricing audit, a penalty will be imposed. However, a concessionary penalty rate may be imposed in a case where a voluntary disclosure was made. Taxpayers have to prepare contemporaneous transfer pricing documentation, (i.e. either at the point of developing the inter-company transaction or prior to the submission of the company's tax return).

Withholding tax ("WHT")

Payments made by Malaysian residents to non-residents that are deemed to be derived in Malaysia are subject to WHT at the following prescribed rates:
a. Interest – 15%.
b. Royalty – 10%.
c. Contract Payments – 10% + 3%.
d. Rental – 10%
e. Services – 10%
f. Other gains or profit – 10%

The rates may be reduced under specific double tax treaties.

Stamp duty

Stamp duty is imposed on a wide range of documents and transactions. The rates vary with the type of document and amount involved. The stamp duty payable for transfer instruments for real property is 1% to 3% of the market value of the property. The stamp duty payable for transfer instruments for shares is 0.3% of the consideration. Generally, the purchase and sale of units in a listed REIT are not subject to stamp duty since the units are traded scripless on the Malaysian Stock Exchange.

Sales and service tax

Income received by REITs (i.e. rental, interest and dividend income) will not be subject to service tax while expenses incurred by the REIT such as management fees, trustee fees and other administrative and operating expenses will be subject to 8% service tax with effect from 1 March 2024 (previously service tax rate was 6%).

Digital service tax

Effective 1 January 2020, service tax at 6% will be imposed on digital services provided by both local and foreign service providers. Digital services are defined as services which are delivered or subscribed over the internet or other electronic network and cannot be delivered without the use of IT and the delivery of the service is substantially automated. This could potentially result in certain service providers charging digital service tax to the REIT, resulting in an increase in cost.

Gains on sale of property

Any gains on disposal of real properties (chargeable asset), or shares in real property companies (chargeable asset) would be subject to the following real property gains tax (RPGT) rates:

Date of disposal	Companies incorporated in Malaysia and trustees of a trust	Individual (citizen and permanent resident)	Individual (non citizen and non-permanent resident and companies not incorporated in Malaysia)
Within 3 years from	30	30	30
In the 4th year	20	20	30
In the 5th year	15	15	30
In the 6th year and above	10	0	10

A real property company is a controlled company that owns or acquires real property or shares in real property companies with a market value of not less than 75% of its total tangible assets. A controlled company is a company that does not have more than 50 members and is controlled by not more than five persons.

Disposal of property to a REIT approved by the SC are exempt from RPGT and stamp duty. Where the approved REIT subsequently sells properties, the RPGT and stamp duty exemption would not apply.

With effect from 1 March 2024, CGT will be applicable on gain on sale of shares in unlisted Malaysian companies and shares in foreign companies which ultimately have investments in Malaysian real property at the following rates:

Share Acquisition Date	CGT rate
Before 1 January 2024	Rate can be: i.10% on net gain; or 2% on gross sales value
From 1 January 2024	10% on net gain

Therefore, gains from disposal of all Malaysian unlisted shares will be subjected to CGT from 1 March 2024 instead.

6 New Zealand

Non-resident investment in New Zealand

Overseas persons may invest in New Zealand (NZ) property directly or through a local company, non-resident company, trust or partnership.

Overseas Investment Office approval

Investments in NZ real property by overseas persons may require consent from the NZ Overseas Investment Office (OIO). The OIO assesses consent applications from overseas investors who intend to:

- acquire significant assets, including through the acquisition of shares, where the consideration or value is >NZD 100 million (higher thresholds apply for certain Australian investors and investors from member countries of certain free trade arrangements); or
- acquire an interest (freehold or a lease of more than 10 years) in 'sensitive' land (e.g., residential land, marine or coastal land, farm land, historic or heritage land or areas adjacent to reserves or water). This includes where the investment is in another entity that holds a relevant interest in 'sensitive land'.

An increase in an existing >25% ownership or control interest past certain threshold limits will also be captured.

In the case of an investment in 'sensitive land', among other things, the overseas investor must demonstrate the benefit(s) that the proposed investment brings to NZ. A national interest assessment may also apply.

As part of obtaining consent, overseas investors must provide tax disclosures for certain investments, and disclose historic penalties for tax avoidance or evasion, and outstanding unpaid tax of NZD 5 million or more in any jurisdiction.

Land transfer tax schedule

Persons who buy and sell property in NZ are required to provide certain details to their property lawyer or conveyancer, including a NZ tax number and their offshore tax identification number (where relevant). The driver for this requirement is to make it easier for Inland Revenue to track the buying and selling of property for investigative purposes.

Real property taxation

Net rental income derived from NZ real property is taxable in NZ at:

- the owner's personal marginal tax rate if the owner is an individual (the highest NZ marginal tax rate is currently 39%);
- a flat rate of 39% if the owner is a trust and the income is not distributed to beneficiaries within a specific tax year (a rate of 33% applies in limited circumstances); or
- a flat rate of 28% if the owner is a company.

Expenses incurred in deriving rental income are generally deductible (subject to various restrictions). These include property costs such as repairs and maintenance, insurance, rates, administration costs and depreciation.

Interest on funding used to acquire the property is generally deductible subject to potential restrictions under any of the thin capitalisation, anti-hybrid or transfer pricing rules.

From 1 October 2021 to 31 March 2024 there were various restrictions on the deductions for interest in respect of residential investment properties (with exclusions for employee or commercial accommodation, farmland, care facilities and retirement villages, as well as newly built residential properties).

From 1 April 2024 to 31 March 2025 the restriction has been reduced allowing a deduction for 80% of interest in respect of residential investment properties. This will increase to a full deduction from 1 April 2025.

Capital expenditure in relation to the property is not deductible. Capital expenditure relating to depreciable property is able to be included in the cost base of the property and depreciated (further details below).

NZ does not have a comprehensive capital gains tax regime. As such, if the property is held on 'capital' account, there should not be any taxable gain or loss on disposal (subject to recovery of depreciation deductions noted below). If the property is held on 'revenue' account, then any gain or loss will be taxed in the same way as other income earned in relation to the property (outlined above).

Generally, property acquired for long term investment for the purpose of earning rental income is regarded as held on 'capital' account. There are some important exceptions to this general rule, including where:

- the property is acquired with a purpose or intention of disposal;
- the person selling the property is in the business of developing land, erecting buildings or dealing in land;
- the person who owns the property is treated under NZ tax rules as associated with another person who carries on a business of developing land, erecting buildings or dealing in land, which could include a significant owner or an entity with shared ultimate ownership that carries on these activities (in either case not limited to activities within NZ).
- residential property is subject to the 'bright-line property rule'. The bright- line property rule, broadly, deems a gain on disposal to be taxable if a residential property (subject to specific exclusions, including a main home exemption) was acquired within 5 or 10 years depending on the acquisition date. The bright-line has recently changed to 2 years for properties sold on/after 1 July 2024.

Tax depreciation

The depreciation rate for buildings with an estimated useful life of 50 years or more is 0% from the 2024/2025 income year. This is consistent with the position from the 2011/2012 income year until the 2019/2020 income year. From the 2020/2021 income year to the 2024/2025 income year, depreciation was available on commercial buildings at a 2% diminishing value rate (or 1.5% straight-line rate). The depreciation rate for residential buildings has consistently been 0%.

Certain components of buildings (such as fixtures and fittings that constitute commercial fit-out (e.g. non-load bearing walls or wiring)) are eligible for higher Inland Revenue-determined depreciation rates. The components of a building eligible for a higher depreciation rate are different depending on whether the building is residential or non-residential.

On disposal, the amounts allocated to land, buildings and other depreciable property for tax purposes generally need to be consistent as between buyer and seller (via agreement or a default statutory mechanism, based on relative market value). Where depreciated assets are sold at a value in excess of the depreciated value, there will be a taxable gain on sale in the year of sale (capped at the amount of depreciation previously deducted). A tax loss can be claimed on the disposal of depreciable property (e.g., fixtures and fittings). However, a taxpayer is only able to claim a tax deduction for a loss made on the disposal of a building in very limited circumstances.

As noted above, capital expenditure in relation to a building is not deductible. The criteria for capitalising costs for accounting purposes is not the same as the criteria for tax purposes. As a result, there are typically items that are expensed for accounting purposes that need to be capitalised for tax purposes and vice versa (and, where appropriate, depreciated for tax purposes).

Transfer pricing

Cross-border related party transactions are subject to transfer pricing (TP) rules. The NZ TP regime generally aligns with the OECD TP guidelines, placing a focus on economic substance over legal form. The onus of proof is on the taxpayer to demonstrate that cross border arrangements are conducted on an 'arm's length' basis. Contemporaneous NZ specific TP documentation is critical and mitigates the risk, on audit, of the 'lack of reasonable care' penalty being applied.

In addition to the general TP rules, NZ has a restricted transfer pricing (RTP) regime which limits the tax deductions available for interest where inbound related party cross-border debt is at least NZ$10m, using a prescribed set of rules. The RTP regime represents a significant departure from OECD principles, which allow for interest to be priced with reference to the actual loan terms and conditions agreed between parties and general arm's length principles. This can lead to a disconnect between the interest rate that the counterparty jurisdiction will expect based on general arm's length principles.

Thin capitalisation rules

A portion of interest expense is disallowed where an entity's debt percentage (interest-bearing debt/total 'net' assets) exceeds both of the following:

- 60% for 'inbound' investment (i.e. non-NZ owned groups) or 75% for 'outbound' investment (i.e. NZ owned groups); and
- 110% of the worldwide group's debt percentage (or 100% in certain circumstances).

The use of a debt-to-net asset percentage differs from many other jurisdictions' thin capitalisation regimes (which tend to monitor an entity's debt-to-equity ratio).

There are certain de-minimis provisions giving full or partial relief. Other concessions allow the debt percentage to exceed 60% for certain infrastructure projects.

Anti-hybrid regime

NZ has had anti-hybrid rules since 2018. The rules are based on OECD principles, and are aimed at eliminating tax benefits arising from hybrid mismatch arrangements. Generally, hybrid mismatch arrangements are arrangements that take advantage of the differences in tax treatment of an instrument, entity or branch across different jurisdictions. They can include a deduction where there is no income inclusion by the recipient or where there is a deduction for the same expense (or portion thereof) in more than one jurisdiction. The rules are extremely complex, whilst the legislation and guidance with respect to these rules continues to develop.

Taxpayers have annual disclosure requirements with respect to the anti- hybrid rules. Inland Revenue also expects non-NZ headquartered taxpayers to obtain appropriate written confirmations from their offshore group tax function confirming the application of the rules.

Tax losses

NZ tax losses incurred may be carried forward and used to offset income in future income years provided there has been (a) at least 49% continuity in the ultimate shareholding from the year in which the losses are incurred to the year in which they are used to offset profits, or (b) the requirements of the 'business continuity test' (BCT) are met. Under the BCT, tax losses can be carried forward where there is no 'major change' in the nature of the taxpayer's business activities, generally for five years after a change in ownership. Tax losses cannot be carried back.

Tax losses arising from residential rental properties are 'ring- fenced'. Taxpayers may only offset residential rental property tax losses against other residential property-related income (and not against other income such as salary or other business income). Residential rental property tax losses may be carried forward.

Goods & Services Tax

Goods and services tax (GST) registration is required if income from non-residential rental income is, or is expected to be, over NZD 60,000 for any 12-month period. If GST registration is required, GST is payable on rental income derived from commercial or industrial property rental but no GST is imposed on residential rental property.

Most sales of non-residential land (and buildings) between GST registered persons are zero-rated for GST purposes. Depending on whether you or your NZ investment entity is registered for GST, and the past and intended use of the property (i.e., whether for a GST taxable activity or not), the purchase or sale of the property may or may not be subject to GST. It is important to seek GST advice from your advisor prior to any transaction.

7 Philippines

Ownership of real estate

Generally, foreign individuals or corporations cannot privately own land in the Philippines. However, foreign investors can acquire up to 40% of the equity in a domestic company that owns land in the Philippines. Moreover, foreign individuals or companies can own 100% of a condominium unit, although the condominium units owned by foreign investors should not exceed 40% of the total units in a particular condominium project.

A natural born citizen who is now a naturalized citizen of a foreign country may acquire land in the Philippines, but subject to the following limitations:

a. for business purposes, up to 5,000 square meters of urban land or up to 3 hectares of rural land, and
b. for residential purposes, up to 1,000 square meters of residential land or up to 1 hectare of agricultural land.

Ownership of real properties is normally represented by titles issued in the name of the owner. Registration of title in the Register of Deeds constitutes notice to the world that the property is owned by the person in whose name it is registered.

Leasehold

Sale/acquisition and lease of real estate property

Although foreigners are prohibited by the Constitution from acquiring lands in the Philippines except by hereditary succession, they can lease real property in the Philippines. If the lease is for investment purposes, the maximum period allowed for the duration of leases of private lands to (a) foreigners or, (b) foreign-owned entities not qualified to acquire private lands is 50 years, renewable once for another 25 years. For other purposes, the maximum period allowed is 25 years, renewable for another 25 years.

Every lease of real estate must be recorded in the Registry of Property for it to be binding upon third persons.

Capital gains tax (CGT)

Sale of real property shall be subject to a capital gains tax (CGT) of 6% on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business and are treated as capital assets.

Capital assets are defined as property held by the taxpayer (whether or not connected with his trade or business), but not including the following:

- Stock in trade or other property of a kind which would properly be included in the inventory, if on hand at the close of the taxable year;
- Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
- Property used in trade or business, of a character which is subject to allowance for depreciation; and
- Real property used in trade or business of the taxpayer.

Ordinary income tax/expanded withholding tax

Sale of real property classified as ordinary assets, however, shall be subject to ordinary income, and any gain/income from the sale or exchange of such real properties shall be subject to the 20%/ 25% normal corporate income tax (CIT) or 2% minimum corporate income tax (MCIT), whichever is higher. The rate of 20% CIT shall be applicable to domestic corporations with a net taxable income not exceeding PHP 5 million, and with a total assets not exceeding PHP 100 million (excluding the land on which the taxpayer's office, plant and equipment are situated).

The gain is the difference between the gross selling price or the fair market value, whichever is higher, and the cost of the land. The basis of the tax shall be the gross selling price or fair market value of the land and/or building, whichever is higher.

If the real property is sold at less than fair market value, in addition to the income tax liability, the Bureau of International Revenue (BIR) may also assess a donor's tax at the rate of 6% on the supposed gift based on the excess of the fair market value over the selling price, unless the taxpayer can prove that the transaction is bona fide and without any intent to evade tax.

Value-added tax (VAT)

Generally, sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business is subject to 12% VAT. The VAT shall be based on the gross sales of the real property sold, or leased.

The following sales are exempt from VAT:
- Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business;
- Sale of real property utilized for low-cost and socialized housing as defined by Republic Act (RA) No. 7279, as amended;
- Sale of house and lot, and other residential dwellings with selling price not more than PHP 3,600,000;
- VAT may be imposed on incidental sales; and
- Lease of a residential unit with a monthly rental not exceeding PHP 15,000 per month, regardless of the aggregate rental amount during the year.

Documentary stamp tax (DST)

DST is imposed on the privilege of entering into certain transactions through the execution of specific instruments or documents as follows:
- Sale, conveyance and donation of real property (PHP 15 for each PHP 1,000 [effectively 1.5%] is levied on the consideration paid for the real property, or its fair market value, whichever is higher)
- Lease agreements on land and other tenements (PHP 6.00 for the first PHP 2,000 + PHP 2.00 for every PHP 1,000 thereafter is levied for each year of the agreement)
- Mortgages, pledges, and deeds of trust (PHP 40.00 for the first PHP 5,000 + PHP 20.00 for every PHP 5,000 thereafter is levied on the amount secured)

Capital gains tax (CGT)

Sale of shares

The sale of shares in a real property company not listed on the Philippine Stock Exchange (PSE) by all types of taxpayers is subject to a flat capital gain tax (CGT) of 15%. If the shares are listed and traded through the PSE, then their sale will be subject to a stock transaction tax (STT) of 0.6% on the gross selling price or gross value in money of the shares of stocks.

If the seller is a resident of a country with which the Philippines has a tax treaty, then the seller may be exempt from CGT under the capital gains article of that particular treaty. However, under a majority of Philippine tax treaties, the exemption will not apply if the assets of the issuing company consist principally of real property.

Documentary stamp tax (DST)

The sale, barter or exchange of shares in a real estate company, which are not listed and traded through the PSE, is subject to DST at the rate of PHP 1.50 for each PHP 200, based on the par value of the shares (effectively 0.75%). However, in the case of shares without par value the DST levied shall be 50% of the DST based on the original issuance of the said shares.

On the other hand, if the shares are listed and traded through the PSE, the sale, barter or exchange of said shares is exempt from DST.

Transfer Pricing

Transfer Pricing

In the Philippines, Section 50 of the National Internal Revenue Code ("Tax Code") authorizes the Commissioner of Internal Revenue to adjust, allocate, or apportion the revenues and expenses of associated enterprises to reflect their appropriate taxable income. Section 50 is exercised applying the arm's length principle as the most appropriate standard to determine transfer prices of related parties.

Revenue Regulations (RR) No 2-2013 provided guidelines in applying the arm's length principle for cross-border and domestic transactions between associated enterprises. These are largely based on the principles set out in the Organization for Economic Co-operation and Development ("OECD") Transfer Pricing Guidelines. Under the Philippine TP Guidelines, transfer pricing documents must be contemporaneous, i.e., the documents should exist or be brought into existence at the time the associated enterprises develop or implement any arrangement that might raise transfer pricing issues, such that in the event of a tax examination, those transfer pricing documents must be made available upon the BIR's request.

Revenue Audit Memorandum Order No. 1-2019 (TP Audit Guidelines) introduced standardized audit procedures and techniques in the BIR's conduct of audit of taxpayers with related party and/ or intra-firm transactions. It further provided guidelines on business restructuring within a multinational group, intra-group services, intangible asset transactions, cost contribution arrangements, and interest payment transactions.

RR No 19-2020 prescribed the use of the new BIR Form No 1709 replacing BIR Form 1702H or the Information Return on Transactions with Related Foreign Persons, series of 1992. In this regard, RR No 19-2020 provided rules in determining related parties and related party transactions in accordance with PAS 24, the required disclosures on related party transactions which shall be presented separately per related party, and the guidelines on the submission of BIR Form No 1709 and its supporting documents as an integral part of the Annual Income Tax Return of the taxpayer.

Tax Authorities further issued Revenue Memorandum Circular (RMC) No. 76-2020 which provides further clarification on certain issues on the filing of BIR Form No. 1709 regarding the streamlined procedures for the submission of the BIR Form No 1709, TP documentation and other supporting documents by providing, inter-alia, safe harbors and materiality thresholds.

Real Estate Investment Trust (REIT)

The Real Estate Investment Trust (REIT) Act of 2009 defined a REIT as a stock corporation formed for the purpose of owning income-generating real estate assets. It is a type of investment instrument that provides a return to investors derived from the rental income of the underlying real estate asset. A REIT must be registered with the SEC as a stock corporation with a minimum paid-up capital of PHP300m.

In the first quarter of 2020, the SEC issued its revised regulations requiring a 1/3 Minimum Public Ownership of a REIT. Among others, the revised regulations also require the appointment of a REIT fund manager and property manager and the creation of a related party transactions committee.

The act extended various incentives to REITs as long as the qualifying conditions are complied with. A REIT that owns land in the Philippines must comply with foreign ownership limitations imposed under Philippine laws. A REIT may also own foreign real estate property, provided that such investment does not exceed 40% of the REIT's deposited property and only upon special authorization from the SEC.

Real Property Taxes

Provinces and cities, as well as municipalities within Metropolitan Manila, are primarily responsible for the levy and collection of real property tax (RPT).

All owners of real property are required to file with the provincial, city, or municipal assessor a sworn declaration of the current and fair market value of their real property once every three years. Where any owner fails or refuses to make such a declaration, the assessor concerned shall do so in the name of the defaulting owner.

The basis of the RPT shall be the assessed value of the property, which is computed as a certain percentage (i.e., assessment levels based on classification of the real property at rates not exceeding those prescribed under the Code) of the fair market value of the real property (as fixed by ordinances enacted by the Sanggunians of the province, city, or municipality concerned). Moreover, real property is classified, valued and assessed on the basis of its actual use, regardless of location, whoever owns it and whoever uses it.

A province, city, or a municipality shall fix a uniform rate of basic RET, applicable to their respective localities, as follows:
- In the case of a province, at the rate not exceeding 1% of the assessed value of real property; or
- In the case of a city or a municipality, at the rate not exceeding 2% of the assessed value of real property.

In addition to the basic real property tax, a province, city, or a municipality may impose the following:
- An additional levy for the special education fund equivalent to 1% of the assessed value of real property;
- An additional ad valorem tax on idle lands in the form of an annual tax at a rate not exceeding 5% of the assessed value of the property.

Pending Bills

Currently, there are no pending major bills in relation to taxation of real properties. On 13 June 2024, Republic Act No. 120001 or the Real Property Valuation and Assessment Reform Act (RPVARA) which aims to promote the development of a just, equitable, and efficient real property valuation system was signed into law.

America

1 Argentina

Income tax rate

For fiscal periods which start in 2024, a progressive rate for the Income Tax has been established (25%, 30% or 35% considering the level of tax result). The maximum tax rate of 35% will be applicable when net tax results exceed ARS 347.035.230,79. This amount will be annually updated by inflation rates.

Sale of Stock by non-residents and dividend distributions

Transfer of Argentine shares between non-residents is currently subject to non-resident capital gains tax (NRCGT). Thus, foreign beneficiaries are subject to a 13.5% effective income tax withholding rate on gross proceeds or, alternatively, a 15% income tax on the actual capital gain if the seller's cost basis can be duly documented for Argentine tax purposes.

Non-residents are exempt from NRCGT on the sale of shares of publicly traded companies, but only to the extent that the shares are sold through the local Stock Exchange. Furthermore, non-residents are exempt from tax on capital gains from the sale of corporate bonds issued in an IPO. The yields from those bonds are also exempt from Argentine tax. In all cases, the exemption is conditioned on the foreign seller being a resident in a jurisdiction that has an exchange of information agreement with Argentina and that the funds come from these jurisdictions.

Indirect transfer of Argentine assets (including shares) are subject to indirect NRCGT provided that i) the value of the Argentine assets exceed 30% of the transaction's overall value and ii) the equity interest sold in the foreign entity exceeds 10%. The tax is due if any of these thresholds were met during the 12-month period prior to the sale. The indirect transfer of Argentine assets, however, is only subject to the tax to the extent those assets were acquired after 1 January 2018. Furthermore, indirect transfers of Argentine assets within the same economic group do not trigger taxation.

A withholding tax on dividend distributions has been established since 2018, at 7%. In addition, a 35% 'equalization tax' applies to dividend distributions made out of earnings accumulated prior to 1 January 2018 that exceeded tax earnings as of the year-end prior to the relevant distribution.

Rollover of fixed assets

Income Tax Law establishes that in the event of disposal and replacement of fixed assets, the gain obtained from that disposal may be applied to the cost of the new fixed asset. Therefore, the result is charged in the following years, through the computation of lower amortization and/or cost of a possible future sale of new goods. In case of real estate, this procedure only takes place when the property was affected to the obtaining of taxable income (as fixed asset or was subject to lease) at least (two) years before its disposal.

The use of real estate trust

The use of real estate trusts is regulated by the Civil and Commercial Code, which provides a very flexible legal framework. It has been the preferred vehicle for real estate projects in Argentina and is commonly used in building construction, especially in structures where small and medium-sized investors are involved. There are no major taxation differences compared to other corporate entities. Law 27,440 establishes tax reductions and reduced tax rates for trusts and investment funds constituted for real estate developments, to the extent that certain requirements are met.

The main advantages are the following: i) Revenue recognition for income tax purposes is deferred up to the moment the trust effectivity makes a profit distribution to its participants; ii) Certain real estate trusts with social-productive aims are benefited with a reduced 15% income tax rate.

Transfer Pricing

All related-party cross-border payments have to comply with the arm's length principle. Failure to present appropriate documentation to the tax administration may result in the non-acceptance of group charges and penalties for tax purposes. The 2017 – tax reform introduced a detailed definition of a permanent establishment (PE): a building site, a construction, assembly or installation job or supervision activities in connection therewith but only if such site, project or activities last more than six months in Argentina.

Tax Treaty Network

Argentina has concluded more than 20 tax treaties for the avoidance of double taxation with various countries, under which reduced withholding tax rates can generally be applied on dividends, interest, royalties and certain capital gains. It is strongly recommended to verify substance requirements to apply double tax treaty benefits.

Tax losses carried forward

Losses may be used to offset Argentinean profits arising in the same company. Any amount of tax losses that could not be used in the year in which they were incurred can be carried forward for five years, but they cannot be carried back. Losses in transfers of shares generate specific tax loss carry-forwards and may only be used to compensate profits of the same origin.

Thin capitalization rule

The deduction on interest expense and foreign exchange losses with local and foreign related parties is limited to the higher amount between i) 30% of the taxpayer's taxable income before interest, foreign exchange losses and depreciation; ii) The amount fixed by the Regulatory Decree (ARS 1 million). The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilized deduction capacity for three years.

Foreign exchange control regulations

On 1 September 2019, the Argentine government issued two relevant measures: Decree 609/2019 and Communication "A" 6770 of the Central Bank of the Argentine Republic ("BCRA", for its Spanish acronym). In general terms, both regulations were aimed to restore the Foreign Exchange Control Regime, therefore allowing the administration to further restrict and control all transactions carried out in foreign currency.

In this sense, a local company cannot access the Foreign Exchange Market ("FX Market") to obtain foreign currency to buy real estate outside of Argentina. It would only be able to do so if it has Free Availability Funds ("FAF") deposited abroad.

The possibility of accessing the FX Market to obtain foreign currency to invest in real estate in Argentina is only reserved for human persons, for a certain amount, as long as these funds are applied simultaneously to the purchase of properties in the country intended for single, family housing and permanent occupation, and these are funds from mortgage loans granted by local financial entities or if the purchase transaction is completed within the framework of the Procrear Program.

Consequently, if a resident company needs to invest in real estate in Argentina, it can only do it if it has FAF deposited abroad. To obtaining FAF, the local company can receive a financial loan abroad. It is to be noted that the local company does not have the obligation to bring into and settle the foreign currency of the financial loan through the FX Market.

In this regard, it is possible to bring into the FX Market the foreign currency to perform an exchange operation for the currency to be deposited in local bank accounts (without being settled), to be utilized later to buy real estate in Argentina. Nevertheless, it must be considered that the foreign exchange regulation only allows access to the FX Market for the repayment of capital and interest if the funds of the financial loan have been brought into and settled through the FX Market.

Besides, if the lender is a foreign related party, unless certain exceptions, for the payment of capital and interest on financial loans through the FX Market, prior approval from the BCRA is required until 31 December 2024. If the lender is a foreign third party, the local company must, as mentioned in the previous paragraph, bring into and settle the foreign currency through the FX Market, as well as comply with certain other requirements established in the norm.

Moreover, for the purpose of obtaining FAF, the local company can receive a capital contribution abroad from non-resident entities and there is no obligation to bring into the country the foreign currency of such contribution. The money can remain outside the country and be used to pay for the purchase of a property in Argentina. Because of this, it is also possible for the funds in foreign currency to be brought into through an exchange operation (without being settled) to be then deposited in a local bank account in foreign currency, for it to be used to buy real estate.

If a local company receives a capital contribution from its non-resident shareholders, in the future the latter may seek a repatriation of the investment or collecting profit and dividends from the local entity. However, the local company that intends to access the FX Market to purchase and/or transfer abroad foreign currency for a repatriation of direct investments will need the prior formal approval of the BCRA. Specifically, if the local company brought the foreign currency of a capital contribution by an exchange operation in which there was no settlement of said funds through the FX Market, the prior formal approval of the BCRA will be needed to access the FX Market to repatriate. Such prior formal approval will not be necessary to carry out a capital repatriation if the funds of the capital contribution were brought into and settled in the FX Market, because in that situation, and complying with certain requirements of the rule, access to FX Market may be allowed.

To make a dividend payment through the FX Market, prior formal approval of the BCRA is also required, with certain exceptions, for instance: the local company receives a new capital contribution through the FX Market and it seeks a dividend payment of up to 30% of such new capital contributions. In addition, the profits and dividends correspond to audited and closed balance sheets and the total amount paid for this concept is not higher than the corresponding amount in local currency, according to the distribution that was determined in the shareholder's meeting; among other requirements.

Another way to obtain FAF to invest in real estate in Argentina is through transactions with securities in the Stock Market. But operating in the stock exchange market may imply restrictions to access the FX Market to make payments abroad. Accessing the FX Market for residents to pay debts and other obligations in foreign currency contracted with other residents and agreed as of 1 September 2019, onwards is not allowed, unless such obligations have been implemented through public records or deeds by 30 August 2019.

In all the cases in which the prior formal approval of the BCRA is required, it is to be noted that BCRA's authorizations are granted on a null or a very restricted basis. Consequently, in each project a careful analysis should be performed.

Corporate Law Impacts

In case the purchaser of land is a foreign company, the purchase of real estate may either be treated as either an 'isolated act' or as an act evidencing some degree of continuous presence in Argentina. Recent administrative proceedings and judicial case law tend to treat the purchase of real estate property by foreign companies under the second view and, hence, a permanent representation of the company in the country (e.g., a subsidiary or a branch) may be required by the local Office of Corporations.

Since 26 March 2024, the Office of Corporations through the General Resolution No. 10/2024, modifies the current regime regarding foreign companies, leaving the general resolution 08/2021. The new measures include the possibility that companies incorporated abroad act through "investment vehicle" companies, the significant decrease in demands for compliance with the annual reporting regime, the elimination of the requirement of having to provide investment plans for companies incorporated under the terms of article 123 of Law 19550 and the recognition of the registration of companies incorporated in the foreigner who had been registered in provincial jurisdictions.

Below, we detail the main modifications introduced by the Office of Corporations through the General Resolution No. 10/2024:

1. Restores the article repealed by Office of Corporations Resolution No. 08/2021, allowing the companies that are part of a group can prove compliance with the notoriety and knowledge requirements through the presentation of a certification accountant.
2. Restores the possibility that corporations coming from countries,domains, jurisdictions, territories, states partners and regimes special taxes, considered not cooperators to end of the transparency non-collaborators in the fight against washing of assets and financing of the terrorism, they can request your registration under a criterion restrictive.
3. Restrict enrollment in cases of "off shore" companies.

Once per year, the Office of Corporations requests a sworn declaration of the final beneficiary owner ("UBO") from the companies registered. Since 19 October 2021, the Financial Information Unit ("UIF") Resolution 112/2021 has lowered the threshold to be considered an UBO from 20% to 10%, and since 23 November 2021, the Office of Corporations General Resolution No. 17/2021 has adopted the same criterion. In this sense, the final beneficiary is understood to be human persons who have at least ten percent (10%) of the shares or voting rights of the company, or who by other means exercise the final, direct or indirect control of the company registered in the Argentine Republic. Whenever it is not possible to identify any individual as UBO, then it shall be considered as UBO the individual who is in charge of the management, administration or representation of the legal entity head of the group and its personal information must be disclosed in the UBO Affidavit.

Rural land ownership law

Law No. 26,737 that limited the right of ownership over rural land and investments in the sector was repealed by the Decree 70/2023.

Surface Right in the new Civil and Commercial Code

A surface right involves a temporary property right on real property not personally owned, which allows its holder to use, enjoy and dispose of the property subject to the right to build (or the right on what is built) in relation to said real property. The maximum legal term for this surface right is 70 years. The surface right holder is entitled to build and be the owner of the proceeds. In turn, the landowner has the right of ownership provided that he does not intervene on the right of the surface right holder.

Simplified Companies

Law 27,349 provides different new tools for developing entrepreneurial capital, like the Simplified Companies. They have been created for providing every entrepreneur the possibility of incorporating a company, obtaining its tax code and a bank account in a short period and with a much more flexible structure than the one in force for other legal types provided by Argentine Law 19550. Also, any existing company incorporated in Argentina under any of such existing legal types is entitled to amend its by-laws to adopt the Simplified Companies legal type.

A specific General Resolution of the Office of Corporations (22/2020) established an exchange information regime between such public authority and the Real State Registry of the City of Buenos Aires, extended to any other jurisdiction in this country, to determine the effective economic activity using such real estate in this territory, when a Simplified Company is entitled. As a result of such control if an existence of activity is detected, the Office of Corporations must take judicial actions to be responsible to the shareholder/s, in a direct way, including the dissolution and wind-up process of the Simplified Company. It is important to mention that General Resolution of the Office of Corporations 22/2020 was repealed by General Resolution of the Office of Corporations 15/2024 as of 27 February 2024. This change makes more suitable the type of companies mentioned for the business described.

Limits to the Property Right in the Civil and Commercial Code

The Civil and Commercial Code establishes that the exercise of individual rights over goods must be compatible with the Collective influence rights. Such exercise must meet national and local administrative laws passed upon the public interest and must affect neither the performance nor the sustainability. of flora and fauna ecosystems, biodiversity, water, cultural values, landscape, among others, according to the criteria foreseen in the particular legislation. This broad limitation over the exercise of property rights in Argentina is still to be interpreted and applied by local courts.

2 Canada

Investment structures

Foreign investors (also referred throughout as non-residents) may invest in property in Canada using a Canadian legal entity (corporation, partnership or trust) or may acquire property directly.

Corporations resident in Canada are subject to Canadian tax on worldwide income. Non-resident corporations are subject to tax on income derived from carrying on a business in Canada (generally through a permanent establishment located in Canada) and on capital gains from the disposition of taxable Canadian property.

Partnership income is determined at the partnership level and the partners are taxed on their share of the partnership income, whether or not such income is distributed.

Income of a trust resident in Canada that is paid or payable to a beneficiary is generally deductible in computing the trust's taxable income and is included in the beneficiary's taxable income.

Corporate income tax rates

The combined federal and provincial/territorial corporate income tax rates for the 2024 taxation year range from 23% to 31%, depending on the province or territory. The combined rates include the 15% federal rate plus the provincial or territorial rate which is applied when income is earned in one of Canada's ten provinces and three territories.

Capital cost allowance (tax depreciation)

Non-residents are generally subject to the same rules relating to depreciable property and capital cost allowance ('CCA') as for residents of Canada. A non-resident person cannot claim CCA in respect of property situated outside Canada. Depreciation determined for accounting purposes is not deductible.

CCA on rental buildings, including additions or component replacements of a capital nature, is calculated on a declining balance basis at a maximum annual rate of 4% (or 6% for certain Canadian non-residential buildings, or parts thereof, constructed after 19 March 2007). The Government of Canada has released draft legislation to introduce a CCA rate of 10% for new eligible purpose-built rental projects that begin construction after 15 April 2024 and before 2031 and are available for use before 2036. Eligible property will be new purpose-built rental housing that is a residential complex (1) with at least four private apartment units, or ten private rooms or suites, and (2) in which at least 90% of residential units are held for long-term rental.

Eligible property acquired after 20 November 2018 and available for use from 2024 to 2027 may qualify for accelerated CCA, to effectively allow for that year the application of the full CCA rate to the cost of the additions (accelerated CCA will phase out after 2027, after which time the first year CCA is limited to 50% of the full-year maximum amount).

CCA is calculated on a pool basis, with separate tax classes provided for various types of property. Most rental properties (i.e. buildings costing more than CAD 50,000) are required to have separate tax pools so that CCA is claimed on a property-by-property basis and not on a combined pool of properties.

CCA is a discretionary deduction, up to an annual maximum amount, but cannot be claimed on a rental property to create or increase a tax loss unless the CCA claim is being made by a corporation, the principal business of which is the leasing, rental, development or sale of real property, or a partnership, the partners of which are all such corporations.

Thin capitalisation rules

The Canadian thin capitalisation rules may apply when the lender to a Canadian corporation or trust (or a corporation or trust that is not resident in Canada but carries on business in Canada or has elected to pay tax on passive income from Canadian real property as if it was a resident of Canada) is a non-resident person that alone or with other related persons owns more than 25% of the Canadian corporation's shares (or that with such persons has more than 25% by value of all interests in the trust), and interest expense on the loan would otherwise be deductible to the corporation or trust. If the ratio of these debts to a measure of equity exceeds 1.5/1, the interest on the excess is not deductible.

Special rules address situations involving such debts owing by a partnership. The rules can also apply in respect of certain back-to-back loan or secured guarantee arrangements in respect of third-party debts that would otherwise not be subject to the thin capitalisation limitations.

Interest expense of a Canadian corporation disallowed under the thin capitalisation rules will be deemed to be a dividend subject to Canadian non-resident withholding tax of 25%, which may be reduced under a tax treaty.

The legislation relies on the use of various defined terms and significant uncertainty may arise due to many interpretive issues. Careful consideration of all financing arrangements is required.

The Government of Canada has enacted legislation for the Excess Interest and Financing Expense Limitation ("EIFEL") rules. The EIFEL rules apply to taxation years beginning after 30 September 2023.The rules limit interest deductibility in Canada, are generally consistent with the recommendations under BEPS Action 4, and apply in addition to existing interest limitations including the thin capitalisation rules. The rules limit the amount of deductible net interest expense for a corporation (and a trust, or Canadian branch of a non-resident corporation or trust, as well as such non-resident entities that earn passive rental income in Canada) to no more than a fixed ratio of its 'tax EBITDA'.

The ratio is 40% for taxation years beginning after 30 September 2023 and before 1 January 2024 and 30% for taxation years beginning on or after 1 January 2024. A 'group ratio' rule allows a taxpayer to deduct interest that exceeds the fixed ratio if certain criteria are met. If actual interest expense in a year is less than the maximum allowable amount, this excess capacity can be carried forward 3 years. Interest denied can generally be carried forward by Canadian resident corporations or trusts, or non-resident corporations or trusts that carry on business in Canada, indefinitely and deducted to the extent the taxpayer has excess capacity under the rules in that carryover year.

The Government of Canada has released draft legislation to provide an elective exemption for the EIFEL rules not to apply to certain interest and financing expenses relating to debt used to finance purpose-built rental housing.

Disposition of property by non-residents

A non-resident that disposes of taxable Canadian property (TCP) that is held as capital property is subject to Canadian tax on the taxable portion of any resulting capital gain (proceeds of disposition less capital cost of the property). The Government of Canada has introduced draft legislation to increase the taxable portion of capital gains from one half to two thirds for capital gains realised after 24 June 2024. TCP generally includes real property situated in Canada and shares of the capital stock of an unlisted corporation, or an interest in a partnership or trust, if at any time during the previous 60-month period, more than 50% of the value of the share or interest was derived from real property situated in Canada.

In addition, the full amount (if any) of the lesser of the proceeds of disposition of Canadian depreciable property that is TCP (e.g. a building) and the property's original capital cost over the property's undepreciated capital cost is taxable to the non-resident as recaptured depreciation.

When the TCP is held on income account rather than as capital property (e.g. inventory), the full amount of any profit from a disposition, net of applicable expenses, is taxable in Canada, subject to possible tax treaty relief.

Generally, a non-resident vendor of TCP must report the disposition to the Canada Revenue Agency (CRA) and obtain a clearance certificate in respect of the disposition. If no certificate is obtained, the purchaser is required to withhold and remit to the CRA either 25% (in the case of sale of land that is capital property; the Government of Canada has introduced draft legislation to increase the rate to 35% to reflect the increase to the capital gains inclusion rate) or 50% (in the case of land that is not capital property, or of a building or other depreciable property) of the gross sales proceeds. Relief from the reporting and withholding requirements may be available in certain cases. In addition to the federal reporting and withholding obligations noted above certain provinces within Canada have separate reporting and withholding requirements, subject to available relief provisions.

Losses carried forward

Losses incurred in a taxation year from a business carried on in Canada are deductible from income, other than passive income from property earned by a non-resident. If these losses are not used in the year they are incurred, they can be carried back three years and forward 20 years. However, losses of a non-resident from a business carried on outside Canada, or from a passive interest in Canadian real property, are not deductible in Canada.

Capital losses, resulting from the disposition of taxable Canadian property of a capital nature, can be carried back three years, and forward indefinitely, to reduce taxable capital gains realised on the disposition of taxable Canadian property in those years.

Withholding tax

Certain amounts paid or credited by a Canadian resident entity to non-residents are subject to withholding tax of 25% of the gross amount paid or credited. These amounts may include interest paid to related parties, dividends, rents, or royalties. The withholding tax rate may be lower when the payment is made to a resident of a country with which Canada has a tax treaty.

Interest paid to arm's length non-resident lenders is generally exempt from Canadian withholding tax, unless paid in respect of a participating debt arrangement.

Additionally, a non-resident that makes payments to another non-resident may be deemed to be a Canadian resident for the purposes of withholding tax, in respect of payments made to the other non-resident person to the extent that those payments are deductible in computing the non-resident payer's Canadian-source income (including passive rental income).

Transfer Pricing

Canadian transfer pricing legislation and administrative guidelines are generally consistent with OECD Guidelines and require that transactions between related parties be carried out under arm's length terms and conditions.

Land transfer tax, registration fees, and property tax

Various provinces and territories and some Canadian municipalities levy a land transfer tax or registration fee on the purchaser of real property (land and buildings) within their boundaries. The tax is expressed as a percentage, usually on a sliding scale, of the sales price or the assessed value of the property purchased.

Rates may be up to 5% of the property value depending on the city in Canada and depending on whether the property is residential or non-residential. The tax is generally payable at the time the legal title of the property is registered or on the transfer of a beneficial interest.

To address issues of unaffordability of residential housing in certain cities in the provinces of Ontario and British Columbia, local governments have implemented additional transfer taxes where non-residents of Canada acquire residential property. Foreign entities and certain taxable trustees that purchase residential property may be subject to additional property transfer tax (in addition to the provincial and municipal land transfer tax), with rates up to 20% to 25% of the property value.

Sales tax

The Underused Housing Tax is a federal annual 1% tax on the value of certain non-Canadian-owned residential real estate considered to be vacant or underused. Certain exemptions may be available. In addition, certain cities and provinces have similar vacancy tax measures generally ranging from 1 to 3%, and are applicable in addition to the Underused Housing Tax. These taxes should be carefully considered when acquiring residential property in Canada.

In addition, most cities and towns impose an annual realty and/or business tax on real property. These taxes are based on the assessed value of the property at rates that are set each year by the various municipalities.

Residential Real Property Ownership Restrictions

The 5% federal goods and services tax (GST) will apply on the purchase of real property (except, in most situations, used residential property) and on certain expenses incurred in connection with the operation of the property, although the GST paid is usually recoverable (subject to significant restrictions in respect of residential rental properties). In most cases, a landlord is required to collect and remit GST on commercial rents received. However, a non-resident vendor of real property is not generally required to collect GST on the sale of real property.

In addition, some provinces have harmonised their sales taxes with the GST. The harmonised sales taxes (HST) function, in the same manner as the GST but with a higher rate of between 13% and 15%.

In 2024 the Government of Canada implemented an enhanced GST/HST rebate for newly constructed multi-unit residential rental properties that begin construction after 13 September 2023 and before 1 January 2031, and are completed by 31 December 2025. The rebate rules are complex but seek to offset the GST/HST which otherwise become payable by the builder on a deemed sale of a newly constructed rental housing on the earlier of (1) the day construction or substantial renovation is substantially completed, and (2) the day possession or use of a unit is given to a person pursuant to a lease, license or similar arrangement.

Effective 1 January 2023 foreign-controlled commercial enterprises and individuals who are not Canadian citizens or permanent residents are prohibited from acquiring residential property in Canada for a period of two years, subject to certain exceptions.

Also effective 1 January 2023, profits arising from certain dispositions of properties owned for less than 12 months are deemed to be business income, rather than a capital gain.

3 Mexico

Tax developments

Mexico has enacted relevant tax reforms in the last 5 years that introduced changes in the Mexican Income Tax Law, Value-Added Tax Law and Mexican Federal Tax Code meant to incorporate fundamentals of the OECD base erosion and profit shifting (BEPS) initiative.

Books vs. tax depreciation

For book purposes, assets can be depreciated using different methods. For income tax purposes, fixed assets are depreciated on a straight-line basis applying the rates established by law. In addition, tax depreciation is adjusted for inflation, resulting in differences with the amount of the book depreciation.

Review book and tax depreciation, including the adjustment for inflation in the latter, and determine whether the tax depreciation rates are the highest allowed. For taxpayers in a tax loss position, a decrease in the depreciation rates could be analyzed.

Alternative minimum tax

There is not an alternative minimum tax in Mexico.

Asset impairment

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

Check that no tax deduction from impairment of the assets is being taken by the company. Furthermore, confirm that impairment adjustments are not from obsolescence of fixed assets, because a tax deduction may be included.

Goodwill

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

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

Non-deductibility of payments made to preferred tax regimes

Any type of payments made by a Mexican taxpayer to a non-Mexican resident that is a) a related party or b) through a structured agreement, would not be deductible for income tax purposes if such income obtained by the non-Mexican resident is subject to a preferred tax regime (PTR) under Mexican rules. Some exemptions to this rule would apply subject to certain requirements.

A PTR would be deemed to exist when the income is not subject to taxation in a foreign jurisdiction or if the effective tax due and paid in the foreign jurisdiction is lower than the 75% of the 30% corporate income tax rate that would be due and paid under Mexican rules (lower than 22.5% under Mexican rules).

Check if payments are made to a PTR and determine the corresponding deductibility for Income Tax Purposes. Support with contemporary documentation would be relevant.

Classification of real estate acquisition	Real estate must be classified for both book and tax purposes as inventory or fixed assets, depending on whether it is acquired for subsequent sale or for development. This will impact the way in which the real estate is deducted: as cost of goods sold (inventory) or via depreciation (fixed assets). Review how the real estate is classified and determine how it must be deducted and whether this classification makes sense with respect to the business.
Thin capitalization rules	Interest derived from debts granted by foreign related parties of the taxpayer that exceed three times its shareholders equity will not be deductible (several special rules apply). Review the thin capitalization position of the company and also the computation to determine the non-deductible interest, if this is the case.
Limitation on deducting interest expense	The Mexican tax laws provide a in limitation on the deduction of interest expense. Net interest arising from all financing cannot exceed 30% of an adjusted taxable income (ATI) as defined in the Mexican Income Tax Law. ATI is calculated similarly to EBITDA. Interest expense that exceeds this threshold can be carried forward in the following ten years. Additionally, financing activities derive in a taxable or deductible annual inflationary adjustment (AIA). Also, financing activities carried out in different exchange rates would derive in a taxable gain or deductible loss.
Investments in Mexico through foreign transparent vehicles and foreign transparent vehicles deemed as Mexican tax residents.	Review the debt position of the company and the computation to determine any non-deductible interest, as well as review the effect in the AIA and the foreign exchange gain or loss. Mexican domestic legislation disallows to look- through transparent entities or vehicles to determine their tax implications from its income obtained in Mexico (even if their owners consider such income as taxable on its residence jurisdictions), except otherwise is stated under a tax treaty. An exemption rule was enacted for public investment funds to the extent that certain requirements are met (some registrations and reporting will apply with the Mexican tax authorities for this purpose). Also, it has now been established that transparent entities or vehicles whose effective place of management is located in Mexican territory would be considered as Mexican residents for tax purposes. Review and analyze in detail the characteristics of the investment vehicle to confirm if this provision would apply and, if applicable, confirm if there is an exemption that can apply to the relevant investment structure.
Reportable schemes	Tax advisors have the obligation to disclose to the Mexican tax authorities certain listed reportable schemes described in the Mexican Federal Tax Code that were carried out with the purpose to obtain a direct or indirect tax benefit for taxpayers. In some instances, the taxpayer will be the party obligated to report the transactions.

The reporting requirements apply not only to transactions carried out as of 1 January 2021 (date in which provisions regarding reportable schemes became effective) but also to previously implemented transactions that continue to have tax benefits post-2020.

Prepare an inventory of transactions that may fall in the definition of reportable schemes and if any, ensure that the informative returns are duly filed.

General anti-abuse rule (GAAR)

A general anti-abuse rule (GAAR) is included in the Mexican Federal Tax Code. This provision is applicable for Income Tax, VAT and Excise Tax purposes where the Mexican tax authorities may reclassify the tax effects of legal acts when a) there is a lack of business purpose and b) a tax benefit is obtained (directly or indirectly). A test comparing the economic benefit versus the tax benefit must be carried out and if the latter is higher, the Mexican tax authorities would assume that there is a lack of business purpose on the transaction. The re-classification of tax effects would be to the ones that would be obtained to the economic benefit expected to be obtained by the taxpayer.

Check if any of the transactions to be carried out by the Mexican taxpayers satisfy the GAAR requirement.

Transfer pricing

Mexican income tax regulations require that taxpayers conducting transactions with related parties (i.) determine the price or value of such transactions at arm’s length conditions and, (ii.) secure the corresponding contemporaneous documentation. Otherwise, the tax authorities may determine the price or value that would have been used by independent parties in comparable transactions.

In connection with BEPS Action 13 (country-by-country reporting (CbCR), local legislation aimed to comply with such reporting obligations. In this regard, Mexican local entities with taxable income of MXN 755,898,920 (i.e. approximately USD 40 million) are obliged to submit local files and master files, and country-by-country filing if worldwide consolidated revenues are equal or greater than MXN 12 b (i.e. USD 640 million) on 31 December of the following year in which the obligation is triggered. Penalty for non-filing is MXN 220,400 and may lead to disqualification from entering into contracts with Mexican public sector and cancelation of the taxpayer importer registry. The master and country-by-country fillings shall be submitted non later than on 31 December of the immediately following year of the corresponding fiscal year. Local file shall be submitted no later than 15 May of the immediately following year of the corresponding fiscal year.

Analyse if the mark up currently used can be adjusted based on the transfer pricing study.

Pension fund exemption

Mexican tax law establishes a tax exemption regime for foreign pension and retirement funds investing in Mexican real estate. Such regime grants tax exemptions on interest, leasing income and capital gains, if certain rules are complied with. Please note that income tax exemptions for foreign pension funds in connection with the sale of real estate or shares (which value is comprised in more than 50% of immovable property located in Mexico), should be available to the extent the real estate property was leased for at least a minimum period of four years before the transaction takes place.

Specific analysis of the structures involving foreign pension funds should be carried out in order to apply the tax exemption granted by the Mexican Income Tax Law. Moreover, documentation to support the exemptions is required so it is strongly recommended to secure it on a contemporaneous fashion.

Mexican REITs

A special tax regime is granted for publicly traded Mexican REITs providing certain advantages, such as the no obligation to file monthly advanced income tax payments (among other tax benefits). In addition, the Mexican tax rules enacted a new type of REIT for developing hydrocarbon related activities in Mexico (known as REIT-E) that also provides tax benefits.

Due to the 2020 tax reform in Mexico, income tax benefits for private REITs are no longer available and some rules have been included to regulate the taxation of deferred gains in the context of private REITs.

Creditable VAT for specific business transactions.

VAT paid on strictly indispensable costs and expenses which are deductible for Income Tax purposes should only be creditable when the taxpayer carries out taxable activities. For VAT purposes, for example, the sale of land, houses and dwellings is VAT exempt. Therefore, VAT may be a cost for those real estate companies performing VAT exempt activities, as paid VAT will not be creditable. Also, VAT paid on expenses and investments in pre operative period can be credited either 1) on the first VAT return filed after starting to carry out business activities or 2) request a VAT return in the following month of that in which preoperative expenses and investments are made, according to an estimation of the proportion of the business activities to be carried out by the taxpayer that will be VAT taxed at a 16% or 0% rate.

Finally, regarding VAT crediting, the Mexican Supreme Court recently issued a ruling establishing that VAT paid through settlement of debt is non creditable. This ruling is binding jurisprudence and was published in the Official Gazette of the Federal Judiciary (Semanario Judicial de la Federación) on 12 May 2023.

Tax incentive for real estate developers

Taxpayers engaged in construction and sale of immovable property projects may elect to take a deduction for income tax purposes on the acquisition cost of land in the fiscal year that the land is acquired to the extent that this option is applied for a minimum period of five years for all the land being part of its inventory. Review all requirements for the exercise of this option.

Labor Outsourcing

Employee outsourcing and insourcing are prohibited practices in Mexico. Mexican labor legislation only allows the provision of specialized services, as long as the contractor that will provide the specialized services is registered under the Mexican Secretary of Labor public registry for specialized services providers, and the specialized services or work to be provided by the contractor are out of the scope of the client’s business purposes or economic activities.

4 Nicaragua

Tax Law reforms

In Nicaragua the tax legislation has been reformed several times, most recently in 2019. The reforms include changes to Income Tax, Income and Capital Gains Tax, Value Added tax, Salary Withholding, Minimum Definitive Payment, and tax filing and payment deadlines.

Books vs. tax depreciation

For accounting purposes, the assets can be depreciated using different methods according to the company policies.

The tax depreciation must be computed using the straight-line method. Depending on the type of assets. Taxpayers under the Temporary Admission for Active Processing (TAP) regime may establish to their convenience different depreciation rate (i.e. accelerated depreciation) through a request before the tax authorities. Used fixed assets acquired abroad may also be subject to a different depreciation rate.

Alternative minimum tax

In Nicaragua there is a minimum income tax, which can range from 1% to 3% of the gross taxable income

Asset impairment

Impairments are allowed under GAAP and NIIF, however, impairments are not deductible for income tax purposes.

Goodwill

Goodwill, meaning the excess paid over book value in the acquisition of an entire business, may be part of the deductible cost for capital gain tax purposes in a future sale, provided the said price would also have been subject to the respective capital gain tax

Classification of real estate acquisition

Real estate must be classified for both accounting and tax purposes as inventory or fixed assets, depending on whether it is acquired for subsequent sale or for development. This affects how the property is deducted: as a cost of goods sold (inventory) or through depreciation (fixed assets)

Thin capitalization rules

The Nicaraguan tax system does not impose any form of thin capitalization rules

Limitation on deducting interest expense

The Nicaraguan tax law establishes that interest accrued or paid in the tax period for liabilities to generate taxable income will be deductible up to the amount resulting from applying the average active interest rate of the national banking system at the date the loan was obtained.

This limitation does not include loans made by financial institutions regulated or not by the competent authorities.

Permanent establishment (PE)

This term means a place through which a non-resident taxpayer wholly or partially carries on business, including, inter alia, the following: a place of management; a branch; an office or agent; a factory; a workshop; and a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

Such definition also includes a building site or construction or installation project or connected supervision activities, but only if its duration exceeds six months; and the performance of consultancy services, if they exceed six months within an annual period.

A PE may also be created where a person other than an agent of independent status acts on behalf of a non-resident taxpayer if:

- this person has in Nicaragua authority to habitually conclude contracts or undertake acts in the name of the non-resident taxpayer,
- or even though this person does not have such authority, this person habitually maintains in Nicaragua a warehouse of goods or merchandise from which this person regularly delivers goods or merchandise in the name of the non-resident taxpayer.

These PE rules will not apply to a branch or PE of non-resident taxpayers operating business activities of marine and air transportation of cargo and passengers, as well as land cargo transportation.

Transfer pricing

Transactions between a resident and a non-resident related party must be carried out in accordance with the arm's length principle.

Social Security

Social security contributions exist at 7.00% for employees and 21.50% for employers with 50 or less employees and 22.50% if greater than 50 employees and are determined on the gross salaries and wages.

The employer must also pay 2% of its payroll, monthly, for Training Tax (INATEC).

Corporate – Tax credits and incentives

Foreign tax credit

The Nicaragua tax system does not recognize any form of foreign tax credit.

Temporary Admission System Law

Companies that directly or indirectly export at least 25% of total production (not less than USD 50,000 per year) may apply for the application of the Temporary Admission System.

This system allows both the entry of goods into the national customs territory, and the local purchase of goods and raw materials without having to pay any taxes or import duties.

5 Peru

Corporate Income tax (CIT)

Companies incorporated in Peru are considered resident in Peru for tax purposes and thus subject to a CIT rate of 29.5% on their worldwide net income.

For purpose of determining taxable income, such entities are allowed to deduct expenses to the extent that they are necessary to generate or maintain the source of taxable income. Requirements, limitations, and/or caps may apply to the deduction of certain expenses (thin capitalisation rules), bad debt provisions, salaries, travel expenses, gifts, donations, penalties, etc.

Cross border financing Dividends

Domestic corporations are required to withhold income tax regarding the income paid to non-resident entities at the following rates:

- Dividends or profit distribution: 5% (If the dividends correspond to earnings of a fiscal year before 2016, a different tax rate will apply).
- Interest on non-related party loans, provided certain requirements are fulfilled: 4.99%
- Interest on related party loans: 30%
- Interest on bonds: 4.99%
- Royalties: 30%
- Digital services: 30%
- Technical assistance: 15% subject to certain requirements.
- Lease of vessels or aircraft: 10%
- Other income 30%
- Sale of securities within Peru (Lima Stock Exchange): 5%
- Sale of securities outside Peru: 30%

Transfer pricing

Transactions between related parties and those entered into with parties domiciled in tax havens are subject to transfer pricing rules. The existence of the transactions between related parties determine the application of specific valuation methods, which are established in the Income Tax law.

Interest expenses

Net interest is not deductible to the extent that it exceeds 30% of the Tax EBITDA at the end of the previous fiscal year.

For such purposes, net interest is defined as the interest expense allocable in the year in accordance with the PITL that exceeds the interest income taxable with the IT. Tax EBITDA is defined as the net income after offsetting net operating losses, plus net interest, tax depreciation, and tax amortization.

Interest exceeding the abovementioned limit may be carried forward to the following 4 years (FIFO method applies).

Real estate transfer tax

The real estate transfer tax is levied on all transfers of urban and rural real estate property. The taxpayer is the purchaser of the property. The taxable base is equivalent to the retribution agreed by the parties involved in the transaction, provided it is higher than the property's value (in the relevant year for purposes of the real estate property tax), as reflected in the internal records of the corresponding local authorities.

The tax rate is 3% and must be assumed exclusively by the buyer, regardless of what the parties have agreed. The first ten Tax Units (approximately, USD 13,593 considering the 2024 Tax Unit) of the tax basis are exempt from this tax.

Value-added tax (VAT)

Peruvian VAT law establishes that the following transactions will be subject to VAT at a rate of 18%:
- Sale of goods within the country.
- Render or use of services within the country.
- Construction contracts.
- The first sale of real estate made by constructors.
- Import of goods.

For all transactions, vendors are subject to VAT, except in the case of importation of goods or services rendered abroad but economically used within Peru, for which VAT is self-assessed by the importers and users, respectively.

The VAT law follows a debit/credit system, and input VAT may be offset by output VAT. Should excess input VAT be obtained in a particular month, it shall offset output VAT obtained during the following months, until it is exhausted.

The export of movable goods (including the sale of goods in the international zone of ports and airports) is not subject to VAT, nor is the export of services provided that certain conditions are met. Thus, VAT paid upon the acquisition of goods, rendering of services, construction agreements, and the importation of goods related to exported goods or services creates a positive VAT export balance. The positive balance may be offset against output VAT, income tax, or any other outstanding tax debt in favor of the central government. If the positive balance is not completely offset –as the amount of the tax obligations is insufficient– the taxpayer may apply for a refund.

Tax Treaties

Peru has entered treaties with Brazil, Canada, Chile, Japan, Korea, Mexico, Portugal, and Switzerland regarding double taxation on income tax under the OECD model. In addition, Peru, as a member of the Andean Community, which also includes Bolivia, Colombia and Ecuador, is subject to a double-taxation standard (based on source income; not on the OECD model). Under the DTAs in force, reduced VAT rates are applied.

Real Estate Investment Trusts (REITs)

The REITs Tax Regime in Peru is designed to encourage investment in real estate through collective investment structures. These structures by its acronym in Spanish are known as FIRBI (Real Estate Investment Trust for Securitization of Real Estate Rentals) and FIBRA (Real Estate Investment Trust).

Taxpayers that transfer real estate property to REITs will be liable for capital gain tax and real estate transfer tax once the REITs or the certificates of participation are transferred to a third party.

REITs regime provides a reduced withholding rate:
- Income from a property lease: 5% (non-resident individuals) and 24% (non-resident entities).

6 United States

U.S. Economy and 2024/2025 Outlook

The U.S. economy is projected to stabilize at an approximate 2.0% growth through the end of 2024 and the trend is expected to continue into 2025. Contributing to the modest growth forecast is the persistence of high interest rates, which were slashed by 50 basis points in September 2024 for the first time in four years. Policymakers have also suggested the potential for additional cuts; four quarter-point cuts in 2025 and two planned in 2026.

Higher interest rates continue to disincentivize businesses from borrowing which has limited companies from investing in business endeavors as well as expansion initiatives. While the recent overall reduction in interest rates has sparked newfound willingness for commercial real estate players to act, both buyers and sellers remain cautious and selective.

Inflation has been trending downward and nearing the Federal Reserve's 2% target. However, "sticky inflation," referring to inflation in goods and services that have prices that may not respond as easily to monetary policy adjustments, which could adversely impact overall inflation levels, remains a concern. There have been some signs of improvement in capital spending compared to 2023. The current U.S. unemployment rate is elevated relative to a low of 3.4% in 2023, but at 4.1% it remains below the long-term average in recent decades.

2024 Presidential Election and Tax Legislation

In anticipation of the upcoming Presidential election, tax legislation continues to be a central issue for the candidates and a significant concern for U.S. voters. Key provisions of the 2017 Tax Cuts and Jobs Act (TCJA) are scheduled to expire at the end of 2025. However, to date, the House and Senate have failed to agree on potential extensions of the expiring provisions. Both individuals and businesses must vigilantly monitor these developments to evaluate the potential impact on their future taxes. Consequently, businesses may need to reassess their operational and structural strategies and engage in tax planning to adapt effectively.

House Ways and Means Chairman Jason Smith (R-MO) has stated that "everything will be on the table" in 2025. This includes the current 21% corporate tax rate, which Vice President Harris has proposed to increase to 28%. Former President Trump has proposed to lower the 21% corporate rate to 15% for companies producing goods in the United States.

Provisions of the TCJA scheduled to expire include, but are not limited to:
- Individual ordinary income tax rates; the top ordinary individual tax rate of 37% will revert back to 39.6%;
- IRC §199A qualified business income deduction of 20%; and
- The USD 10,000 SALT cap which limits the deduction for state and local taxes.

Other provisional changes that could impact multinational businesses include:
- Global Intangible Low-Taxed Income (GILTI) rate increase from 10.5% to 13.125%.
- Base Erosion and Anti-Abuse Tax (BEAT) rate increase from 10% to 12.5%.
- Foreign-Derived Intangible Income (FDII) rate increase from 13.125% to 16.4%.

IRS Compliance and Enforcement Efforts

The Internal Revenue Service (IRS) continues to leverage funding from the Inflation Reduction Act of 2022 (IRA) to implement various initiatives as part of its “Strategic Operating Plan”. The plan, which was updated in May 2024, outlines upcoming projects and focus areas for the next 12 to 18 months, including:

- Expanding focus on enforcement of taxpayers with complex tax filings and potentially aggressive tax positions;
- Improving taxpayer services (both live and online);
- Redesigning and simplifying the issuance of notices to reduce the burden on the taxpayer;
- Modernizing foundational technology for processing tax returns as well as enhancements to digital tools; and
- Attracting and retaining a highly skilled workforce.

The plan stresses there will be increased focus on compliance and enforcement of high-income earners, large corporations, and large-complex partnerships. Some of the key highlights of the plan include:

- The IRS will seek to nearly triple audit rates on large corporations with assets over USD 250 million in tax year 2026.
- The IRS will seek to increase audit rates by nearly ten-fold on large-complex partnerships with assets over USD 10 million. To that end, they have opened examinations of 76 of the largest partnerships in the U.S., covering industries such as hedge funds, real estate investment partnerships, publicly traded partnerships, and large law firms.
- The IRS will seek to increase audit rates by more than 50% on wealthy individuals with total positive income over USD 1 million. As of January 2024, this initiative has recovered USD 520 million of unpaid taxes.

The IRS has implemented use of artificial intelligence and advanced analytics to assist with the selection of business enterprises for audits. The IRS has also announced new focus initiatives on abusive basis-shifting transactions among related-party partnerships. The Large Business & International tax (LB&I) division also plans to formally launch a new campaign in the near term aimed at complex partnership issues. Taxpayers should continue to remain vigilant of positions taken and retention of documentation to support tax return filings in the event of possible IRS examinations.

REIT Structure Scrutiny – Qualified Lodging Facilities/Qualified Health Care Properties

Taxable REIT subsidiaries (TRSs) are essential for real estate investment trust (REIT) structures, allowing REITs to provide services that they are not permitted to offer. Income from related parties is generally excluded as qualifying income for a REIT. However, the statute provides an exception for income the REIT receives from a “qualified lodging facility” or “qualified health care property” the REIT leased to a TRS, whereby the rents received from the TRS will typically qualify as rents from real property. This exception requires that these properties must be operated and managed by an eligible independent contractor.

Recently, Senator Ron Wyden (D-Ore.) and Senator Elizabeth Warren (D-Mass.) have raised concerns about potential tax violations in this structure for healthcare properties. The Senators have sent letters to the IRS advocating for stronger enforcement in this area. The Senators have expressed concern that some TRSs might be indirectly involved in operations and management of the properties, highlighting that some TRSs have negotiated agreements with hotel operators that allow the TRS to veto collective bargaining agreements and engage in labor negotiations with hotel employee labor unions. The IRS Office of Chief Counsel has responded broadly outlining certain disapproved actions related to the indirect operation or management of lodging facilities. Specifically, they emphasized that a TRS is prohibited from activities such as recruiting, hiring, daily supervision, and directing employees.

Both the Senators' and the IRS's communications indicate a preference for clearer guidelines on what constitutes direct or indirect operation or management by TRSs to ensure compliance with REIT tax regulations. In addition, Senators Edward Markey (D-Mass.) and Warren have introduced legislation that would curtail the ability of REITs to own healthcare properties. Given the overall heightened IRS scrutiny and the proposed legislation, taxpayers should be particularly cautious and seek consultation with legal and tax advisors when establishing and maintaining a REIT/TRS structure.

Loper Bright Enterprises v. Raimondo overturns Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.

The Treasury Department prescribes regulations for the interpretation of the Internal Revenue Code. In Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc., the Supreme Court established the Chevron doctrine that generally required federal courts to defer to a federal agency's reasonable interpretation of an ambiguous statute. The Supreme Court overturned this principle in Loper Bright Enterprises v. Raimondo, ruling that courts "must exercise their independent judgement in deciding whether an agency has acted within its statutory authority."

The Loper Bright decision is likely to lead to a greater divergence of opinions among courts when they are confronted with challenges to regulatory validity. This development may pose compliance challenges or opportunities for taxpayers. At the same time, by constraining an agency's ability to interpret an ambiguous statute, the decision will likely promote regulatory stability across presidential administrations. In other words, an executive agency must adopt the 'best' interpretation of a statute, rather than choose from a range of reasonable readings, which may limit the ability of a new administration to undo the regulatory actions of its predecessors. The Loper Bright decision is focused on agency action interpreting silence or ambiguity in a statute. It also acknowledges, however, that Congress may delegate rulemaking authority to executive agencies within certain bounds.

In the tax context, the Supreme Court's decision to overrule Chevron may result in more legal challenges regarding Treasury and the IRS's interpretation of Code sections. This more stringent judicial review could invalidate existing Treasury regulations if the courts reach a different interpretation of the statutory text. Specifically, while a court generally was required to defer to an agency's interpretation of an ambiguous statute under Chevron so long as it was 'permissible' (or, more specifically, not "arbitrary, capricious or manifestly incompatible with the statute"), the courts now may hold in favor of a litigant's challenge to regulations if the regulations do not represent the 'best' reading of the statute. This is a potentially significant shift. Taxpayers challenging regulations might find courts more receptive to their arguments, potentially leading to less flexibility for Treasury to effect tax policy changes through regulations and to greater uncertainty in the application of Treasury regulations until Congress clarifies a respective statute or Treasury issues new regulations that withstand judicial scrutiny.

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